

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2232 of 1992

Date of Decision: 05.10.2023

Raghubir Singh

... Appellant(s)

Versus

The State of Haryana and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Amit Jain, Senior Advocate
with Mr. Anupam Mathur, Advocate
for the appellant(s).

Mr. Jaspal Singh Pannu, Assistant Advocate General,
Haryana, for the respondents.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

2. This appeal was filed by Mr. Satish Kumar Mittal, Advocate, who later on became a Judge of this Court and has since retired. Subsequently, the brief was handed over to the office of Mr. Arun Jain, Senior Advocate, who has unfortunately passed away. As a moral duty, Mr. Amit Jain, Senior Advocate, son of late Mr. Arun Jain, Senior Advocate, has come forward to assist the Court. This Court permits him to assist.

3.

Heard the learned counsel representing the parties at length and

with their able assistance, perused the paper-book.

4. The correctness of the concurrent findings of facts, arrived at by both the Courts below, while dismissing the suit, is challenged in this second appeal filed by the plaintiff. The First Appellate Court has slightly modified the finding of the trial Court, but, ultimately, dismissed the appeal.

5. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. The plaintiff has filed a suit on 10.12.1985 to seek a decree of declaration that the orders dated 02.09.1981 and 14.01.1982, respectively, whereby Sh.Anand Swarup and Sh.Ghanshyam Dass were promoted as Superintendents, are illegal, null and void as these officials were junior to him. Only, the State of Haryana and its officials were impleaded as party in the suit. The defendants, while contesting the suit, explained that although the appellant, Sh.Anand Swarup and Sh.Ghanshyam Dass were recruited as Clerks, however, the appellant was promoted as a Head Clerk on 26.05.1971, whereas Sh.Anand Swarup was promoted as Junior Auditor on 01.04.1969. Thereafter, Sh.Anand Swarup was taken as a direct recruit on the post of Superintendent w.e.f. 02.09.1981. Similarly, Sh.Ghanshyam Dass was promoted as a Junior Auditor and thereafter, further promoted as a Superintendent. Hence, there cannot be any comparison between the three employees.

6. The learned senior counsel representing the appellant contends that the First Appellate Court has correctly reversed the findings of the trial Court with regard to issue No.1, however, erred in upholding the finding on the issue of non-joinder of the necessary parties.

7. This Court has considered the submissions. It is evident that the

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appellant, Sh.Anand Swarup and Sh.Ghanshyam Dass adopted the different channel of promotion. Moreover, Sh.Anand Swarup and Sh.Ghanshyam Dass were the necessary parties to the suit. Without impleading them as the parties, the Court was not expected to direct the State to consider the promotion of the appellant over and above Sh.Anand Swarup and Sh.Ghanshyam Dass.

8. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of facts arrived at by both the Courts below. Hence, the present appeal is dismissed.

(Anil Kshetarpal)
Judge

October 05, 2023
“DK”

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No