

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CMs-2107 to 2109-C-2023 in
RSA-546-2023 (O&M)
Date of Decision :01.03.2023

State of Haryana and others

...Appellants

Versus

Nanu Ram

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Vibha Tewari, AAG, Haryana for the appellant-State.

* * *

Harsimran Singh Sethi, J. (Oral)

CM-2108-C-2023

The present application has been filed for condonation of delay of 195 days in filing the present appeal.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed. Delay of 195 days in filing the present appeal is condoned.

CM-2107-C-2023

The present application has been filed for condonation of delay of 25 days in re-filing the present appeal.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed. Delay of 25 days in re-filing the present appeal is condoned.

RSA-546-2023

The present regular second appeal has been filed by the appellant-State of Haryana challenging the judgments and decrees dated

16.02.2021 and 12.04.2022 of the Courts below by which, suit filed by the respondent-plaintiff seeking exemption from passing the typing test and release of his annual increments, which have been withheld due to the non-passing of the typing test, has been decreed in favour of the respondent-plaintiff and a direction has been given by the trial Court that from the date of promotion, the annual increments for which the respondent-plaintiff is entitled for, be released to him along with arrears and interest @ 5% per annum.

Learned counsel for the appellant-State argues that judgment and decree dated 16.02.2021 of the trial Court which has been upheld by the Lower Appellate Court vide order dated 12.04.2022 are perverse and argues that the respondent-plaintiff concealed the information from the department while seeking promotion from Class-I to Class-III post that he is handicapped so as to perform the duties relating to typing work hence, after promotion, seeking exemption from passing the type test, is bad.

The second argument raised by the learned counsel for the appellant-State is that decision of this Court in **CWP-23136-2010** titled as **Laxmi Devi vs. State of Haryana and others** decided on 05.02.2014 has not been interpreted in a correct manner so as to record a finding that the instructions dated 20.01.1998 issued by the department were applicable upon the promotion as well.

I have heard learned counsel for the appellant-State and have gone through the record with her able assistance.

The argument being raised by the learned counsel for the appellant that information qua the fact that respondent-plaintiff is handicapped was concealed by him from the department at the time of

seeking promotion, is not correct. On being asked, as to whether department had sought information from the respondent-plaintiff as to whether he is fit enough to perform duty of the clerk or not or whether any evidence has come on record in this regard, learned counsel for the appellant-State concedes the fact that before giving promotion to the respondent-plaintiff to the post of clerk, no such record was seen and no such information was sought from the respondent-plaintiff. In the absence of any information being sought by the department, there was no occasion with the respondent-plaintiff to submit any information on his own qua the disability being suffered by him at the time of promotion. Hence, the contention of the learned counsel for the appellant-State that information qua the disability suffered by him was concealed by the respondent-plaintiff is not correct and cannot be accepted.

The second argument which is being raised is that as per the instructions dated 20.01.1998, it is only in case either hand of the candidate is amputated only then, exemption from passing typing test can be claimed whereas, in the present case, only one thumb of one hand of the respondent-plaintiff is amputated hence, no relief can be claimed under Instructions dated 20.01.1998.

In this regard, it may be noticed that question qua the applicability of Instructions dated 20.01.1998 came up for consideration before the Coordinate Bench of this Court in Laxmi Devi (supra) wherein, it has been held that the said restriction is not qua promotion but only imposed qua direct recruits and, hence, argument raised by the learned counsel for the appellant-State that respondent-plaintiff could not have been promoted as he has not informed about being handicapped cannot be accepted keeping

in view the law settled by the Coordinate Bench of this Court in Laxmi Devi (supra).

Further argument of the learned counsel for the appellant-State that only one thumb of the one hand of the respondent-plaintiff has been amputated whereas, as per the instructions dated 20.01.1998 exemption can only be granted to a candidate, who does not have either of his/her hand, in said regard, the instructions are to be interpreted in a manner required for. Where a candidate has been able to show that keeping in view the disability being suffered by him/her, he/she is unable to pass the type test, the benefit of the Instructions dated 20.01.1998 has to be extended.

The findings recorded by the Courts below are the correct interpretation of the Instructions dated 20.01.1998 and no perversity in the judgments and decrees of the Courts below is pointed out by the learned counsel for the appellant-State. Rather the judgments and decrees of the Courts below are in consonance with the judgment passed by a Coordinate Bench of this Court in **Laxmi Devi (supra)**.

Keeping in view the above, no interference is called for by this Court and the present regular second appeal is accordingly dismissed.

CM-2109-C-2023

Application is also dismissed.

March 01, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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