

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(202)

CM-4137-C-2023 in/and
RSA-1570-1994

Date of Decision : June 01, 2023

Prakash Chander

.. Appellant

Versus

Haryana State Electricity Board and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Jai Shree Kaushik, Advocate, with
Mr. Aryavarat Ajay Chaudhary, Advocate,
for the applicant-appellant.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-4137-C-2023

Present application has been filed for fixing the actual date of hearing of the present appeal.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed and the main appeal is taken up for hearing today itself.

RSA-1570-1994

1. Present appeal has been filed against the judgment and decree of the lower Appellate Court dated 10.02.1994 by which the judgment and decree of the trial Court dated 15.03.1991 has been set aside and the suit filed by the appellant-plaintiff was dismissed.

2. It may be noticed that the suit was filed by the appellant-plaintiff claiming the promotion to the post of Upper Division Clerk (UDC) in preference to respondents No. 4 to 6. The appellant-plaintiff claimed that he was appointed as a Lower Division Clerk (LDC) with the Punjab State Electricity Board on 23.08.1963 and after the bifurcation of the joint Punjab, he was absorbed in the Haryana State Electricity Board as LDC and was promoted as a cashier on 01.06.1969. In the year 1991, a civil suit was filed by the appellant-plaintiff claiming that respondents No. 2 to 4 were promoted as UDC in preference to the appellant-plaintiff hence, he is entitled for promotion as UDC w.e.f. the date the persons junior to him were promoted with all consequential benefits.

3. Keeping in view the evidence and facts which came on record, the suit filed by the appellant-plaintiff was allowed on the ground that when the seniority was issued in the year 1976 of the joint cadre i.e. Lower Division Clerk as well as Meter Reader, no opportunity of hearing was given to the concerned employees so as to raise any objections to the said seniority list hence, the change in the seniority list of the Lower Division Clerk after merger of Meter Readers in the said cadre cannot cause prejudice to the appellant-plaintiff who was working as Lower Division Clerk and the suit was decreed vide judgment and decree of the trial Court dated 15.03.1991.

4. Feeling aggrieved against the said decision, an appeal was preferred by the Haryana State Electricity Board which came to be decided on 10.02.1994. The lower Appellate Court set aside the judgment and decree of the trial Court and consequently suit filed by the appellant-

plaintiff was dismissed by noticing the fact that keeping in view the decision of the Haryana State Electricity Board dated 31.08.1970, the post of Meter Reader was made inter changable with the LDC and it was made a joint cadre for further promotion to the post of UDC and the seniority list prepared in the 1976 was of the joint cadre hence, once the employees, who were senior to the appellant-plaintiff in the year 1976, were promoted, no grievance can be raised by the appellant-plaintiff. Judgment and decree of the lower Appellate Court dated 10.02.1994 is under challenge in the present Regular Second Appeal.

5. Learned counsel appearing on behalf of the appellant submits that the fixation of seniority in the year 1976 by the Department so as to grant the seniority to the private respondents over and above the appellant in the cadre of LDC was bad and the suit filed by the appellant-plaintiff was rightly decided by the trial Court that while framing the joint seniority list of LDC and Meter Readers, due opportunity was not given to the appellant-plaintiff, which finding should not have been over ruled by the lower Appellate Court without any cogent evidence.

6. Learned counsel for the appellant further submits that in the tentative seniority list, private respondents were shown junior to the appellant hence, in the final seniority list, the same could not have been treated senior to the appellant so as to give them promotion for the post of UDC in preference to the appellant-plaintiff.

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

8. It may be noticed that the seniority list issued in the year 1976

is not under challenge in the present suit. Further, even the promotion of the private respondents which was effected in the year 1976 to the post of Upper Division Clerk are not under challenge. The suit was filed by the appellant-plaintiff seeking promotion was filed in the year 1990. Once, the promotions of the private respondents were effected in the year 1976, it can only be said that the cause of action accrued to the appellant-plaintiff in the year 1976. That being so, nothing has come on record as to how, the suit was filed within limitation in the year 1990, when the same was filed.

9. Even otherwise, it has already come on record that keeping in view the decision of the Haryana State Electricity Board passed on 31.08.1970, there was a joint cadre of LDC and Meter Reader. Keeping in view the said decision taken, a joint seniority list was framed of the Meter Reader as well as LDC keeping in view the date of their initial appointment. Learned counsel for the appellant-plaintiff has not been able to rebut the fact that the private respondents were appointed on the post of Meter Reader prior to the date when the appellant was appointed as LDC. That being so, it cannot be said that in the joint cadre of LDC and Meter Reader, the private respondents, who were working as Meter Reader, were junior to the appellant in any manner so as to give a right of preference to the appellant-plaintiff for promotion as Upper Division Clerk.

10. Another point which has been ignored by the Court below is that prior to the year 1970, the appellant had already been promoted as a cashier in the year 1969. Nothing has been shown by the learned counsel for the appellant that for promotion to the post of Upper Division Clerk, even the cashiers were entitled and the said cadre of cashier was a feeder cadre to

the promotion of UDC. Hence, once concededly the appellant was working as a cashier since 1969 and nothing has been brought on record to show that the cashiers were also entitled for promotion as UDC, the claim raised in the year 1991 seeking promotion to the post of UDC, has rightly not been allowed by the lower Appellate Court.

11. No other point was argued.

12. Keeping in view the above, as no perversity has been pointed out in the judgment and decree of the Lower Appellate Court, no ground is made out for any interference by this Court in the present Regular Second Appeal and the same is accordingly dismissed.

June 01, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes