

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

109

1. RSA-796-1996**Date of decision: 15.12.2023****PREM CHAND****..Appellant****Versus****PUNJAB STATE ELECTRICITY BOARD & ORS.****..Respondents****2. RSA-1751-1996****PUNJAB STATE ELECTRICITY BOARD & ORS.****..Appellants****Versus****PREM CHAND****..Respondent****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Rakesh Nagpal, Advocate
for the appellant.

Mr. Y.P. Khullar, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. These two cross-appeals arising from a common judgment passed by the First Appellate Court while deciding the appeal in a suit filed by Sh. Prem Chand have come up for final disposal. Sh. Prem Chand while filing a suit for grant of decree of declaration with a consequential relief of mandatory injunction prays that he may be promoted as a driver as his juniors have been promoted.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

3. After having been inducted into service on 16.08.1976 as T-Mate (work charge basis), the plaintiff (Sh. Prem Chand) was promoted as a

cleaner on 01.01.1977. For a brief period of nearly three years, he has also worked as a driver, though, he was never paid for it. He filed a suit for decree of declaration that he is entitled to continue as a driver and he should be given salary for his services between 12.10.1981 to 07.01.1985. In fact, the suit was filed by the plaintiff when he got posted as a cleaner on a given pay scale. Ultimately, the suit filed by the plaintiff was partly decreed. The Court ordered that he will be entitled to the payment of salary as a driver, however, the Court refused to grant decree for declaration that he is entitled to be promoted as driver. On 27.07.1990, he again filed a civil suit. The defendants while contesting the suit asserted that there is as such no provision in the service rules to promote a cleaner to the post of the driver. It was asserted that the drivers are selected and appointed directly by the Subordinate Staff Selection Board and there is no provision for appointment of drivers on the basis of promotion. The trial Court after taking note of the service rules, dismissed the suit. However, the First Appellate Court held that though the plaintiff has failed to prove that there is any provision in the service rules for getting promoted to the post of driver from the post of cleaner, nevertheless, since departmental officials have failed to show the rules therefore, the appellant would be considered for promotion by the department as and when vacancy arises in the department. That is how two cross appeals arose from a common judgment. Sh. Prem Chand (plaintiff) has already retired. After the judgment passed by the First Appellate Court, his appointment as a driver was never made.

4. It is evident that in the service rules, there is no official channel for promotion from the post of cleaner to the driver. However, the First

Appellate Court impressed by the fact that certain juniors have been

promoted as driver passed the judgment. It is well settled that wrong committed by the officials cannot be perpetuated by issuing directions, which is *de hors* the service rules.

5. Keeping in view the aforesaid facts, the observations made by the First Appellate Court directing the Punjab State Electricity Board now Punjab State Power Corporation Limited to consider the plaintiff for promotion, are set aside.

6. The appeal filed by the Punjab State Electricity Board now Punjab State Power Corporation Limited i.e. RSA-1751-1996, is disposed of, whereas, that of the employee i.e. RSA-796-1996, is dismissed.

7. All the pending miscellaneous applications, if any, are also disposed of.

December 15th, 2023

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**(ANIL KSHETARPAL)
JUDGE**

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