

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

311

RSA-1556-1999 (O&M)
Date of decision: 30.11.2023

State of Haryana and Others

....Appellants

Versus

Suresh Kumar Prince

...Respondent

RSA-2878-1999 (O&M)

Suresh Kumar Prince

....Appellant

Versus

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Jagdish Manchanda, Addl. AG Haryana

Mr. S.P. Laler and Mr. Shubham Saroha, Advocate
for the appellant in RSA-2879-1999 &
for the respondent in RSA-1556-1999

AMAN CHAUDHARY, J.

1. The aforementioned appeals arise out of a common judgment passed by learned Additional District Judge, Faridabad, and are therefore being decided together.
2. Challenge in the present regular second appeals is to the judgment and decree dated 29.01.1999 passed by learned Additional District Judge, Faridabad partly rejecting the judgment and decree dated 15.05.1998 passed by learned Civil Judge (Jr. Division), whereby the suit for declaration was decreed in favour of the plaintiff. For the sake of convenience, parties shall be referred as per

their original status.

3. The facts necessary for the adjudication of these appeals are that a suit for declaration was filed by plaintiff-Suresh Kumar stating therein that he was appointed as Agriculture Development Officer in the Agriculture Department, Haryana on 13.03.1975 and was placed at Sr.No.684 in the seniority list, whereas Raj Kumar Denodia and Yash Pal Verma, who were also appointed and placed at Sr.Nos.697 and 711, were promoted as Circle Agriculture Officers w.e.f. 09.02.1979 by ignoring him on the ground that there were adverse remarks in his ACR for the year 1989-90. His representation was also not considered. Thus, the present suit was filed for declaration.

4. In the written statement filed by the defendant-State, besides taking the preliminary pleas of the suit being premature and civil Court having no jurisdiction to try the same, it was also stated that Raj Kumar Denodia and Yash Pal Verma belonged to backward class category and the reason for non-selection of the plaintiff, were the adverse entries in his ACR.

5. The learned trial Court after framing the issues decided the suit vide judgment and decree dated 15.05.1998 in favour of the plaintiff by holding that nothing incriminating was brought on record by the defendant and the adverse remarks had been recorded by the Deputy Director, Agriculture in a casual manner without following the Government Instructions. Thus, the said remarks in ACR for 1989-90 were expunged. Further, the plaintiff was held to be entitled to promotion as Circle Agriculture Officer from the date when his juniors were promoted and ancillary benefits thereof.

6. Aggrieved defendant-State filed an appeal, which was partly accepted

by the learned Additional District Judge, vide judgment and decree dated 29.01.1999 on the ground that the caste of the plaintiff was declared as backward class on 10.11.1982, which was after the promotion of Yash Pal Verma and Raj Kumar, his juniors, who were not made a party and therefore, he would neither be entitled to be promoted w.e.f. 09.02.1979, when they were promoted nor to the benefits accrued therefrom. However the finding of the trial Court with regard to expunction of the adverse remarks was affirmed.

7. Both the parties being not satisfied, have filed their respective appeals before this Court.

8. Learned counsel for the plaintiff would submit that the learned lower appellate Court has committed an error while partly accepting the appeal of the defendant. The learned trial Court had rightly decreed the suit in his favour and ordered to grant promotion w.e.f. 09.02.1979 with all ancillary benefits thereof by expunging the adverse remarks in ACR for the year 1989-90. Yash Pal Verma and Raj Kumar Denodia, who were junior to him, were promoted by considering them as backward class, whereas no such circular was issued to submit any certificate for the said purpose. Further the finding of the lower appellate Court that the caste, to which the plaintiff belongs to, came into existence on 10.11.1982, is contrary to record, as it was enlisted much prior to 09.02.1979. Since, now the plaintiff has retired on attaining the age of superannuation, learned counsel restricts the grant of benefits only notionally towards fixation of pension.

9. On the other hand, learned State counsel contends that the lower appellate Court has rightly rejected the claim of the plaintiff as he could not place on record the caste certificate, whereas his juniors, belonging to the backward

class, were promoted on 09.02.1979.

10. Heard the learned counsel on either side and perused the record.

11. Admittedly, Suresh Kumar Prince (plaintiff) was appointed as Agriculture Development Officer in the Agriculture Department, Haryana on 13.03.1975, Raj Kumar Denodia and Yash Pal Verma on 28.12.1975 and were at seniority Nos.684, 697 and 711 respectively. Thereafter, his juniors were promoted as Circle Agriculture Officers w.e.f. 09.02.1979, being in the backward class category. However, the plaintiff was ignored on the ground that the caste to which he belonged was got declared as backward class subsequently on 10.11.1982.

12. As is evincible, the Deputy Director reported the integrity of the plaintiff doubtful and overall assessment was held to be average. Both the Courts below found that CAO had initially recorded his ACR good, to which, Sub Divisional Agriculture Officer agreed but Deputy Director, was without any basis and being biased made the adverse entry in his ACR. Regarding duplicacy of the TA bills, it had been stated by him, while appearing as PW8 that the original TA bills had been lost, to which there was no rebuttal. In his comments Ex.PW6/5, the plaintiff made specific allegations against the officer, who recorded adverse remarks and the defendant could not confute the same. The same were found to be recorded in contravention of the Govt. instructions and with some ulterior motive. In view of the above, both Courts rightly expunged the adverse remarks in the ACR of the plaintiff, requiring no interference, it being a finding of fact. Thus, there is no impediment to his promotion.

13. It would be gainful to refer to the list of backward class for the year 1968-69 mentioned in the report published by the Govt. of Haryana in 1978-79,

which is a public document and can be taken into consideration at this stage as well, reads thus:

“List of backwards class:

1. Aheriya, Aheri, Heri, Naik, Thori or Turi
29. Bhat, Bhatra, Darpai, Ramiya.”

14. On evaluating the record, it is apparent that the persons, concededly junior to the plaintiff, were promoted prior to him, that too without considering his claim, though said to have been on the basis of the backward class certificate, which is contrary to record inasmuch as the order does not reveal that it was against any roster point, even otherwise, had the same been the position, two employees could not have been promoted simultaneously, on basis of reservation. That apart, it has not been shown by learned State counsel that any circular or memo was issued by the Department seeking furnishing of a certificate for the said category for purpose of promotion on the aforesaid premise of belonging to backward class.

15. Still further, the finding recorded by the lower appellate Court to the effect that the promotion could not have been granted to the plaintiff based on his caste having been declared as backward, since it was made in the year 1982, amounts to misreading of evidence as the same was done w.e.f. 1978-79, while the promotion order of juniors was dated 09.02.1979, therefore, he could have been subsequently considered for it with effect from the aforesaid date. In **Neelakantan and Ors. vs. Mallika Begum**, (2002) 2 SCC 440, Hon’ble the Supreme Court held that findings of fact recorded must be set aside where the finding has no basis in any legal evidence on record or is based on a misreading of evidence or suffers from any legal infirmity which materially prejudices the case of one of the parties.

16. It not being borne out from the record that the juniors had been promoted by granting them the benefit of the backward class category, the plaintiff had a right of consideration, to say the least, which has now evolved as a fundamental right, though promotion is not, as held by Hon’ble the Supreme Court in **Ajay Kumar Shukla vs. Arvind Rai**, 2021 SCC OnLine SC 1195.

17. Keeping the foregoing holistic discussion in mind, this Court is of the opinion that RSA-2878-1999 filed by the plaintiff-appellant should succeed, which leads to the affirmation of the judgment and decree of the trial Court, with the modification that he would be entitled to only notional benefits towards fixation of pension, in wake of the fact of him not having worked on the said post and also for which reason even the learned counsel has fairly restricted the claim to that effect. The judgment and decree of the lower appellate Court, insofar as it stood allowed, is set aside. RSA-1556-1999 filed by the State being devoid of merits, is dismissed.

18. A photocopy of the judgment be placed on the file of the connected case.

(AMAN CHAUDHARY)
JUDGE

November 30, 2023
M.Kamra

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