

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(206)

CM-7434-C-1999 in/and
RSA-4275-1999 (O&M)
Date of Decision : January 05, 2023

Roshan Lal

.. Appellant

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jaspal Singh Maanipur, Advocate, for the appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-7434-C-1999

As prayed for, the application is allowed.

Delay of 03 days in filing the appeal is condoned.

RSA-4275-1999

Present Regular Second Appeal has been filed by the appellant challenging the order of the lower Appellate Court dated 23.02.1999 by which, the findings recorded by the trial Court in its decision dated 28.11.1996 were set aside.

The claim of the appellant is that he is entitled for consideration for promotion and he should be given promotion as Forest Guard w.e.f. the date candidates junior to him were promoted i.e. 01.08.1969. As per the appellant, certain juniors of the appellant namely Sudhir Kumar, Rameshwar, Kedar Nath, Mahabir Singh, Rajinder Parshad, and Sohan Lal

were promoted in preference to the appellant ignoring the seniority position, hence, the appellant is entitled for promotion as Forest Guard w.e.f. the date the juniors of the appellant-petitioner were promoted. The suit filed by the appellant was allowed by the trial Court holding that number of persons were promoted to the higher rank ignoring the claim of the appellant especially when the appellant was found eligible in all respects but was not given an appointment keeping in view the fact that the appellant had crossed the maximum age for being recruited on the said post of Forest Guard. A direction was given by the trial Court that the appellant be extended the promotion to the post of Forest Guard w.e.f. 01.08.1969 along with all the consequential benefits including interest @ 12% per annum. The said judgment of the trial Court dated 28.11.1996 was appealed and in Civil Appeal No.17 dated 30.01.1997, the lower Appellate Court accepted the appeal on the ground that the claim of the appellant for promotion was declined by the Department through a letter conveyed to him on 12.09.1986 and thereafter even the appeal filed against the said rejection was rejected vide Exhibit P-27, which was brought to the knowledge of the appellant on 28.06.1986, which orders are not under challenge, hence, the suit filed for declaration filed by the appellant was not maintainable being time barred and also due to the non-joinders of the necessary parties as the appellant was claiming promotion w.e.f. the date persons junior to him were promoted.

In the present Regular Second Appeal, the appellant is impugning the judgment of the lower Appellate Court on the ground that once it was held by the trial Court that juniors to the appellant were promoted as Forest Guard, the appellant was entitled for promotion to the

said post even if, the orders dated 12.09.1983 and 28.06.1986 rejecting the claim of the appellant for appointment as Forest Guard is to be accepted, appellant can be promoted thereafter.

Learned counsel for the appellant submits that the appellant joined as a Mali and retired from the said post after rendering about more than three and half decades of service, which cannot be allowed as every employee is entitled for minimum of two promotions in the career.

Learned counsel for the respondent-State argues that from the post of Mali, the appellant could have been given promotion to the next higher post in case he fulfills the criteria for promotion but with regard to the appointment as Forest Guard, the appellant initially did not fulfil the qualification when the juniors to the appellant-petitioner were appointed on the said post but when the appellant attained the academic qualification for appointment to the post of Forest Guard, though he was found fit for appointment as Forest Guard but he had crossed the maximum age required for the said appointment, hence, the appellant could not be given appointment as a Forest Guard, therefore, the judgment of the lower Appellate Court is perfectly valid and the decision of the trial Court has rightly been set aside by the lower Appellate Court.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The trial Court has recorded a finding on the basis of evidence that there were avenues of promotion as well as direct appointment from the post of Mali. It has been conceded by the learned counsel for the respondent-State before the trial Court that certain persons, who were junior to the appellant, were directly appointed as Forest Guards, who fulfilled the

qualification for the same but as the appellant did not fulfil the academic qualification, he was not appointed on the said post.

Further, it has also come on record that certain employees were given promotion to the higher rank from the post of Mali. That being so, the suit filed by the appellant seeking declaration that he is entitled for promotion w.e.f. the date persons junior to him were promoted, is valid even if it is assumed that the claim of the appellant for direct appointment as a Forest Guard, could not have been entertained keeping in view the rejection of the claim in the year 1983 and thereafter in 1986, being time barred.

Keeping in view the above, the judgment of the trial Court as well as the lower Appellate Court is modified to the extent that the respondents will consider the claim of the appellant for promotion to the next higher rank from the post of Mali in accordance with the seniority maintained and appropriate order be passed within a period of three months from the receipt of copy of this order. In case, the appellant is found entitled for promotion to the next higher rank and the same has already been extended to an employee junior to him in the said cadre of Mali and the appellant fulfilled the requisites for the said promotion when the said junior employee was promoted, appropriate promotion be also extended to the appellant.

The present appeal is allowed in above terms.

January 05, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes