

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

315

RSA-4940-1989 (O&M)
Date of decision: 05.12.2023

Hari Singh

....Appellant

Versus

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Ms. Karamjeet Sharma, Advocate/Legal Aid Counsel
for the appellant

Mr. Jagdish Manchanda, Addl. AG Haryana

AMAN CHAUDHARY. J.

1. Challenge in the present regular second appeal is to the concurrent findings of facts returned by both Courts below in favour of the plaintiff-respondent in a suit filed for permanent injunction.
2. The brief factual matrix of the case is that the plaintiff-appellant was an aspirant for appointment as a subordinate Judge, for which he participated in the HCS examination, 1988-89, under the reserved category, wherein he scored 49.9% marks in the written test and was thus declared ineligible vide result dated 15/16.09.1989, the benchmark being 55%. Thereafter, on 13.06.1990, an amendment was made in Rule 8 of the Haryana Civil Service (Judicial Branch) whereby the minimum qualifying marks for scheduled castes/tribes and backward classes were reduced to 50%. The representation filed by him to consider his case as per the above against a vacant SC post by rounding-off his marks to 50% was rejected, leading to filing the suit for declaration and mandatory injunction.

3. The defendants in their written statement, stated that the plaintiff-appellant had scored less marks than required, thus was rightly not selected and the amendment dated 13.06.1990 was not applicable for an examination held prior thereto.

4. Learned trial Court after framing the issues and hearing the arguments, dismissed the same by observing that the plaintiff was governed by the conditions of minimum qualifying marks for both general and SC candidates, as the same was in force at the time of the examination, which he did not obtain. Further that the suit was time-barred, as it was filed after a period of more than four years from the date of cause of action that accrued on 13.06.1990, when the amendment had taken place.

5. The lower Appellate Court, though reversed the findings on issue No.4 i.e. of limitation, in favour of the plaintiff by holding that the cause of action arose on the date of selection of the last candidate in general category, however, dismissed the appeal, on the ground that the Notification, Ex.P1 cannot operate with retrospective effect and his marks of 49.9% cannot be rounded-off as 50%.

6. Learned counsel for the appellant would submit that the Notification dated 13.06.1990 whereby the minimum qualifying marks to be obtained in the competitive examination were reduced, should have been made applicable to the case of the plaintiff-appellant as well, in terms of the judgment in the case of **Asha Mehta vs. State of Punjab and Another**, 1993(2) RSJ 1 (P&H) and he thus was entitled to the rounding off the marks to 50% to become eligible for appointment. It was further contended that even in the year 1994, appointment of a general category candidate was made, while 12 posts of backward class candidates

remained vacant against which he has a claim.

7. Contrarily, learned State counsel submitted that there is no provision in the Rules for rounding off the marks for any post in State of Haryana and Courts below have rightly dismissed the suit as the appellant had not obtained the minimum required percentage of 55%. He relied on **Orissa Public Service Commission and Another vs. Rupashree Chowdhary and Another**, (2011) 8 SCC 108.

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

9. The appellant having rubbed shoulders in a competitive examination failed to secure the minimum required marks of 55%. The plea is that his case be considered in terms of the reduced percentage of marks of 50%, as notified subsequently, however, it is explicit that there is profusion of judicial authority on the proposition that a rule or law cannot be construed as retrospective unless it expresses a clear or manifest intention to the contrary, as held by Hon'ble the Supreme Court in **Excise Commr. vs. Esthappan Cherian**, (2021) 10 SCC 210. In wake of the above there can be found no error in the conclusion drawn by the Courts below that no benefit of the Notification can enure to the plaintiff-appellant. Be that as it may, he scored 49.9%, regarding rounding-off of which, no rule or provision could be pointed out by the learned counsel but for the reliance on the judgment in the case of **Asha Mehta** (supra), which would also not come to any aid for the reason that firstly; it was not in rem but in personam, secondly; the Court had decided therein that in order to ward off discrimination that could be meted to the candidates on the premises that of one category of posts, the Punjab Public Service Commission had permitted rounding off, but for

the other categories had not. Moreover, the above situation cannot be said to have arisen in the present case. Even in the case of **Rupashree Chowdhary** (supra) Hon'ble the Supreme Court had denied to round off the marks awarded to the respondent being 44.93%, since the cut-off marks were explicitly mentioned to be 45%.

10. The assessments of facts made by the trial Court cannot be said to be faulted, as the first Appellate Court reconsidered and re-appreciated the same in correct perspective and held the same to be without any apparent misinterpretation or disregard of evidence. Thus, they have arrived at their decisions judiciously both on facts and law.

11. The concurrent findings recorded by the learned Courts below have been found based on substantial reasons, which are in accordance with the facts of the case and no fault can be found with any of their observations. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Randhir Kaur vs. Prithvi Pal Singh**, (2019) 17 SCC 71, wherein it was held that, “A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact... In view of the above, we find that the High Court could not interfere with the findings of fact recorded after appreciation of evidence merely because the High Court thought that another view would be a better view”

12. As an upshot, there being no infirmity or illegality in the impugned judgments and decree, as such, the present appeal is sans merit and hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

05.12.2023
M.Kamra

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