

CM-5457-C-2022 in/&
RSA-1695-2001

2023:PHHC:072292

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CM-5457-C-2022 in/&
RSA-1695-2001
Date of Decision :17.05.2023

Krishna Kumari

...Appellant

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Arun Gupta, Advocate for
Mr. Rakesh Gupta, Advocate for appellant.

Mr. Gurpreet Singh, Addl. A.G. Punjab.

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Harsimran Singh Sethi, J. (Oral)

CM-5457-C-2022

Present application has been filed for fixing the main regular second appeal at an early actual date of hearing.

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

RSA-1695-2001

Present regular second appeal has been filed challenging the judgments and decrees of the Courts below by which, grant of seniority to the appellant-plaintiff from 14.09.1979 in the cadre of Clerks has been

declined.

Certain facts need to be mentioned for the correct appreciation of the issue in hand.

Appellant-plaintiff was initially appointed as Clerk in the office of Deputy Commissioner Sangrur on 14.09.1979. While working in the office of Deputy Commissioner, Sangrur, she made an application for her transfer to the office of Deputy Commissioner, Patiala in the year 1992 as her husband was working with the said department. Keeping in view request made by the appellant-plaintiff, she was allowed to join at Patiala on 03.07.1992. A seniority list was issued by the respondent-department in the cadre of clerks, wherein, appellant-plaintiff was given seniority in the cadre of clerks from 03.07.1992 i.e. the date when she joined the office of Deputy Commissioner, Patiala, upon which, a grievance was raised by the appellant-plaintiff that she was entitled for seniority from 14.09.1979 i.e. date when she joined service in the office of Deputy Commissioner, Sangrur and the service rendered by her in the office of Deputy Commissioner, Sangrur be also considered for seniority and cannot be ignored. As the said benefit was not extended to her, a civil suit was filed by her.

It may be noticed that though, the appellant-plaintiff was claiming seniority over and above a number of employees but none of them was made party to the civil suit.

Keeping in view the evidence, which came on record especially, rules governing the service, the trial Court vide order dated 07.01.2000

dismissed the suit on the ground that keeping in view the rule 11 of the Punjab District Service Class-III Rules, 1976 (hereinafter referred to as “1976 Rules”) seniority of the clerks is to be maintained district wise and there is no intra-district transfer of the appellant-plaintiff and as she had got herself transferred from Sangrur to Patiala in the year 1992, hence she can only be given seniority for the length of continuous service on a post in that cadre of the service only for the period she has remained in District Patiala and no benefit of service rendered by her prior to said date i.e. 02.07.1992 in other district can be given to her.

Feeling aggrieved against the judgment and decree of the trial Court dated 07.01.2000, appellant-plaintiff filed an appeal, which appeal also came to be dismissed by the lower Appellate Court on 26.02.2001 upholding the judgment and decree of the trial Court date 07.01.2000. Hence, the present regular second appeal.

Learned counsel for the appellant-plaintiff argues that in the present case, the Courts below have not considered Rule 11(c) of the 1976 Rules in correct perspective according to which, the seniority which a candidate was maintaining in a respective cadre prior to transfer is to be taken into account hence, the judgments and decrees of the Courts below are perverse keeping in view the rules governing the service.

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

For appreciating the argument raised by the learned counsel for

the appellant-plaintiff, relevant rule 11 of 1976 Rules is reproduced as under

“11. The interse seniority of members of the service in each cadre of the service shall be maintained district-wise and determined from the length of continuous service on a post in that cadre of the service.

Provided that in the case of memebtrs appointed by direct appointment, the order of merit determined by the recruiting authority shall not be disturbed in fixing the seniority and persons appointed as a result of an earlier selection shall be senior to those appointed as a result of subsequent selection.

Provided further that in the case of two or more members appointed on the same date, their seniority shall be determined as follows:-

(a) A member appointed by direct appointment shall be senior to a member appointed otherwise.

(b) A member appointed by promotion shall be senior to a person appointed by transfer; and

(c) In the case of member appointed by promotion or transfer, seniority shall be determined according to the seniority of such member in the cadre from which they were promoted or transferred; and

(d) In the case of members appointed by transfer from different cadres, their seniority shall be determined according to pay preference being given to a member who was a drawing a higher rate of pay drawn are then by their length of service in those appointment; and if the length of such service is also the same, an older member shall be senior to a younger member.”

A bare perusal of the above Rule-11 shows that seniority in the cadre of clerks is to be maintained district-wise. A proviso which is being relied upon by the learned counsel for the appellant-plaintiff is not applicable in the present case for the reason that same is only to break tie between two employees, who are appointed on the same date in a particular district either by way of transfer or by promotion, whereas claim of the appellant-plaintiff was that the employee who was already working in district Patiala be granted benefit of service rendered by her in district Sangrur.

Learned counsel for the appellant-plaintiff has misread the

proviso to rule-11 of the 1976 Rules, which interpretation cannot be accepted.

Learned counsel for the appellant-plaintiff further submits that respondent-department has not taken any undertaking from the appellant-plaintiff that upon transfer she will loss her seniority or not hence, she is entitled for the grant of seniority from the date she joined her services in district Sangur i.e. 14.09.1979.

It may be seen that seniority is to be maintained according to the rules governing the service and not according to the undertaking given by an employee. In the present case, rules governing the service are clear that post of clerk is a district cadre post and seniority is to be maintained district- wise. In the present case, the seniority of the appellant-plaintiff was maintained by the respondent-department from the date she joined district Patiala hence, argument raised by the learned counsel for the appellant-plaintiff that once appellant has not undertaken that her service in district Sangrur should be washed off, she is entitled for the seniority for the period she worked in Sangrur, cannot be accepted.

Even otherwise, appellant-plaintiff was claiming seniority over and above the employees, who joined their service at district Patiala prior to her and none of them were made party to the suit. It is a settled principle of law settled by the Hon'ble Supreme Court of India in **Civil Appeal No.3005-2000** titled as **State of Bihar vs. Kameshwar Prasad Singh** decided on 27.04.2000 that no relief can be granted to an employee in the absence of the

employees, who are likely to be affected by the relief prayed for. Relevant paragraph of the judgment is as under:-

“22. It appears that the High Court totally lost sight of the fact that in his petitions filed from time to time Brij Bihari Prasad Singh had not impleaded any of his seniors as party-respondents. In the absence of persons likely to be affected by the relief prayed for, the writ petitions should have normally been dismissed unless there existed specific reasons for non impleadment of the affected persons. Neither any reason was assigned by the writ petitioner nor the court felt it necessary to deal with this aspect of the matter. Ignoring such a basic principle of law has resulted in the supersession of 168 Inspectors and 407 Dy.SPs. The writ petition filed by Brij Bihari Prasad Singh being totally misconceived, devoid of any legal force and prayers made being in contravention of the rules applicable in the case deserved dismissal, which was unfortunately not done with the result that the interests of many seniors have been threatened, endangered and adversely affected. The appeal of the State has, therefore, to be allowed by setting aside the impugned judgment.

Keeping in view the facts and circumstances noticed hereinbefore coupled with the settled principle of law, no perversity could be pointed out by the learned counsel for the appellant-plaintiff in the findings recorded by the Courts below hence, no interference is called for by this Court and the present regular second appeal is accordingly dismissed.

May 17, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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