

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-311-2001 (O&M)
Date of Decision :09.02.2023

Malkiat Singh

...Appellant

Versus

The Secretary, Punjab Mandi Board
and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vikram Bali, Advocate for the appellant.

Mr. Harsh Chopra, Advocate for the respondents.

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Harsimran Singh Sethi, J. (Oral)

CM-623-C-2001

Application is allowed as prayed for.

RSA-311-2001

In the present regular second appeal, the challenge is to judgment and decree dated 01.06.1998 passed by the trial Court by which, the suit filed by the appellant/plaintiff was dismissed as well as the judgement and decree dated 07.09.2000 passed by the Lower Appellate Court by which, the appeal preferred by the appellant/plaintiff against the said judgement and decree dated 01.06.2008 of the trial Court, was dismissed.

Certain facts need to be mentioned herein.

Appellant/plaintiff was appointed as Kanda Munshi on daily

wage basis with the respondent-department on 01.07.1988 and the said daily wage appointment was converted into adhoc basis on 12.10.1990. While working on adhoc basis, the services of the appellant/plaintiff were regularized by the respondent-department on 12.02.1993. The post of Kanda Munshi was merged with the post of Clerk and promotion from the post of clerk was to be made to the post of Auction recorder. The claim of the appellant/plaintiff is that as he belongs to reserved category of Scheduled caste hence, the post against which one Brij Bhushan was adjusted should have been given to him on the basis of reservation.

As the said claim was not extended to him by the respondent-department, the appellant/plaintiff filed a civil suit before the Civil Court seeking declaration to the effect that withholding of the promotion of the appellant/plaintiff in the cadre of Auction Recorder against the reserved category post is bad and appellant/plaintiff is liable to be promoted as Auction recorder w.e.f. 01.09.1994.

The respondent-department appeared in the civil suit and filed reply wherein, it has been stated that promotion to the post against the reserved category at point No.16, which is being claimed by the appellant/plaintiff is not correct for the reason that all the posts in the cadre of Auction Recorder i.e. 13 posts were already filled up. It was further mentioned by the respondent-department that out of the 13 posts, as per the rules governing the service, 07 posts are to be filled by way of direct recruitment, against which, appellant/plaintiff has no claim and with regard to the remaining 06 posts to be filled by promotion, the same have already filled up and the last promotion to the post of Auction Recorder was made on 19.08.1992, which is much prior to the date when the services of the

appellant/plaintiff was even regularized in the cadre of clerk. Hence, the claim being raised by the appellant/plaintiff is bad. It was also mentioned that the said Brij Bhushan, who was already working as Auction Recorder but was dismissed from service, was reinstated in service on the orders of the Court, which fact cannot give a cause of action to the appellant/plaintiff to approach this Court.

Keeping in view the facts and evidence which had come on record, the suit filed by the appellant/plaintiff was dismissed vide judgment and decree dated 01.06.1998 of the trial Court. Feeling aggrieved against the said order, appellant/plaintiff had filed appeal, which also came to be dismissed vide order dated 07.09.2000 of the Lower Appellate Court hence, the present regular second appeal.

The only claim which is being made by the appellant/plaintiff is with regard to the promotion against the reserved point No.16 of the roster under the rules governing the service. The claim of promotion can be made by an employee, who is eligible for promotion under the rules governing the service. It has come on record by way of an evidence that last promotion to the post of Auction Recorder was made on 19.08.1992, on which date, appellant/plaintiff was not even working as permanent clerk so as to be considered for said promotion. That being so, the claim being raised by the appellant/plaintiff is contrary to the factual aspect that he was entitled to be considered for promotion to the post of Auction Recorder or not.

In the present case, during the hearing of the present appeal, learned counsel for the appellant/plaintiff has not been able to point out any fact/evidence that the last promotion to the post of Auction Recorder which

was made on 19.08.1992, was against the rules in any manner. In the absence of any such evidence being produced that there was any promotion made to the post of Auction Recorder after the appellant/plaintiff had become eligible, no promotion can be given to the appellant/plaintiff as promotion cannot be claimed as a matter of right as only consideration can be demanded.

Even otherwise also, only consideration for promotion can be claimed and promotion cannot be claimed as a matter of right. Once, appellant/plaintiff was made a clerk on permanent basis in August, 1992 no promotion to the post of Auction Recorder was ever effected, claim for promotion by the appellant does not arise even otherwise.

With regard to the claim that after the appellant/plaintiff became permanent clerk in 1992, one Brij Bhushan was adjusted, the said fact cannot come to the rescue of the appellant/plaintiff as the said Brij Bhushan was also already working in the cadre of Auction Recorder prior to the date petitioner became regular clerk on August, 1992 and his services were terminated and he was being reinstated in service under the orders of the Court, hence, the said reinstatement of Brij Bhushan will not give rise to claim of the appellant/plaintiff to claim promotion to the post of Auction Recorder.

Keeping in view the above, as learned counsel for the appellant/plaintiff has not been able to point out any perversity in the orders passed by the trial Court as well as Lower Appellate Court qua the facts or evidence on record, no interference is called for by this Court in the findings so recorded by the Courts below and the present regular second appeal is accordingly dismissed.

February 09, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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