

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

(116)

CM-2302-C-2023 in/and  
RSA-4033-2005

Date of Decision : March 13, 2023

Joginder Kumar

.. Appellant

Versus

Haryana State and others

.. Respondents

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Jaspal Singh Maanipur, Advocate, with  
Ms. Harpreet Kaur, Advocate, for the applicant-appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

**HARSIMRAN SINGH SETHI J. (ORAL)**

**CM-2302-C-2023**

Present application has been filed for disposal of the RSA being covered with the decision rendered in Civil Writ Petition No.23790 of 2011 titled as Gurmeet Singh and another vs. State of Haryana and others, decided on 05.07.2013 (Annexure A-2).

Notice of the application to the counsel opposite.

Ms. Vibha Tewari, learned Assistant Advocate General, Haryana, who is present in the Court, accepts notice on behalf of the respondents-State and raises no objection for the grant of prayer as raised in the present application.

Keeping in view the facts mentioned in the application, the same is allowed.

**RSA-4033-2005**

Present Regular Second Appeal has been filed challenging the judgment and decree of the trial Court dated 25.11.2004 by which the suit filed by the appellant-plaintiff seeking consideration for regularization of his services as a Fitter in pursuance to the regularization policy dated 07.03.1996, has been dismissed as well as against the order dated 29.07.2005 passed by the lower Appellate Court by which, the appeal preferred against the judgment of the trial Court, was also dismissed.

Certain facts needs to be mentioned here for appreciating the controversy in the correct perspective.

The appellant-plaintiff alleges that he was appointed as a Fitter on daily wage basis on 01.12.1988. The post of a Fitter is a class III post whereas the post of Fitter (Helper) is a class IV post. The State of Haryana issued a policy on 07.03.1996 for regularization of the work-charge/casual/daily wage employees, who had requisite number of service to their credit as on 31.01.1996 and fulfilled the required educational qualification for the post in question. For the post in class III, the daily wage employee, who had five years service to his/her credit as on 31.01.1996 and fulfilled the requisite qualification for the post in question and were originally appointed on the said post only, were entitled for regularization of their service in case a regular post exist.

The claim of the appellant-plaintiff was considered but he was regularized as Fitter/Helper instead of Fitter in July 1996 w.e.f. 31.01.1996. The appellant-plaintiff approached the respondents for rectifying this mistake of regularizing his service as a Fitter Helper instead of Fitter and his case was forwarded by the Department concerned to the appropriate

authorities for considering the claim of the appellant-plaintiff for regularizing his service as a Fitter i.e. class III post instead of Fitter Helper which is class IV post.

As the benefit was not being extended to him, the present suit was filed by the appellant-plaintiff seeking declaration that the appellant be treated as a Fitter in the service of the respondents instead of Fitter Helper, which is class IV post. Keeping in view the evidence, which had come on record, the trial Court passed the judgment and decree dated 25.11.2004 holding that nothing has come on record to show that the appellant-plaintiff was originally appointed on a class III, hence, claiming the said post for regularizing his service in the suit cannot be allowed. The appeal preferred by the appellant-plaintiff challenging the judgment and decree of the trial Court also met the same fate as the said appeal was dismissed by the lower Appellate Court vide order dated 29.07.2005, hence, the present Regular Second Appeal.

Learned counsel for the appellant argues that in the present case, the only ground taken by the respondents that the appellant-plaintiff has not been able to show that he was originally appointed as a Fitter, which is a class III post and he had fulfilled five years requisite experience whereas, it is already on record that as per the experience certificate Ex.P-3/A which has been issued by the respondents themselves, the competent authority has described the appellant-plaintiff as a Fitter from day one of service i.e. 01.12.1988 while giving the experience certificate which fact clearly shows that the appellant was not only working as a Fitter, which is class III post but also has requisite five years experience as required under the regularization policy dated 07.03.1996, hence, the findings recorded by

the Courts below are perverse to the evidence on record.

Learned State counsel argues that in the present case, as there was no appointment order produced by the appellant on record showing him to appointed on daily wage basis as a Fitter and his services have already been regularized as Fitter (Helper) in the year 1996, no grievance can be raised by the appellant-plaintiff as the judgments and decrees of the Courts below are inconsonance with the evidence on record.

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

It is not in dispute that the experience certificate i.e. Ex.P-3/A issued to the appellant-plaintiff by the Department itself, described the appellant as a Fitter working from the date of initial appointment i.e. 01.12.1988. The said day has been treated as a date of appointment in the civil suit and has been accepted by both the Courts below. Once a finding has been recorded that the appellant was appointed by the Department on 01.12.1988 which fact is not disputed by the respondents and the certificate issued by the respondents themselves describe the appellant as a Fitter, dismissal of the claim of the appellant-plaintiff by the Courts below on the ground that no appointment order was placed on record proving the fact that he was appointed as a Fitter, are perverse and contrary to the facts and evidence on record. The appointment order is usually issued to a regular employee and not to a daily wage employee. The record of the daily wage employee is maintained by the respondents themselves and once the respondents themselves have issued an experience certificate, a copy of which is already on record as Ex.P-3/A which certificate is based upon the record being maintained by the Department, which certificate describe the

appellant as a Fitter which is class III post working from the date of his initial engagement, the said certificate should have been given due importance while adjudicating the plea of the appellant qua his claim for regularization of his services as Fitter.

Though the appellant-plaintiff fulfils two conditions for regularization of his services under the policy dated 07.03.1996 i.e having been appointed on class III post and having requisite experience of five years but the other condition i.e. whether, there existed a regular post for regularization, has not come on record.

In the absence of any such material on record that the post of Fitter existed as on January 1996 against which the appellant could be regularized, no direction can be given by this Court, hence, the only direction which can be given to the Department in light of the facts and circumstances of the present case is to consider the claim of the appellant-plaintiff against the post of Fitter under the regularization policy dated 07.03.1996 and in case, a regular post available for regularization of the services of the appellant as on 31.01.1996, due benefits be extended to him.

Keeping in view the above, the judgments and decrees of the Courts below are set aside and the suit filed by the appellant-plaintiff is only decreed to the extent that the respondent-State is directed to consider the claim of the appellant-plaintiff under the regularization policy dated 07.03.1996 for the post of Fitter, which is class III post and appropriate order be passed within a period of three months from the receipt of copy of this order keeping in view the observation made in this order.

The present Regular Second Appeal is disposed of in above

terms.

Any miscellaneous application, if any pending, is disposed of  
as not pressed.

March 13, 2023  
*harsha*

(HARSIMRAN SINGH SETHI)  
JUDGE

Whether speaking/reasoned : Yes  
Whether reportable : No