

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

(284)

RSA-1449-2022 (O&M)

Date of Decision : April 17, 2023

**Punjab State Through Secretary to the Government of Punjab
and others .. Appellants**

Versus

Rakesh Garg

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gurvinder Singh, Assistant Advocate General, Punjab.

Mr. Sarthak Gupta, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-4543-C-2022

As prayed for, the application is allowed.

RSA-1449-2022

In the present Regular Second Appeal, the challenge is to the judgment and decree of the trial Court dated 19.03.2019 by which, the suit filed by the respondent-plaintiff for grant of equal salary as being given to one of his junior namely Jaspal Singh Anand, was allowed as well as to the judgment and decree of the lower Appellate Court dated 23.02.2021 by which, the appeal preferred against the judgment and decree of the trial Court, was dismissed.

Learned counsel for the appellants argues that in the present case, the respondent-plaintiff joined the service upon being selected on 05.07.1993 on the post of Sub Divisional Engineer whereas, Jaspal Singh Anand had joined the said post on 29.06.1993 hence, the fact that the respondent-plaintiff has wrongly been treated senior to Jaspal Singh Anand so as to equate his pay by taking into consideration incorrect fact hence, the judgments of the Courts below are perverse and are liable to be set aside.

It may be noticed that the argument which has been raised by the learned counsel for the appellant is fallacious and is not according to the rules governing the service. It is a conceded fact that respondent-plaintiff as well as Jaspal Singh Anand were directly recruited as Sub Divisional Engineers. As per Rule 8 of the Punjab Civil Service (General and Common Conditions of Service) Rules, 1994, the seniority of a person appointed on a post in each cadre is to be determined by continuous length of his service in that cadre provided in the case of a direct appointment, the merit determined by a Commission of the Board is not to be disturbed for decide the seniority inter se of all the candidates selected in a particular selection by way of direct recruitment. According to the said Rule, it has already come on record that in the selection, the merit position of respondent-plaintiff was higher to Jaspal Singh Anand and that is why, for further promotion as Executive Engineer, Rakesh Garg i.e. respondent-plaintiff was promoted on 01.08.2007 whereas, Jaspal Singh Anand was promoted as Executive Engineer on 03.01.2008. That being so, it cannot be said that respondent-plaintiff was junior to Jaspal Singh Anand in any manner. Date of joining the post will not determine the seniority between the respondent-plaintiff and Jaspal Singh Anand in view of the rules governing the service.

Once Jaspal Singh Anand is junior to the respondent-plaintiff, without any valid justification, a junior cannot get higher salary than the senior. No valid justification has been pointed out in the present case so as to deny the benefit to the respondent-plaintiff in regards to equating the pay of the respondent-plaintiff with that of Jaspal Singh Anand.

Hence, no interference is called for by this Court in the concurrent findings recorded by the Courts below in favour of the respondent-plaintiff.

In the Regular Second Appeal, the only perversity in the findings recorded by the Courts below is to be examined qua the evidence and the facts which have come on record. In the present case, no perversity has been pointed out so as to need any intervention by this Court in the present appeal.

At this stage, learned counsel for the appellant submits that the interest which has been given on the arrears, has been calculated @ 9% per annum whereas, the same is on excessive side keeping in view the Section 34 of the CPC, according to which only 6% interest rate can be granted.

Learned counsel for the respondent-plaintiff has not been able to rebut the said contention especially in view of the Section 34 of the CPC according to which the bank rate has to be taken into account for the grant of interest and nothing has been pointed out that the bank rate was more than 6%.

The judgment of the Court below allowing the interest @ 9% from the date of institution of the suit till the realization of the amount is modified to the extent that from the date of institution of the suit till the realization of the arrears, the said amount will carry interest @ 6% instead

of 9%.

The appeal is partly allowed in above terms.

CM-4544-C-2022

As the main appeal has been partly allowed, present application
also stands disposed of.

April 17, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No