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

(207) **RSA No. 3763 of 2006 (O&M)**
Date of Decision : 20.02.2023

Budh Ram

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jitender Malik, Advocate for the appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.
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Harsimran Singh Sethi J. (Oral)

The present regular second appeal has been filed challenging the judgment and decree dated 30.08.2005 passed by the trial court as well as judgment and decree dated 03.04.2006 passed by the lower appellate court by which, the suit filed by the appellant-plaintiff for protection of his pay on being appointed as a Steno Typist in the Department of Excise and Taxation, Haryana, has been dismissed.

Certain facts needs to be mentioned herein for the correct appreciation of the facts.

The appellant-plaintiff was appointed as Senior Scale Stenographer in the Government College, Gurgaon on 10.11.1980. The said appointment was on ad-hoc basis and while working on the said post of Senior Scale Stenographer, the appellant-plaintiff applied for the post of Steno Typist advertised by the Subordinate Selection Board, Haryana. After competing, the appellant-plaintiff got selected and he joined on the post of a Steno Typist in the pay scale of 950-1500/- in the Department of Excise and Taxation, Haryana on regular basis.

The appellant-plaintiff continued working as a Steno Typist when in the year 2002, the appellant-plaintiff filed a civil suit claiming a benefit that the salary which the appellant-plaintiff was drawing while working as a Senior Scale Stenographer in the Department of Education, should have been protected at the time when he was appointed as a Steno Typist in the Excise and Taxation Department, Haryana on 31.12.1986, which benefit was not extended to him hence, the respondents be directed to protect his salary which he was already drawing at the time of joining the Department of Excise and Taxation, Haryana.

The said suit was dismissed vide order dated 30.08.2005 after the respondents-defendants pointed out that the appointment of the appellant-plaintiff as Senior Scale Stenographer in the Department of Education was on ad-hoc basis and he was not a permanent employee so as to hold the lien on the said post hence, the question of protection of his pay upon appointment on a lower post does not arise. Further, the objection was raised qua the maintainability of the suit i.e. the suit was filed after 15 years of joining the Department of Excise and Taxation, Haryana as Steno Typist. The trial court in the judgment and decree dated 30.08.2005 held that once the appellant-plaintiff was not working on permanent basis in the Department of Education as a Senior Scale Stenographer, upon his selection to a lower post of Steno Typist, his pay could not have been protected even under any rule.

Feeling aggrieved against the decision of the trial court dated

30.08.2005, the appellant-plaintiff preferred an appeal, which was also dismissed on 03.04.2006 hence, the present regular second appeal.

Learned counsel for the appellant-plaintiff argues that the case of the appellant-plaintiff was covered under Rule 4.5 of the Punjab Civil Services Rules as applicable to Haryana and according to the said rule, the employee i.e. the appellant-plaintiff was entitled for protection of his pay while he was appointed as a Steno Typist in the Department of Excise and Taxation, Haryana. The said arguments have been considered by both the courts below and have been rejected on the ground that benefit of Rule 4.5 of Punjab Civil Services Rules, as applicable to Haryana, is only admissible to a permanent employee, who has joined a new post in a separate cadre whereas, the appointment of the appellant-plaintiff in the Department of Education as a Senior Scale Stenographer was only on ad-hoc basis hence, his case is not covered by the said Rule 4.5 as appellant-plaintiff did not had any lien on the post of Senior Scale Stenographer.

Learned counsel for the appellant-plaintiff has not been able to point out as to how the interpretation being given by the courts below to Rule 4.5 of the Punjab Civil Services Rules, which is being relied, is incorrect and perverse. The bare reading of the said rule clearly shows that in case, any employee has a lien of the post and he joins on another post on permanent basis, he is entitled for protection of his pay where, the said employee holds a lien. In the present case, it is a conceded position that the appellant-plaintiff was not a regular employee in the Department of Education while working as a Senior Scale Stenographer hence, question of retaining the lien does not arise. The interpretation being given to Rule 4.5

by the courts below cannot be treated to be a perverse rather the said interpretation is inconsonance with the said rule.

Learned counsel for the appellant-plaintiff argues that though, at the time when the appellant-plaintiff joined the service in the Department of Education, he was not a permanent employee but after he had already left the department, keeping in view the litigation, the services of certain employees, who were working in the Education Department in the cadre of Senior Scale Stenographer were regularized, including that of the appellant-plaintiff hence, keeping in view the order passed in the year 1999 regularizing the services of the appellant-plaintiff as Senior Scale Stenographer, the benefit of Rule 4.5 of Punjab Civil Services Rules needs to be given to the appellant-plaintiff. Said argument cannot be accepted. Nothing has come on record as to how an employee, who was not working in the Department of Education on the post of Senior Scale Stenographer since the year 1987, can be regularized in 1999 and that too with retrospective effect. Only the services of an employee, who is in job, can be regularized. Even otherwise, merely the services of the appellant-plaintiff were regularized in a cadre in the year 1999, will not allow him the benefit as, when the appellant-plaintiff joined the department of Excise and Taxation, Haryana in the year 1986 as Steno Typist, he was concededly not a permanent employee in the Education Department. Hence, the benefit of any order passed in the year 1999 will not give any right to the appellant-plaintiff to claim any benefit retrospectively.

No other argument has been raised.

Keeping in view the above, as no perversity in the judgments of the courts below has been pointed out by the learned counsel for the appellant-plaintiff, no ground is made out for any interference by this court in the present regular second appeal.

Dismissed.

<u>CM-9627-C-2008</u>

As the main appeal has been dismissed, the present application also stands dismissed.

February 20, 2023 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No