

CM-1262-C-2023 in/and
RSA-1814-2008

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(111)

CM-1262-C-2023 in/and
RSA-1814-2008
Date of Decision : 14.02.2023

Rama Nand Aneja

...Appellant

Versus

Haryana Power Generation Corporation Limited and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Subhash Ahuja, Advocate for the appellant.

Harsimran Singh Sethi J. (Oral)

CM-1262-C-2023

Present application has been filed for fixing the RSA No. 1814 of 2008 to an early actual date of hearing.

Keeping in view the fact that the RSA is pending since 2008, the application, which is duly supported by an affidavit, is allowed and RSA No. 1814 of 2008 is taken up for hearing today.

RSA No. 1814 of 2008

In the present regular second appeal, the challenge is to the judgment and decree of the trial court dated 17.09.2007 by which, the suit filed by the appellant-plaintiff claiming certain benefits from retrospective date by challenging the seniority list, was dismissed as well as to the order dated 06.02.2008 passed by the lower appellate court by which, the judgment and decree of the trial court was upheld.

Certain facts, which need to be mentioned to appreciate the controversy in correct propsecitve are that the appellant-plaintiff joined as a Line Superintendent in Haryana State Electricity Board on 01.03.1968. The said post was re-designated as a Junior Engineer. Some persons were appointed as Junior Engineers much after the appointment of the appellant-plaintiff. The appellant-plaintiff claims that though, he was appointed in the year 1968 but his colleagues, who were appointed in 1974, were promoted as Assistant Engineer in preference to him, which was arbitrary and illegal and the said illegal promotion resulted into disparity of the pay, which needs to be rectified.

The second relief, which was sought by the appellant-plaintiff was that though, he was promoted as Assistant Engineer in the year 1991 on ad-hoc basis but once his services were regularized in the year 1993, he was entitled for upgradation of the pay on completion of 12 years service, which the appellant-plaintiff completed prior to his retirement on 31.05.2005 in case, 12 year period is calculated from the date of ad-hoc promotion, which was effected in the year 1991.

Keeping in view the evidence, which came on record, the suit filed by the appellant-plaintiff was rejected on the ground that the promotion of the so called juniors was never challenged and even in the challenge to the seniority list, which came into being in the year 2003, the aggrieved persons were not the party. With regard to claim of other benefits of higher pay on completion of 12 years service, the trial court held that as regular promotion as Assistant Engineer was only given w.e.f. 11.10.1993, 12 years service of the appellant-plaintiff is to be taken from the said date

and the appellant-plaintiff retired on 31.05.2005, before completion of the said period of 12 years hence, the claim raised is not maintainable and the suit was dismissed.

Feeling aggrieved against the judgment of the trial court dated 17.09.2007, the appeal was preferred by the appellant-plaintiff, which also came to be dismissed on 06.02.2008 hence, the present regular second appeal.

Learned counsel for the appellant-plaintiff argues that though, the present suit was filed after the retirement of the appellant-plaintiff but, as the promotion of the employees concerned, who were appointed after him, was bad in law, he is entitled for the benefits, which were extended to the said employees. In support of his contention, learned counsel for the appellant-plaintiff relies upon the judgment of a Division Bench of this Court in LPA No. 657 of 1997 titled as ***Haryana State Electricity Board Vs. Rajender Singh Redhu and others***, decided on 17.12.2004. Learned counsel for the appellant-plaintiff further argues that the seniority list in the cadre of Assistant Engineer was circulated in the year 2003 and the suit filed by the appellant-plaintiff was within the timeframe hence, the challenge to the same should have been maintained by the courts below and the dismissal of the suit by the trial court vide order dated 17.09.2007 as well as the appeal by the lower appellate court dated 06.02.2008 is without considering the actual facts/evidence on record hence, the same are liable to be set-aside.

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

The first argument, which has been raised by the learned counsel for the appellant-plaintiff is that the promotion of the employees, who joined after the appellant-plaintiff in the year 1991, was bad in law, cannot be accepted for the reason that it is a conceded position that the said promotions were effected in the year 1991 and the same remained unchallenged even upto now. Once, there is no challenge to the promotion of the employees concerned that they were given undue benefit over and above the appellant-plaintiff, the order of promotion of the employee could not have been adjudicated upon by the trial court or by the lower appellate court, which findings of the courts below is perfectly valid.

As far as the argument that the similar promotions were held to be bad by the Division Bench in ***Rajender Singh Redhu's case (supra)***, learned counsel for the appellant-plaintiff conceded that in the said proceedings, the promotions of the employees were under challenge. That being so, no benefit of the said judgment can be given to the appellant-plaintiff, especially when, he never challenged any promotion order of any employee against whom, he was aggrieved either during service or even after his retirement in the present suit hence, no infirmity or perversity can be found in the findings of the courts below while dismissing the suit filed by the appellant-plaintiff and no benefit of the judgment in ***Rajender Singh Redhu's case (supra)*** can be extended to the appellant-plaintiff.

As far as the argument that the appellant-plaintiff is entitled for higher pay on completion of 12 years as Assistant Engineer, a finding has already been recorded that the appellant-plaintiff was promoted as Assistant Engineer in the year 1991 on ad-hoc basis against the General Category

Post. Further, it has also come on record that the promotion was only regularized on 11.10.1993. Once, the promotion was regularized on 11.10.1993, 12 years period, after which an employee becomes entitled for the higher pay scale, is to be counted from the said date only and it is a conceded position that before completing 12 years of service, which the appellant-plaintiff would have completed on 10.10.2005, he had already attained the age of superannuation and retired on 31.05.2005. That being so, findings recorded by the courts below cannot be treated to be perverse to the facts on record or the evidence or the rules governing the service.

Keeping in view the above, no question of law arises for the determination in the present appeal and in the absence of any perversity in the findings recorded by the courts below, no interference is called for by this court in the judgments of the courts below.

Dismissed.

February 14, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No