

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(248)

RSA No. 889 of 2021 (O&M)

Date of Decision : 09.01.2023

State of Punjab and others

...Appellants

Versus

Vipan Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Anju Sharma, Deputy Advocate General, Punjab
for the appellants.

Mr. Aakash Singla, Advocate for the respondent.

Harsimran Singh Sethi J. (Oral)

The present regular second appeal has been filed by the State challenging the judgment of the trial court dated 11.08.2016, by which the claim of the respondent-plaintiff has been allowed for giving benefits of seniority, pay fixation, pension, promotion and other consequential benefits with effect from the date, persons junior to him in merit were appointed for the post of Senior Assistant, which judgment has been modified by the lower appellate court vide order dated 26.10.2020 only to the extent that the respondent-plaintiff will be entitled for the arrears of salary 03 years 02 months prior to the filing of the civil suit and not for whole of the period.

The facts in the present case are that the posts of Senior Assistant were advertised by the Subordinate Selection Board, Punjab in

which the respondent-plaintiff competed and had obtained 107 marks and was placed at Sr. No. 29 in the merit list. Another person, namely, Shamsher Singh, who also secured 107 marks, was placed at Sr. No. 28 in the merit list and said Shamsher Singh was issued appointment letter on 18.09.2001 and he joined for the post in question immediately. Thereafter, on 09.11.2001, the name of the respondent-plaintiff was recommended by the Subordinate Selection Board to the Language Department, Punjab for appointment but no appointment was issued to the respondent-plaintiff and other candidates, which grievance was raised by some other similarly situated candidates before this Court in CWP No. 7962 of 2002, wherein, a direction was given to the respondents to give the appointments to the candidates, who were selected by the Subordinate Selection Board on 09.11.2001.

Though, similarly situated candidates were given appointment on 04.09.2003, the respondent-plaintiff was not given the same until 28.09.2005 on which date the respondent-plaintiff was allowed to join as a Senior Assistant on 04.10.2005. The prayer of the respondent-plaintiff was that as there was one joint selection from various departments in the Govt. of Punjab and the names were recommended according to the merit and the candidates lower in merit had already been appointed prior to 28.09.2005 and a candidate, namely, Shamsher Singh immediately above the respondent-plaintiff in merit was appointed on 18.09.2001, the respondent-plaintiff be also given the appointment from the said date as, keeping in view the rules governing the service, the candidates are entitled for fixation of seniority keeping in view the merit obtained in the direct recruitment.

As the said benefit was not being extended to the respondent-

plaintiff, the respondent-plaintiff filed a Civil Suit on 17.09.2011, which was decreed in his favour on 11.08.2016 to hold that the respondent-plaintiff is entitled for appointment to the post of Senior Assistant w.e.f. 18.09.2001 along with seniority, pay fixation as well as promotion from the said date keeping in view the benefit extended to the similarly situated employees and grant of pension under Old Pension Scheme, 2001 as well as the arrears will also carry 12% interest per annum. The said order was assailed in appeal by the State of Punjab (appellants herein) and the appeal came to be decided on 26.10.2020 by which, though the benefit of appointment and other consequential benefits including pay fixation were allowed in favour of the respondent-plaintiff w.e.f. 07.12.2001 but the arrears were restricted for a period of 38 months prior to the filing of the civil suit. The present regular second appeal has been filed impugning the judgments of both the courts below.

It is required to be mentioned here that the modification of the order passed by the lower appellate court so as to entitle the respondent-plaintiff the arrears for a period of 38 months, has not been challenged by the respondent-plaintiff and the same stands accepted by him.

Learned counsel for the appellants argues that once the actual benefit of appointment was given to the respondent-plaintiff in the year 2005, the grant of benefit of appointment along with seniority and pay fixation by the trial Court is contrary to the facts on record. Further, the prayer of the appellants is that though the appointment was given in the year 2005, the suit was filed by the respondent-plaintiff in the year 2011, which bars the grant of benefit.

I have heard learned counsel for the parties and have gone

through the record with their able assistance.

It is a conceded position that as per the rules governing the service, the direct appointment is to be given on the basis of merit obtained by a candidate in the direct recruitment. In the present case, it is also conceded by learned counsel for the appellants that as per the evidence on record the similarly situated employees were given appointment on 18.09.2001 and in December, 2001 by certain departments and even the candidates lower in merit were appointed but Department of Language where the name of the respondent-plaintiff was recommended, kept the recommendation pending for a period of 04 years before accepting the same in the year 2005. Nothing has come on record as to why, once the recommendation was made by the Subordinate Services Selection Board recommending the name of the respondent-plaintiff in the year 2001 itself, the appellant-Department of Language took 04 years to give the appointment to respondent-plaintiff. In the absence of any valid justification, the grant of relief to the respondent-plaintiff by the Courts below for appointment in service with retrospective effect cannot be faulted with, especially when, a candidate lower in merit has already been appointed in the year 2001 in another department.

Learned counsel for the respondent-plaintiff submits that after the name of the respondent-plaintiff was recommended in the year 2001, his testimonials were sent for verification, which delayed the appointment as the appellants-department took 04 years to verify the testimonials for which the respondent-plaintiff cannot be punished. By the judgments of the courts below, the grievance of the respondent-plaintiff has been redressed so as to grant him the appointment as per his merit along with seniority and pay

fixation as extended to the similarly situated candidates, who competed with him but got appointment in the year 2001 itself. Learned counsel for the appellants has not been able to show as to whether any of the finding of the courts below is perverse or contrary to law.

As far as the arguments of learned counsel for the appellants that the suit filed by the respondent-plaintiff was beyond limitation, nothing has come on record that the suit filed by the respondent-plaintiff for the grant of seniority with effect from the date candidates junior to him in merit were appointed, was ever rejected after his joining in the department in 2005 till the filing of the suit. Rather the respondent-plaintiff approached the Court claiming the benefit. Further, the lower appellate court has already taken care of the said aspect as the arrears have been restricted for a period of 38 months prior to the filing of the suit. Hence, no prejudice is caused to the appellants.

Under these circumstances, no interference is called for by this Court in the present appeal.

Dismissed.

CM-4207-C-2021

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

January 09, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No