

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

211

RSA-933-2008 (O&M)

Date of Decision :28.03.2023

DHBVNL

...Appellant

Versus

Hawa Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Anupama Sharma, Advocate for the appellant.

Mr. Vijay Pal, Advocate for the respondent.

* * *

Harsimran Singh Sethi, J. (Oral)

In the present regular second appeal, challenge is to order passed by the Courts below by which, suit filed by the respondent-plaintiff so as to grant him benefit of adhoc service for the grant of benefit of promotion and seniority has been allowed.

As per the settled principle of law only in case when appointment on adhoc basis is made after following due process as envisaged under law for the post in question and by considering the claim of all the eligible persons, a consideration can be given for counting the said service for the grant of benefit of promotion but in case the initial appointment is contrary to the procedure as envisaged under rules for appointment, benefit of the said service cannot be granted towards seniority etc.

From the judgments and decrees of the Courts below nothing

has come on record as to how the post of shift attendant i.e. post on which the respondent-plaintiff was appointed, is to be filled and who is the appointing authority for the said post and whether the said post was advertised and claim of all the eligible persons was considered or not while giving appointment on adhoc basis.

In the absence of such fact and discussion upon these facts, no benefit could have been given to the respondent-plaintiff by the Courts below.

Faced with this situation, learned counsel for the parties agree that the judgment and decree of the Lower Appellate Court dated 06.12.2007 be set aside and case be remanded back to the Lower Appellate Court to decide these issues afresh that whether initial appointment of the respondent-plaintiff was made after following the rules as envisaged under law or whether the post was advertised or not before giving appointment to the respondent-plaintiff on adhoc basis so that the claim of the respondent-plaintiff for considering his adhoc service for the grant of benefit of seniority and promotion could be considered.

Keeping in view the above, as prayed by learned counsel for the respective parties, judgment and decree of the Lower Appellate Court dated 06.12.2007 is set aside and the case is remanded to the Lower Appellate Court to decide the issues as mentioned in the present order in accordance with law.

It may be noticed that in case Lower Appellate Court finds that no such evidence is on record, an appropriate remedy of giving additional chance to the parties concerned to lead appropriate evidence on the said issues can be extended by the Court below so as to pass proper order on the

issue

CM-17433-2018

Application is disposed of as infructuous.

March 28, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No