

CM-278-C-2023,
CM-279-C-2023,
CM-280-C-2023 and
CM-281-C-2023 in/&RSA-77-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(116) CM-278-C-2023,
CM-279-C-2023,
CM-280-C-2023 and
CM-281-C-2023 in/&RSA-77-2023
Date of Decision : January 12, 2023

Amit Gehlawat .. Appellant

Versus

Maharishi Dayanand University, Rohtak .. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jitender Nara, Advocate, for the applicant-appellant.

Harsimran Singh Sethi J. (Oral)

CM-278-C-2023

As prayed for, the application is allowed.

CM-279-C-2023

As prayed for, the application is allowed.

Delay of 77 days in re-filing the present appeal is condoned.

RSA-77-2023

The present regular second appeal has been filed impugning the judgment of the trial court dated 02.01.2016 by which, the suit filed by the appellant-plaintiff was dismissed as well as the judgment of the lower appellate court dated 30.05.2022 by which, the appeal filed by the appellant-plaintiff was also dismissed and the judgment of the trial court has been upheld.

Before coming to the arguments raised by the learned counsel for the appellant-plaintiff, certain factual matrix needs to be noticed so as to appreciate the controversy in correct perspective.

Respondent-University circulated the post of Lab Attendant-1 to be filled up vide advertisement No. 48 of the year 2013. The appellant-plaintiff, who considered himself to be eligible, applied for the same and appeared in the written test, which was held on 27.04.2014. After the said written test, the appellant-plaintiff was called for interview for which he appeared on 14.06.2014. The result of the selection was declared and the appellant-plaintiff secured 16.05 marks and was placed at Sr. No. 3 in merit list. Keeping in view the number of posts advertised, one Mahesh Kumar, who was higher in merit than the appellant-plaintiff, was selected. Keeping in view the said selection, Mahesh Kumar joined the post of Lab Attendant on 17.06.2014. After joining, the said Mahesh Kumar resigned on 17.07.2014. After the resignation of Mahesh Kumar, as the post of Lab Attendant became vacant, the appellant-plaintiff filed a civil suit claiming the said post on the ground that he is entitled for appointment against the said post on the ground that he was at Sr. No. 3 in the merit list and a candidate, namely, Manju Kumari, who was at Sr. No. 2 in the merit list, has already joined on another post and, therefore, he being at Sr. No. 1 in the waiting list, be appointed on the said post.

As the prayer of the appellant-plaintiff was not accepted by the respondent-University, the present suit was filed by the appellant-plaintiff seeking declaration with consequential relief of mandatory injunction for

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appointment to the post of Lab Attendant against which, Mahesh Kumar was appointed.

The trial Court decided the said suit keeping in view the stand taken by the respondent-University that as the post, which was advertised, has already been filled up by Mahesh Kumar, subsequent resignation of the said candidate, cannot be taken into account to operate the waiting list, if any, so as to consider the claim of the appellant-plaintiff as the selection for the post in question is over immediately upon the joining of the selected candidate. The suit filed by the appellant-plaintiff was dismissed vide order dated 02.01.2016 keeping in view the said stand of the respondent-University. Aggrieved against the said order of the trial court, the appellant-plaintiff filed an appeal before the lower appellate court, which was also dismissed vide order dated 30.05.2022. Hence, the judgment of the trial Court dated 02.01.2016 as well as of the lower appellate court dated 30.05.2022 is being impugned in this regular second appeal.

Learned counsel for the appellant-plaintiff argues that it is a conceded position that Mahesh Kumar had resigned from the job after joining on the advertised post. Learned counsel argues that keeping in view the said fact, the post, which was advertised and was given to Mahesh Kumar, became vacant, he is entitled for the said post as the selection process continues after the resignation of Mahesh Kumar in the light of judgment of a Co-ordinate Bench of this Court passed in CWP No. 15403 of 2011 titled as ***Varun Kumar Vs. Haryana Staff Selection Commission and others***, decided on 17.07.2013, which settled principle of law has not

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been taken into account by the courts below so as to decline the claim.

I have heard learned counsel for the appellant-plaintiff and have gone through the record with his able assistance.

The only argument raised is that once the post of the Lab Attendant against which the appellant-plaintiff competed but could not be appointed as the candidate higher in merit, was selected and joined, upon the resignation of such candidate, the said vacancy again became available, the same should have given to the appellant-plaintiff. The said contention of the appellant-plaintiff is contrary to the settled principle of law settled by the Hon'ble Supreme Court of India in Civil Appeal Nos. 5987, 5982 of 2007 titled as ***Public Service Commission, Uttaranchal Vs. Mamta Bisht and others***, decided on 03.06.2010. Hon'ble Supreme Court of India has held that once all the vacancies advertised are filled up, the selection process comes to an end and any vacancy, which occurs after the joining of the selected candidate keeping in view the resignation or death, the same cannot be filled up from the same selection. The relevant paragraph of the said judgment is as under :-

*“6. It is settled legal proposition that vacancies over and above the number of vacancies advertised cannot be filled up. Once all the vacancies are filled up, the selection process comes to an end. In case a selected candidate after joining resigns or dies, the vacancy, so occurred cannot be filled up from the panel, which stood already exhausted. (Vide **Rakhi Ray & Ors. Vs. The High Court of Delhi & Ors.** AIR 2010 SC 932).”*

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Learned counsel for the appellant-plaintiff has not been able to controvert the said settled principle of law noticed hereinbefore as, in the present case also, the claim of the appellant-plaintiff is for the post, which has been vacated by resignation of candidate, namely, Mahesh Kumar after joining the post in question, the same cannot be given to the appellant-plaintiff as upon the joining of Mahesh Kumar, the selection process came to an end and any vacancy, which arises thereafter, is to be filled in accordance with law by due advertisement once again and cannot be filled up from the waiting list. Keeping in view the settled principle of law in ***Mamta Bisht's case (supra)***, no benefit of the judgment of Co-ordinate Bench of this Court in ***Varun Kumar's case (supra)***, can be extended to the appellant-plaintiff.

No other point was raised.

Keeping in view the above, no ground is made out for any interference with the judgment of the courts below keeping in view the settled principle of law as the judgments of the courts below are inconsonance with law.

Dismissed.

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As the main appeal has been dismissed, the present applications also stand dismissed.

January 12, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No