

**CM-1388-C-2023 and CM-1389-C-2023 in/and
RSA-4061-2016**

2023:PHHC:041125

1

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

(106)

**CM-1388-C-2023 and
CM-1389-C-2023 in/and
RSA-4061-2016
Date of Decision : March 21, 2023**

Jagir Singh

.. Appellant

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Puneet Kumar Bansal, Advocate,
for the applicant-appellant.

Mr. Gurvinder Singh, Assistant Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-1388-C-2023

As prayed for, the application is allowed.

List of dates and events and list of citations are taken on record.

CM-1389-C-2023

Present application has been filed for listing the above
mentioned appeal for an early actual date.

Notice of the application to the counsel opposite.

Mr. Gurvinder Singh, Assistant Advocate General, Punjab, accepts notice on behalf of the respondents and raises no objection for the grant of prayer as raised in the present application.

Keeping in view the above, the application is allowed and the main appeal is taken up for hearing today itself.

RSA-4061-2016

In the present Regular Second Appeal, the challenge is to the judgment and decree of the trial Court dated 06.05.2014 by which, the claim of the appellant-plaintiff for the promotion to the post of Inspector in Transport Department with effect from the date person junior to him were promoted, was declined as well as to the judgment and decree of the lower Appellate Court dated 23.05.2016 by which, the appeal preferred by the appellant-plaintiff was also dismissed.

Certain facts needs to be noticed herein for understanding the issue in hand.

The appellant-plaintiff joined as a Conductor in the year 1976. While the appellant-plaintiff was working as senior Conductor, disciplinary proceedings were initiated against him in the year 2009 on certain allegations. In May, certain senior Conductors, were re-designated as Sub Inspectors, which benefit was declined in favour of the appellant-plaintiff on the ground that the disciplinary proceedings were pending against him. During the pendency of the said disciplinary proceedings, the employees, who were re-designated as Sub Inspectors, were further promoted as Inspectors.

The disciplinary proceedings initiated against the appellant-plaintiff came to an end on 16.12.2009 but within a short span of time, another proceedings were initiated against him on 29.01.2010 in which disciplinary proceedings, the charges against the appellant were proved and a minor punishment was imposed upon him. After the disciplinary proceedings came to an end, the appellant-plaintiff was re-designated as Sub Inspector on 09.02.2011 on which post, he attained the age of superannuation and retired on 30.04.2011. After the retirement, the appellant-plaintiff claimed promotion to the post of Inspector w.e.f. 25.09.2009, which was not granted to him and he filed a civil suit claiming promotion to the post of Inspector from the date employees junior to him were promoted i.e. 25.09.2009.

Keeping in view the evidence, which had come on record, the trial Court dismissed the suit of the appellant-plaintiff holding that as the disciplinary proceedings were pending against him, no benefit of retrospective promotion can be given especially when minor punishment was imposed in the disciplinary proceedings and the suit was dismissed vide judgment and decree dated 06.05.2014.

Feeling aggrieved against the decision of the trial Court, an appeal was preferred, which was also dismissed by the lower Appellate Court by recording a finding that the appellant-plaintiff factum qua the pending departmental proceedings were withheld from the Court, hence, once the appellant-plaintiff was facing disciplinary proceedings at the time when his juniors were promoted and in those disciplinary proceedings, he

was held guilty and minor punishment was imposed, no benefit of retrospective promotion to the post of Inspector can be extended to the appellant-plaintiff. Hence, the present Regular Second Appeal.

Learned counsel for the appellant argues that in the present case, the junior employees were re-designated as Sub Inspector in May 2009 when the disciplinary proceedings were pending.

During the pendency of those very disciplinary proceedings, those very employees, who were re-designated as Sub Inspector in May 2009, were promoted as Inspector on 25.09.2009, hence, once the appellant was exonerated of the first disciplinary proceedings on 16.12.2009, he was entitled for consideration of his claim to be re-designated as a Sub Inspector as well as promotion to the post of Inspector from the date his juniors were granted the said benefit.

The said argument is to be tested in the facts and circumstances of the present case.

Concededly, an order was passed on 09.02.2011 re-designating the appellant-plaintiff as a Sub Inspector. The said order was passed while the appellant-plaintiff was in service. The said order has never been challenged by the appellant-plaintiff to claim retrospective re-designation as a Sub Inspector from the previous date. In the absence of any such claim being raised by the appellant-plaintiff, promotion to a higher post of Inspector cannot be extended in favour of the appellant-plaintiff from a date prior to 09.02.2011. Once, the re-designation as a Sub Inspector w.e.f.

09.02.2011 has been accepted by the appellant-plaintiff, the promotion as

Inspector can only be effected from a date subsequent to the said date. In the absence of any challenge to the order dated 09.02.2011, no benefit of re-designation as a Sub Inspector from a date prior to the said date i.e. 09.02.2011 and consequent promotion as a Inspector, which is also being claimed from a date prior to 09.02.2011 could not have been granted by the Courts below.

Keeping in view the above, no perversity is found in the orders passed by the Courts below and no ground is made for interference by this Court in the present Regular Second Appeal.

Dismissed.

March 21, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No