

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(104)

CM-2379-C-2022 in/and

RSA-3624-2015

Date of Decision : May 02, 2023

General Manager, The Doaba Co-operative Milk Producers
Union Ltd.

.. Appellant

Versus

Mohinder Singh and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. A.S. Chadha, Advocate, for the non-applicant/appellant.

Mr. Inderjit Sharma, Advocate, for the applicant/respondents.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-2379-C-2022

Present application has been filed for listing the main appeal
i.e. RSA No.3624 of 2015 for final hearing.

Notice of the application to the counsel opposite.

Mr. A.S. Chadha, Advocate, accepts notice on behalf of non-
applicant/appellant 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 i.e. RSA No.3624 of 2015 is taken up for hearing today itself.

RSA-3624-2015

1. Present Regular Second Appeal has been filed by the appellant challenging the judgment and decree dated 27.11.2014 of the lower Appellate Court by which, judgment and decree of the trial Court dated 16.11.2012 has been set aside and the suit filed by the respondents-plaintiffs has been allowed.

2. Certain facts needs to be mentioned for the correct appreciation of the controversy in question.

3. The respondents-plaintiffs filed a suit claiming promotion to the post of Junior Plant Operator/Auto Electrician, which is class III post. All the respondents-plaintiffs were working on a class IV post. It has come on record that for promotion to the class III post, the criteria was prescribed vide Ex.D-4 according to which, an employee seeking promotion to a class III post should have completed five years of service as on 31.03.2002 and the said candidate must fulfill the condition of qualification/experience prescribed by the Department and the promotions were to be made on the basis of seniority cum merit. For the technical post, an employee was required to fulfill the qualification and skill experience prescribed.

4. The process for promotion to class III post was started by the appellant and they considered the claim of all the eligible employees including the respondents-plaintiffs but the respondents-plaintiffs were not promoted to a class III post on the ground that the respondents-plaintiffs failed to pass the skill/type/computer test which was taken by a Committee. The question arose as to whether, there was a requirement of passing any skill/type/computer test before getting promoted to a class III Post keeping

in view Ex.D-4 as well as the criteria fixed by the Department initially for

assessing the suitability of a candidate for promotion to a class III post.

5. The trial Court keeping in view the evidence and facts which came on record, held that once the respondents-plaintiffs participated in the skill test conducted by the appellant-Department while ascertaining the suitability for promotion to a class III post and failed, they cannot raise any grievance hence, the suit filed by the respondents-plaintiffs was dismissed vide judgment and decree dated 16.11.20212.

6. Feeling aggrieved against the judgment and decree of the trial Court, an appeal was preferred, which came to be decided on 27.11.2014. The lower Appellate Court came to the conclusion that though initially vide letter dated 14.03.2008, a particular criteria was laid down for assessing the suitability of a candidate for promotion which included a type/skill test but before starting the process for assessing the suitability of the candidates, vide Ex.D-4 dated 12.08.2008, the said criteria dated 14.03.2008 was changed according to which, there was no type test required hence, the rejection of the claim of the respondents-plaintiffs for promotion on the basis of criteria dated 14.03.2008 which already stood substituted subsequently by criteria dated 12.08.2008, cannot be allowed especially when the promotions are to be made on the basis of seniority cum merit. The judgment and decree of the lower Appellate Court dated 27.11.2014 is under challenge in the present regular second appeal.

7. Learned counsel appearing on behalf of the appellant contends that once it has already come on record that on 14.03.2008, for effecting the promotions to a class III post, a technical skill/type/computer test was prescribed, the same should be made applicable even qua Ex.D-4 by giving

a harmonious reading and therefore, the judgment passed by the lower

Appellate Court, by totally ignoring the letter dated 14.03.2008 which prescribed the criteria for promotion to a class III post, is liable to be set aside being perverse to the facts and evidence on record.

8. Learned counsel for the respondents-plaintiffs, on the other hand, submits that once the criteria was changed prior to the undertaking of the process for considering the eligibility of candidates for promotion by Ex.D-4, only criteria fixed as per Ex.D-4 was required to be taken into account for effecting the promotion according to which, there was no skill/type test required for assessing the suitability of a candidate for promotion hence, the judgment of the lower Appellate Court is perfectly valid and legal and is liable to be upheld.

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

10. In the present case, this Court is only required to see whether keeping in view the decision taken by the appellant, a skill/type test could have been undertaken to assess the suitability of a candidate or only the experience was required for effecting promotions. It is a conceded position that the promotions are to be made on the basis of seniority cum merit. The said criteria means that a senior who is fit enough is entitled for promotion in preference to his junior. It is also a conceded position that the selection process was undertaken keeping in view Ex.D-4, which was issued on 12.08.2008. It is also a conceded position that there was no skill/type test prescribed in Ex.D-4 for effecting the promotions and only the skill experience was required. Nothing has come on record that any of the respondents-plaintiffs does not have skill experience as required for getting promoted to a class III post. The only ground taken by the Department for

denying the promotion to the respondent-plaintiffs is that they participated in a skill/type test which they could not clear hence, their juniors have been promoted. The said ground, which is contrary to the criteria/conditions prescribed under Ex.D-4, cannot be made a ground to deny promotion to a candidate. Once the skill/type test was not prescribed under the conditions issued for effecting promotion vide Ex.D-4, the only requirement was that the respondents-plaintiffs should have the requisite skill experience which, concededly they had on the date of their consideration for promotion hence the judgment of the lower Appellate Court is perfectly valid that Ex.D-4 is to be taken as a criteria for effecting promotions and not the letter dated 14.03.2008, which already stood substituted by the appellants themselves.

11. The argument which has been raised by the learned counsel for the appellant is that once the respondents-plaintiffs have undertaken the skill/type test and failed, they cannot raise any grievance. There is no estoppel against the rules. Once under the Rules or the criteria framed by the appellant themselves, the respondents-plaintiffs were not required to undergo a skill/type test, holding of a skill test and denying the promotion by the appellant is incorrect as the appellant did not follow their own criteria Ex.D-4 prescribed for effecting promotions. Hence, merely that the respondents-plaintiffs participated in the skill/type test and failed will not be a ground for rejection of the claim for promotion to a class III post as the same was mere a condition for effecting the promotion from class IV to class III post.

12. Even otherwise, the condition which is being brought into operation by the learned counsel for the appellant prescribed vide letter dated 14.03.2008 as noticed by the lower Appellate Court in paragraph 3 of

the judgment, clause D, is only relating to the class of employees who have already been promoted. The same is not applicable qua the process which is to be initiated for promotion from a class IV post to class III post. The plain reading of the clause D makes it clear that skill/type/computer test is only for the employees who have already been promoted, hence, even otherwise, the argument being raised by the learned counsel for the appellant that under clause D of the letter dated 14.03.2008, even for getting promotion, a skill type test was required to be cleared, is not borne out of the said letter.

13. Keeping in view the above, as no perversity in the judgment of the lower Appellate Court is pointed out, no interference is called for by this Court in the present Regular Second Appeal.

14. Dismissed.

May 02, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes