

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(114)

CM No. 1404-C-2023 in/and
RSA No. 4897 of 2015
Date of Decision : 13.02.2023

Bhagmal Patwari

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajiv Dhawan, Advocate for the appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM No. 1404-C-2023

Present application has been filed for placing on record synopsis of the case.

Application is allowed and synopsis of the case along with law points are taken on record.

On the oral request of learned counsel for the parties, the present regular second appeal is taken up for hearing today.

RSA No. 4897 of 2015

The present regular second appeal has been filed challenging the judgment and decree dated 11.08.2011 passed by the trial court by which, the suit filed by the appellant-plaintiff seeking a declaration that he is entitled for the benefit of First Assured Career Progress Scheme (in short 'ACP'), was dismissed as well as the judgment and decree dated 12.09.2013

passed by the lower appellate court by which, the judgment and decree dated 11.08.2011 passed by the trial court was upheld.

Certain facts need to be mentioned so as to appreciate the controversy in the correct perspective.

Prior to 01.01.1996, keeping in view the Instructions issued by the Government of Haryana, higher standard pay scale was extended to the employees, who had rendered 10 years regular service but could not get promotion despite eligibility. It is a conceded fact that in order to get the said benefit, the appellant-plaintiff was to become eligible on 01.04.1996.

W.e.f. 01.01.1996, the State of Haryana had revised the pay scales and also replaced the higher standard pay scale scheme with that of ACP scheme. The benefit of higher standard pay scale as well as of ACP were not extended to appellant-plaintiff on the ground that before completing 10 years in service, which was a mandatory requirement to get the benefit under the higher standard pay scale, the said scheme had already been replaced with ACP rules, which rules came into operation w.e.f. 01.01.1996. Benefits under ACP rules were extended to the appellant-plaintiff on the ground that under the service rules, for promotion to the Kanungo, a Patwari was required to pass the departmental examination, which departmental examination, the appellant-plaintiff failed to pass and hence, was not eligible for promotion benefits under ACP rules can not be extended.

The civil suit filed by the appellant-plaintiff was dismissed on the ground that he failed to prove his eligibility for the grant of benefit being prayed in the civil suit. The said judgment dated 11.08.2011 has also been upheld by the lower appellate court vide judgment and decree dated

12.09.2013 hence, the present regular second appeal.

Learned counsel for the appellant-plaintiff argues that the appellant-plaintiff has not been given the benefit of higher standard pay scale for which, he became entitled for on 01.04.1996 and even otherwise, certain Patwaris were given the benefit of ACP scales despite the fact that they did not pass the required departmental examination, which is mandatory for promotion to the post of Kanungo hence, the judgments of the courts below are liable to be set-aside as, the facts and evidence, which has come on record, have not been appreciated in the correct perspective.

Learned counsel for the respondent-defendant submits that in order to get the higher standard pay scale, the appellant-plaintiff was required to have 10 years service, which he was to complete on 01.04.1996 but as before the completion of said 10 years, the Notification for the extension of the higher standard pay scale was withdrawn and only the ACP rules were in operation w.e.f. 01.01.1996, under which Rules, the appellant-plaintiff could not be granted benefit as he did not attain the eligibility for promotion to the post of Kanungo hence, no grievance can be raised qua the findings of the courts below by which, the suit filed by the appellant-plaintiff has been dismissed, which judgment has been upheld by the lower appellate court vide judgment and decree dated 12.09.2013.

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

The finding recorded by the courts below that before the completion of 10 years service, which was mandatory for the grant of benefit under the higher standard pay scale, which the appellant-plaintiff

cannot be faulted with. It is a conceded fact even before this court that appellant-plaintiff did not complete 10 years service upto 01.01.1996 i.e. the date when instructions qua the grant of higher standard pay scale was withdrawn. Once, the said fact is conceded that on the date when the appellant-plaintiff completed 10 years service, the higher standard pay scale scheme was not in existence, the grant of benefit to the appellant-plaintiff under the said scheme does not arise. Hence, it cannot be said that findings recorded by the courts below are perverse to the facts or the rules governing the service.

The further claim of the appellant-plaintiff was that he is entitled for the benefit under the ACP rules also as, he could not get promotion to the post of Kanungo and was stagnated despite the fact that he had required number of years of service as Patwari to his credit. Though, it is a conceded fact that the appellant-plaintiff while working as a Patwari, had the required experience in his credit to get the ACP scale but the appellant-plaintiff was not eligible for promotion to the post of Kanungo as he had not passed the mandatory departmental examination.

Learned counsel for the appellant-plaintiff conceded before this court that as per the rules governing the promotion to the post of Kanungo, passing of the departmental examination is must for a Patwari to get promotion. It is also a conceded position that the ACP rules envisaged the grant of benefit only to the eligible employees, who are eligible for promotion but are stagnated due to the non-availability of promotional avenues.

In the present case, the appellant-plaintiff could not be granted the benefit of ACP in the cadre of Patwari as, he did not had the eligibility

for promotion to the post of Kanungo. It is a conceded fact hence, the findings recorded by the court below cannot be treated as perverse either to the facts or the rules governing the service.

Learned counsel for the appellant-plaintiff further submits that certain Patwaris, who did not pass the departmental examination, were extended the benefit of ACP scale hence, the appellant-plaintiff was also entitled for the same. The negative discrimination is not permissible. In order to get a claim under the rules, the entitlement has to be shown and merely because someone ineligible has been granted the benefit, the same will not confer a right upon another ineligible to claim the said benefit.

Learned counsel for the appellant-plaintiff submits that the ACP rules, which came into effect w.e.f. 01.01.1996, the actual Notification was issued in the year 1998 and, therefore, factually, higher standard pay scales were in existence on 01.04.1996 when the appellant-plaintiff complete 10 years of service hence, he should have been granted the said benefit.

It may be noticed that by a deem in fiction that 1998 ACP rules were brought into effect w.e.f. 01.01.1996. Once, by deeming fiction, the ACP rules are applicable from 01.01.1996 and the higher standard pay scale rules were withdrawn w.e.f. 01.01.1996 in the absence of any challenge to 1998 ACP rules, no benefit could have been granted. The findings of the courts below to the said effect are inconsonance with law and need no modification.

No other argument was raised.

Keeping in view the facts and circumstances, no question of

law arises in the present appeal for the determination of this court in the

regular second appeal, especially when, no perversity has been pointed out
in the findings of the courts below either on facts or on evidence.

Dismissed.

February 13, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No