

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

124

2023:PHHC:120497

RSA-2197-2018

Date of decision: 13.09.2023

BALRAM

..Appellant

Versus

STATE OF HARYANA AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajesh Arora, Advocate
for the appellant.

Ms. Vibha Tewari, AAG, Haryana.

ANIL KSHETARPAL, J(Oral)

1. The correctness of the concurrent findings of fact arrived at by the Courts below is assailed by the plaintiff in this second appeal. His suit for grant of decree of declaration that he is entitled to stepping up of his pay at par with his juniors and that he should be declared senior to the persons named in the plaint, has been dismissed by both the Courts below. He was appointed as a clerk on 21.10.1967 in Zila Parishad. On evolution of the Zila Parishad, he was transferred to the Department of Health, Haryana on 01.01.1974. He was promoted as an Assistant on 04.06.1997, thereafter, he sought voluntary retirement, which was allowed with effect from 31.12.2005. He filed the suit on 21.10.2013, Both the Courts on appreciation of evidence have found that as per the instructions dated 16.03.1962 and 20.10.1965, the clerks who were appointed on the basis of recommendations of the Subordinate Service Selection Board are required to be given seniority from the date of recommendation. Sh. Jai Narayan, Sh. Om Prakash and Sh. Rameshwar Jangra were recommended by the Subordinate Service Selection

Board for appointment on 07.09.1973 and thus they are granted seniority from that date.

2. Both the Courts on appreciation of evidence have found that the plaintiff has failed to make out a case for grant of decree of declaration.

3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

4. The learned counsel representing the appellant contends that as per the admitted facts, the appellant was appointed as a clerk on 01.01.1974, whereas, Sh. Jai Narayan, Sh. Om Prakash and Sh. Rameshwar Jangra joined on the post of clerk subsequent to the appellant. He further submits that in view of the Division Bench judgment in **Dr. Suresh Kumar Mangal and others Vs. State of Haryana and others, 2009(1) SCT 621**, the Division Bench has held that the seniority of direct recruits is to be counted from the date they joined on the post.

5. This Court has carefully read the judgment passed by the Division Bench in which Rule 11 of the Haryana Civil Medical (Group A) Service Rules, 1981, came up for interpretation. While interpreting the Rule, the Court held that the seniority will be counted from the date, the employee becomes the member of cadre, whereas, in this case, both the Courts have held that there are specific instructions of the department issued on 16.03.1962 and 20.10.1965, which provide for counting of seniority of a candidate recruited by Subordinate Service Selection Board from the date of Board's recommendation. There is no challenge to the correctness of the aforesaid instructions.

6. The learned counsel representing the appellant has failed to draw the attention of the Court to the relevant service rules. Moreover, over the direction of the Court in the previous suit filed by the appellant, a speaking and considered order has been passed by the competent authority. Still further, the suit was filed after the appellant retired from the service. Even, the previous suit was filed by the appellant before his retirement.

7. Keeping in view the aforesaid facts, no ground to interfere is made out.

8. Dismissed accordingly.

9. All the pending miscellaneous applications, if any, are also disposed of.

September 13th, 2023
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(ANIL KSHETARPAL)
JUDGE

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