

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CM-8980-C-2022 in/and
RSA-485-2017 (O&M)
Date of Decision :30.01.2023

Vijay Kumar

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Manu K. Bhandari, Advocate and
Mr. Rohit Kataria, Advocate for the appellant.

Mr. Gurvinder Singh, AAG, Punjab.

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Harsimran Singh Sethi, J. (Oral)

CM-8980-C-2022

The present application has been filed for listing the main regular second appeal to an actual date of hearing.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed. The main appeal is taken up for hearing today itself.

CM-4194-C-2017

Learned counsel for the appellant submits that the present application may be disposed of having been not pressed any further.

Ordered accordingly.

RSA-485-2017

In the present regular second appeal, the challenge is to order dated 04.02.2015 passed by the trial Court by which, the suit filed by the appellant-plaintiff challenging the order dated 01.10.2009 by which, the

services of the appellant-plaintiff were de-regularized, was dismissed as well as judgment of the Lower Appellate Court dated 29.03.2016 by which, the decree and judgment of the trial Court dated 04.02.2015 was upheld.

Certain facts needs to be noticed so as to appreciate the controversy in a correct perspective.

The services of the appellant-plaintiff were regularised by the respondent-department on the post of Pump Operator on 06.04.2004. Thereafter, certain objections were raised by the employees that the services of senior employees have not been regularised whereas, the junior employees got the benefit of regularization of their service. The respondent-department conducted an exercise to ascertain t the facts qua he said allegations of the employees concerned and it was found that certain employees, who were junior got the benefit of regularization including the appellant herein hence, as a remedial measure the order by which the services of the appellant were regularised was withdrawn vide order dated 01.10.2009 by the respondent-department after giving due opportunity to show cause.

Feeling aggrieved against the said order of de-regularization of service dated 01.10.2009, the appellant filed CWP-16561-2009 titled as **Vijay Kumar vs. State of Punhab and others** before this Court wherein, the appellant claimed that he was actually appointed in the month of May, 1988 whereas, for the purpose of de-regularization of his services, his date of appointment has been taken as 01.10.1989, which is arbitrary and illegal. Respondent-department appeared before this Court and keeping in view the disputed question of facts that had arisen qua the actual date of appointment

of the appellant, the prayer of the appellant was not entertained and the said writ petition was disposed of vide order dated 10.11.2010 of this Court with liberty to the petitioner i.e. appellant herein to avail the remedy by filing a civil suit.

The appellant-plaintiff has filed a civil suit raising the same pleas and in the reply to the civil suit, it has been stated by the respondent-department that in the seniority list, which already existed prior to the date when the regularization of service of the appellant was ordered in 2004, the name of the appellant was at Sr. No.741 and out of the 741 employees only employees upto the serial No.637-A were entitled for regularization, keeping in view the terms and conditions of the regularization policy dated 23.01.2001 hence, the claim of the appellant could not have been considered for regularization of his services. It was further mentioned in the said reply that after the framing of initial seniority list giving seniority position No.741 keeping in view the date of appointment as 01.10.1989 to the appellant-plaintiff, there was an insertion of the name of appellant-plaintiff at Sr. No.492-A in the seniority list by placing reliance upon a log book to antedate the date of appointment of the appellant-plaintiff from 01.10.1989 to 03.05.1988, which document could not have been taken into consideration for preponing the date of appointment of the appellant. Hence, as the seniority position of the appellant-plaintiff was at Sr. No.741 and he was wrongly regularised in service ignoring the claim of the senior employees, the impugned order dated 01.10.2009 was passed de-regularizing the services of the appellant/plaintiff.

Thereafter, evidence was led in the suit filed by the

appellant/plaintiff and the appellant-plaintiff placed reliance on a log book to contend that he was appointed on 03.05.1988 and not on 01.10.1989 so as to contend that order dated 01.10.2009 by which, the services of the appellant-plaintiff were de-regularized, was contrary to the facts on record. The respondent-department contended that order dated 01.10.2009 is valid as the log book, which document remains with the employee concerned only, is not an official record and the said log book cannot be given effect to so as to ascertain the valid date of appointment of the appellant-plaintiff. The respondent-department further submitted that the appellant-plaintiff has even signed the said log book in the month of April, 1988, which shows that even before the date of alleged appointment i.e. 03.05.1988, the appellant-plaintiff was signing the said document. Further, the Muster Rolls for the period from May, 1988 till September 1989 were produced to show that name of the appellant-plaintiff did not exist in the said Muster Rolls so as to be treated in employment.

Keeping in view the evidence which had come on record, the trial Court dismissed the suit of appellant-plaintiff vide order dated 04.02.2015 against which order, the appellant preferred an appeal before the Lower Appellate Court which also came to be dismissed vide order dated 29.03.2016. Hence, the present regular second appeal.

Learned counsel for the appellant-plaintiff argues that the log book was a material document which should not have been ignored by the trial Court to record a finding that appellant-plaintiff was appointed on 1.10.1989 only and not on 03.05.1988 as being claimed. Learned counsel for the appellant-plaintiff submits that the log book was duly signed by the

official concerned also hence, ignoring the said log book to deny the relief to appellant is miscarriage of justice and the findings recorded by the Courts below are totally contrary to the facts on record.

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

The arguments being raised by the learned counsel for the appellant cannot be accepted for the reason that the log book cannot be treated as document to prove the appointment of the appellant and that too in preference to the other documents which cite the date of appointment of the appellant/plaintiff as 01.10.1989. Log book remains in the hands of employee concerned and is to be used only for recording certain facts and at the best log book can be used as a correlating material only in case any other material exists to support the contention that appellant-plaintiff was appointed on 03.05.1988. Further, in the present case, it is a conceded position that even in the month of April, 1988, there are signatures of the appellant on the said log book. This shows that the said document was not reliable to be taken into account to accept the prayer of the appellant-plaintiff to treat him to be in service from 03.05.1988 and that too by ignoring a seniority list which was produced by the department much before the services of the appellant/plaintiff were ordered to be regularised in the year 2004.

Even otherwise, the Courts below have placed reliance upon the seniority list of employees, which was framed by the department, keeping in view the date of appointment of an employee. The said seniority list was in existence prior to the date, the order of regularization was passed

in favour of the appellant-plaintiff, which order of regularization of service was later on withdrawn by the respondent-department vide impugned order dated 01.10.2009. In the seniority list framed, it is a conceded position that the name of the appellant-plaintiff was at Sr. No.741 and once the name of the appellant-plaintiff was at Sr. No.741 and the date of appointment has been recorded as 01.10.1989, the said document has to be given preference over and above the log book as being claimed by the appellant-plaintiff. Hence, the seniority list which has been relied upon by the Courts below is a more authentic document to determine the seniority of an employee, which seniority list also depicts the date of appointment of an employee, has rightly been given preference over and above the log book and that too when the said log book created doubt as the same was signed for the month of April, 1988 i.e. even on the date prior to the claimed date of appointment.

Learned counsel for the appellant further submits that the impugned order dated 01.10.2009 is a non-speaking order, which fact has not been taken into account by the Courts below though, the said fact had not been argued before the Courts below.

A bare perusal of the impugned order dated 01.10.2009 would show that the facts have been taken into account and reasons have been given for arriving at a conclusion of de-regularization of services of the appellant/plaintiff. Speaking order means that findings need to be supported by reasons, which reasons are mentioned in the impugned order.

In the present case, in the order of de-regularization of service dated 01.10.2009, a reason has been given that the seniority position of the appellant-plaintiff in the seniority list has been depicted at Sr.No.741

whereas, only 637 employees have only been regularized from the said seniority list, which clearly shows due application of mind and reason for arriving at a conclusion and cannot be taken as a cryptic order.

No other argument has been raised.

Keeping in view the fact that no perversity has been pointed out by the learned counsel for the appellant in the findings so recorded by the Courts below qua the facts as well as evidence on record hence, no interference is called for by this Court and the present regular second appeal is accordingly dismissed.

January 30, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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