

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 5798 of 2018 (O&M)

Date of Decision: 08.08.2023

Ishwar Dayal

... Appellant(s)

Versus

The Kaithal Co-op. Sugar Mills Ltd. And Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. H.S.Kasan, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

2. Though, the appeal has been filed along with an application to condone the delay of 285 days in refiling the appeal, however, the learned counsel representing the appellant has been heard on merits of the case.

3. The correctness of the concurrent findings of fact arrived at by both the Courts below are challenged by the plaintiff in the present second appeal. He prays for grant of decree of declaration that the order dated 06.09.2011 is illegal, null and void. He also prayed for issuing direction to the respondents to regularize his services prior to the date on which the services of his juniors were regularized. Both the Courts below, on the

appreciation of evidence, have found that the defendant No. 2 to 4 were appointed prior to the plaintiff. Moreover, there were only three posts of the Instrument Attendant in the permanent cadre, whereas one post was in seasonal permanent cadre. The petitioner was in the seasonal permanent Instrument Attendant cadre. Thus, there was no comparison between the plaintiff and the defendants. When the plaintiff was adjusted in the seasonal Instrument Attendant cadre, he gave an affidavit disclosing his willingness.

4. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of fact arrived at by both the Courts below. Hence, the present appeal is dismissed.

5. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

August 08, 2023

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No