

RSA-2348 of 1990 (O&M)

2024:PHHC:007230

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

RSA-2348 of 1990 (O&M)
Date of decision: 18.01.2024

Harbhajan Dass

.....Appellant

Versus

The Punjab State and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Ms. Neha Jain, Advocate,
for Mr. K.S. Dadwal, Advocate,
for the appellant.

Mr. Arun Gupta, AAG, Punjab.

NAMIT KUMAR, J.

1. This Regular Second Appeal has been filed against the judgment and decree dated 22.01.1987 passed by the Court of learned Sub Judge, Ist Class, Jalandhar, whereby suit for declaration filed by the appellant-plaintiff was dismissed as well as the judgment and decree dated 28.08.1990 passed by the Court of learned Additional District Judge, Jalandhar, whereby appeal preferred by the appellant-plaintiff against the judgment and decree dated 22.01.1987 also met the same fate.

2. Brief facts of the case are that appellant-plaintiff filed a suit for declaration pleading therein that he joined the Punjab Language Department as Clerk at Kapurthala on 17.09.1969 and was promoted to the rank of Senior Clerk w.e.f. 01.01.1978. He was promoted to the

short term vacancy vide office order No.83/229 dated 15.11.1983 passed by the Director, Language Department, Punjab, Patiala and was promoted as Assistant on adhoc basis at point No.12 which had been carried forward from point No.11. It was pleaded that order dated 26.12.1983 whereby respondent-defendant No.3 was promoted as Assistant at point No.11 and office order No.Estt.85/6 dated 12.01.1984 passed by Director, Language Department, Punjab, whereby appellant-plaintiff was reverted as Senior Clerk from the post of Assistant with effect from 22.12.1983 are illegal and void, unlawful and unconstitutional, against the provisions of law, service rules and principles of natural justice, therefore, same are not binding on the appellant. The suit and the appeal filed by the appellant were dismissed vide impugned judgments and decrees. Hence, this appeal.

3. The only argument raised by the learned counsel for the appellant in the present case is that along with the appeal filed before the lower Appellate Court, an application was also filed under Order 41 Rule 27 of the CPC for producing additional evidence. Learned counsel for the appellant submits that as per the various *zimni* orders, the said application remained pending for consideration for passing appropriate order and there is no order on the file of the lower Appellate Court which would show that the application filed under Order 41 Rule 27 of the CPC was decided prior to the decision of the appeal by the lower Appellate Court or along with the main appeal. Learned counsel for the appellant further submits that keeping in view the settled principle of law by the Hon'ble Supreme Court of India in

Civil Appeal No.2699 of 2008 titled as Hakam Singh vs. State of Haryana and others, decided on 09.04.2008, any application filed for adducing additional evidence is to be decided prior to the decision of the suit or appeal concerned as the case may be and in the absence of deciding the said application, final order passed cannot be sustained. She also places reliance on the judgment of the Hon'ble Supreme Court in ***Sanjiv Goel v. Avtar S. Sandhu, 2006(9) SCC 748*** and this Court in ***RSA-1904 of 2019 – Roshan Lal v. Raghbir Singh – decided on 19.04.2023; RSA-696 of 1994 – Babu (deceased) through LRs v. Lehmbhar Singh and others – decided on 18.05.2022*** and ***RSA-310 of 2016 – Satbir Singh alias Sehdev (deceased) through his LR v. Raj Bala – decided on 17.05.2017***.

4. Learned State counsel very fairly submits that keeping in view the fact that application filed by the appellant under Order 41 Rule 27 of the CPC was not decided before passing the final order on the appeal preferred and also along with the appeal, the case will be covered by the judgment of the Hon'ble Supreme Court of India in ***Hakam Singh's case (supra)*** and other judgments.

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

6. From the record, it transpires that the application filed under Order 41 Rule 27 of the CPC before the lower Appellate Court remained pending consideration even upto the date of final judgment and decree passed by the lower Appellate Court on 28.08.1990. That being so, the issue in question is covered by the judgment of the

Hon'ble Supreme Court of India in ***Hakam Singh's case (supra)***. The relevant paragraph of which is reproduced hereinafter.

“4. Without going into the facts in detail, these appeals can be disposed of on a very short point. It is an admitted position that an application under Order 41 Rule 27 of the Code of Civil Procedure (In short "CODE") for acceptance of additional evidence was filed before the High Court in the aforesaid First Appeals, which were dismissed by the High Court by the impugned order. However, the application for acceptance of additional evidence under Order 41 Rule 27 of the Code was not considered by the High Court while disposing of the appeal.

5. That being the position, without going into the legality and propriety of the impugned order of the High Court passed in the aforesaid appeals, we set aside the same and remit back the cases to the High Court for decision of the Appeals afresh on merits and in accordance with law along with the application for acceptance of additional evidence under Order 41 Rule 27 of the Code.

6. Accordingly, the impugned order is set aside. The High Court is requested to dispose of the First Appeals in the light of the observations and directions made hereinabove within three months from the date of supply of a copy of this Order along with application for acceptance of additional evidence under Order 41 Rule 27 of the Code.”

7. Keeping in view the above, the judgment and decree of the lower Appellate Court dated 28.08.1990 is set aside and the case is remanded to the lower Appellate Court to decide the appeal as well as

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the application filed under Order 41 Rule 27 of the CPC afresh on merits and in accordance with law.

8. As the parties are litigating since long, it will be appreciated that the lower Appellate Court decides the appeal within a period of four months from the first appearance of the parties concerned. Parties are directed to appear before the lower Appellate Court on 05.02.2024. It is expected that the parties to the *lis* shall not be entitled for seeking unwarranted adjournments.

9. The present Regular Second Appeal is disposed of in above terms.

10. Pending application(s), if any, stand disposed of accordingly.

18.01.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No