

RSA No.2555 of 1993 (O&M)

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

RSA No.2555 of 1993
Decided on: 26.04.2024

State of Haryana and others

.....Appellants

Versus

Shri Shiv Ram

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Saurabh Mohunta, DAG, Haryana,
for the appellants.

None for the respondent.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 03.08.1993 passed by the Court of learned District Judge, Ambala, whereby appeal filed by the plaintiff-respondent against the judgment and decree dated 22.07.1992 passed by the Court of learned Sub Judge II Class, Ambala City, dismissing his suit for declaration, has been allowed.

2. Parties to the *lis* hereinafter shall be referred to by their status before the trial Court. Brief facts of the case are that plaintiff filed a suit for declaration challenging order No.52 dated 31.05.1990 issued by defendant no.3 to be illegal, null and void claiming his entitlement to promotion to the rank of Forester, being senior to the persons who have been promoted as Forester vide said order. It was averred that he was appointed as Forest Guard on 29.01.1970 and

RSA No.2555 of 1993 (O&M)

qualified the course of training prescribed from 07.06.1971 to 21.11.1971 and is working in the same capacity with defendant no.4. As per the seniority list his name is at Sr. No. 274. On 14.08.1987 and 08.06.1990 he applied for his case to be considered for promotion from the rank of Forest Guard, based on the seniority list but to no avail. However, his juniors were promoted.

3. Upon notice, defendants appeared and filed the written statement taking the preliminary objections as regards the maintainability of the suit as no notice U/S 80 C.P.C. was served; jurisdiction of the Civil Court to hear the present suit, besides mentioning that the plaintiff did not possess any cause of action.

4. Plaintiff filed replication to the written statement and from the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether order no.52 dated 31.5.1990 issued by the defendant no. 3 is illegal, null and void against principles of natural justice, if so to what effect? OPP
2. Is the suit of the plaintiff not maintainable? OPD
3. Is this court has no jurisdiction to try and entertain the present suit? OPD
4. Whether the suit of the plaintiff is bad for cause of action? OPD
5. Relief.

5. After hearing arguments and after appreciating evidence on record, trial Court dismissed the suit of the plaintiff vide judgment and decree dated 22.07.1992.

6. Aggrieved against the judgment and decree of the trial Court, plaintiff preferred an appeal before the lower appellate Court, which has been allowed vide judgment and decree dated 03.08.1993. Hence, this appeal by the defendants.

7. Learned counsel for the appellants-State contended that judgment of the lower appellate Court is the result of mis-reading and mis-interpretation of the evidence on record and the judgment of the trial Court has wrongly been set aside. He further contended that the lower appellate Court committed grave error by recording a finding that plaintiff-respondent was entitled to promotion from the post of Forest Guard to the post of Forester from the date when his juniors were promoted. He further contended that reliance upon the Division Bench judgment of this Court in *K.K. Vaid v. State of Haryana, 1990(1) S.L.R. 1* by the lower Appellate Court was mis-placed. Notice of motion in this appeal was issued on 25.11.1993 and operation of the impugned judgment was stayed. Thereafter, the matter was admitted on 13.01.1994. Learned State counsel submitted that despite best efforts, State has not been able to get the particulars of LR's of sole respondent, who died during the pendency of the instant appeal, therefore, he does not press the present appeal, however sought liberty to get revived the same in case any execution application is preferred by LR's of the deceased-respondent.

8. In view of the above, present appeal is dismissed as not pressed at this stage with aforesaid liberty.

RSA No.2555 of 1993 (O&M)

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

26.04.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No