

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

(122)

**RSA-72-1993 (O&M)
Date of decision:- 29.04.2024**

Gurnam Singh

... Appellant

Versus

Haryana State Agriculture Marketing Board and others ... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ravinder Kumar (Ravi), Advocate for the appellant.

Mr. Padamkant Dwivedi, Advocate for the respondent No.1.

SUVIR SEHGAL, J. (ORAL)

1. Plaintiff-appellant is in second appeal before this Court challenging the concurrent finding of fact recorded by both the Courts below.

2. Pleaded case of plaintiff is that he joined the service as a Junior Engineer (Electrical) on 07.04.1979 and his name figured at Serial No.3 in the seniority list circulated in the year 1986. He filed objections to the seniority list to the effect that he is entitled to the benefit of service rendered by him as a Junior Engineer from 07.12.1976 to 20.05.1977. Ganesh Dutt and Karam Singh, who were his juniors, were assigned the charge of the post of Sub Divisional Officer (Electrical) ignoring his claim. He filed a suit for declaration to the effect that he may deemed to be promoted to the post of a Sub Divisional Officer (Electrical) from the date his juniors were promoted and claimed consequential benefits.

3. Upon notice, suit has been contested by defendant-respondent No.1, wherein various preliminary objections were taken. A stand was taken that seniority is determined on the basis of length of service in the cadre as provided in Haryana State Agricultural Marketing Board Service Rules, 1974. It was submitted that Ganesh Dutt possessed a AMIE degree and on its strength, he was promoted as Sub Divisional Officer (Electrical) on regular post, whereas Karam Singh was senior to the plaintiff. Defendants-respondents No.2 and 3 were proceeded against ex-parte. Plaintiff filed a replication re-asserting the claim. Issues were framed on the basis of the pleadings of the parties and after they led evidence, Trial Court by judgment and decree dated 22.04.1991, dismissed the suit. Plaintiff remained unsuccessful in first appeal, which was rejected by judgment dated 12.08.1992.

4. By referring to communications dated 21.12.1998, 18.05.1999 and 20.03.1998, Annexures A-2 to A-4, addressed by respondent No.1, counsel for the appellant has contended that Karam Singh did not possess the requisite qualification for promotion to the post of Sub Divisional Officer (Electrical) and his promotion was in violation of the service rules.

5. On the other hand, counsel for the respondent No.1 has opposed the appeal and submits that the documents upon which reliance is being placed by the appellant have neither been produced nor proved. It is his argument that the plaintiff as well as the private respondents have retired from service during the pendency of the appeal and the appeal has become infructuous.

6. I have heard counsel for the parties and considered their respective submissions.

7. One of the grounds on which the first appeal has been declined by the learned Additional District Judge, Kurukshetra is that plaintiff has not been able to establish that Karam Singh was not qualified to hold the post of Sub Divisional Officer (Electrical). A perusal of the documents, Annexures A-2 to A-4, show that this finding seems to be against the record. The documents relied upon by the appellant have come into being during the pendency of the instant appeal. This Court is, therefore, of the view that an opportunity should be given to the appellant to produce and prove them, so that the Court is in a position to appreciate their import. This Court is, therefore, of the view that the matter deserves to be remitted to the First Appellate Court for the decision afresh.
8. Accordingly, impugned judgment passed by the First Appellate Court is set aside. Matter is remitted to the learned District Judge, Kurukshetra to decide the appeal afresh, after hearing the parties, uninfluenced by any observation made hereinabove, by giving the parties sufficient opportunity to produce and prove any additional material on which they intend to rely upon.
9. Appeal is disposed of.
10. Parties are directed to appear before the learned District Judge, Kurukshetra on 30.05.2024, who may hear the matter himself/herself or assign it to any other Court of competent jurisdiction.
11. Pending application, if any, stands disposed of.

29.04.2024

(SUVIR SEHGAL)

Kamal

JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No