

RSA-2145-1992 (O&M)

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2024:PHHC:012880

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

RSA-2145-1992 (O&M)

Reserved on: 05.01.2024

Date of decision: 31.01.2024

Haryana State Electricity Board

....Appellant

Versus

Gopal Krishan Sharma and another

..Respondents

CORAM: HON'BLE MR JUSTICE ANIL KSHETARPAL

Present:- Mr. Pardeep Tanwar, Advocate and
Mr. Padamkant Dwivedi, Advocate for the appellant

Mr. Sachmeet Singh Randhawa, Advocate for
respondent no.1

ANIL KSHETARPAL, J

1. In this Regular Second Appeal, the correctness of the concurrent findings of fact arrived at by the courts below is challenged by the defendant. Both the courts have decreed the suit while granting decree of declaration that the plaintiff (respondent) shall be entitled to be confirmed as an Assistant with effect from 19.06.1981 and the order dated 08.08.1977, vide which defendant no.2 was confirmed as Assistant w.e.f 23.03.1976, is illegal, null and void.

2. In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed.

3. Learned counsel representing the appellant has made a tabulated compilation of various events which are relevant for the decision of the present case, the same are extracted as under:-

	Plaintiff	Defendant no.2
Appointed as LDC	-	27.11.1965
Appointed as officiating UDC	22.07.1968 (Direct appointment)	06.02.1969 (By promotion)
Passed Deptt. Accounts Exam	August, 1973	May, 1968
Confirmed as UDC	w.e.f 12.02.1972 vide order dated 18.10.1977. The said order dated 18.10.1977 was declared as nonest vide order dated 05.03.1986. Confirmed as UDC 01.09.1973 vide order dated 10.07.1986	w.e.f 21.02.1972 vide order dated
Promoted as provisional Assistant	04.07.1974	10.07.1970 vide order dated 10.07.1970
Confirmed as Assistant		w.e.f 23.03.1976 vide order dated 08.08.1977
Granted Selection Grade of Assistant		19.06.1981 vide order dated 20.07.1982

4. The plaintiff filed the suit on 12.12.1983. He was appointed as an Upper Division Clerk (hereinafter referred to as ‘UDC’) by way of direct recruitment on 22.07.1968. As per condition no.4 of the plaintiff's appointment letter, he was appointed as an officiating UDC and he will be considered for confirmation, against a permanent vacant post of UDC, after completion of 2 years of probation and passing the departmental account examination. Five chances were given to the plaintiff for clearing the exam, within the aforesaid period, however, he failed to pass the same. Subsequently, three more chances were given to the plaintiff and he passed the examination only in August, 1978. Whereas on the other hand, defendant no.2 passed the departmental examination in May, 1968. On the day, she joined as UDC, on 06.02.1968, she had already passed the examination. Thus, she was originally appointed as an officiating

Assistant vide order dated 25.08.1968. Subsequently, she was reverted and again promoted as provisional Assistant. She was confirmed as an Assistant w.e.f. 23.03.1976 vide office order dated 08.08.1977. She was granted selection grade of an Assistant on 19.06.1981 vide order dated 20.07.1982. Both the courts have held that the plaintiff was appointed to the post of UDC prior in point of time and the moment he cleared his departmental examination, he will be entitled to all the benefits prior to Smt. Bhagwati Devi, defendant no.2.

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

6. Learned counsel representing the appellant contends that there cannot be any comparison between the plaintiff and defendant no.2. He submits that on the day the defendant no.2 was appointed as an Assistant, the plaintiff was not qualified. He passed the departmental examination in August, 1973 and he was confirmed as UDC w.e.f 1.9.1973 vide office order dated 10.7.86. He further submits that the plaintiff was confirmed as an Assistant w.e.f 1.9.73. Hence, there could not be any comparison. Moreover, the learned counsel representing the appellant further submits that the suit was filed on 10.12.83 i.e after a peirod of more than 6 years, whereas, the cause of action, if any, accrued in favour of the plaintiff on 08.8.1977 when the office order was passed confirming defendant no.2 as an Assistant w.e.f 23.3.1976.

7. On the other hand, the learned counsel representing the respondent contended that the judgments passed by the courts below

are correct and this Court should not interfere with the concurrent findings of fact.

8. This Court has considered the submissions made by the learned counsel representing the parties.

9. It is evident that defendant no.2 was promoted as an officiating Assistant in the year 1968 itself because she had already passed the departmental examination in May, 1968. She was ultimately promoted as an Assistant w.e.f 10.7.1970 whereas she was confirmed as an Assistant on 23.03.1976. The cause of action, if any accrued in favour of the plaintiff on 08.08.1977. Though the plaintiff has claimed that subsequent cause of action accrued to him on 20.07.1982, however, on that date defendant no.2 was granted selection grade as an Assistant. The plaintiff at the first instance is required to challenge the order dated 08.08.1977 only then he can be granted consequential relief of challenging the order dated 20.07.1982. The period of limitation began to run from 09.08.1977 i.e the next day when the order was passed whereas the suit was filed by the plaintiff only on 12.12.1983. Thus, the plaintiff did not file the suit within the prescribed period of limitation. In this case, the plaintiff has sought decree of declaration. His case will be governed by Article 58 of the Schedule attached to the Limitation Act, 1983. Column no.3 of Article 58 provides that the time from which the period will begin to run would be when the right to sue first accrues. In this case, the cause of action first accrued on 8.8.1977. Reliance in this regard can be placed on the judgments passed by the Supreme Court in **State of Punjab**

and others vs. Gurdev Singh (1991) 4 SCC 1, State of Punjab and another vs. Balkaran Singh (2006) 12 SCC 709.

10. Thus, the plaintiff failed to file the suit within the prescribed period of limitation. Hence, the judgments passed by both the courts below are set aside, resulting in dismissal of the plaintiff's suit. The appeal stands allowed accordingly.

11. All the pending miscellaneous applications, if any, are also disposed of.

31.01.2024

rekha

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No