

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-970-1992 (O&M)
Reserved on: 17.11.2023
Date of decision: 08.01.2024

STATE OF HARYANA

..Appellant

Versus

BAL MUKAND (DECEASED) THROUGH LRS

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jaspal Singh Pannu, AAG, Haryana.

Mr. Alankrit Bhardwaj, Advocate
for the respondent.

ANIL KSHETARPAL, J.

1. This is defendant's second appeal against the concurrent judgment passed by the Courts below while decreeing the plaintiff's suit for grant of decree of declaration to the effect that he is entitled for promotion to the rank of Group Instructor/Superintendent from the date when his juniors were promoted to the higher rank i.e. in the year 1976, 1985 and 1986, along with consequential benefits with interest at the rate of 18% per annum.
2. In order to comprehend the issue involved in the present case, the relevant fact, in brief, are required to be noticed.
3. The respondent joined as a Leather Instructor in the Rural Artisan Training Centre (hereinafter referred to as the 'RATC') on 22.02.1965. In the year 1982, the government decided to close down RATC and it was planned to be replaced with the guest classes in Industrial Training Institute (hereinafter referred to as the 'ITI') that were to be

introduced in the different trades. However, the classes of the leather trade were not introduced when the guest lectures begun and started running. The employees working in the leather trade were given an option to join as a Clerk/Assistant. The plaintiff gave his consent on 21.10.1982, for his adjustment as an Assistant. Thereafter, he drew his salary against the post of the Assistant. Efforts were made to adjust the surplus Leather Inspectors in other departments but it did not work out. On 25.07.1987, the plaintiff filed the suit claiming that Director, ITI, has circulated a seniority list of instructors as it stood on 31.03.1983, wherein, Sh. Pritam Singh, Sh. Phool Chand and Sh. Shiv Prashad are shown at serial No.334, 336 and 386, respectively, but the name of the plaintiff is not included in the gradation list. Moreover, Sh. Mohinder Singh Cheema and Sh. Sita Ram Brar, who were junior to the plaintiff in RATC were promoted as the Group Instructors and now they are working as Superintendents since 1976. Sh. Manphool Singh, who was a junior to the plaintiff, has been working as an Instructor in ITI, Hansi, in a footwear trade, but the request of the plaintiff to be retained in the footwear trade being senior to Sh. Manphool Singh has also been turned down. With these grievances, the plaintiff filed the suit.

4. The defendant while contesting the suit, submitted that in order to save these Leather Instructors from unemployment, they were given an option to work as a Clerk/Assistant and pursuant to the consent given by the plaintiff, he was adjusted in the cadre of Assistants. It was clarified that Sh. Mohinder Singh Cheema and Sh. Sita Ram Brar had passed matriculation in the year 1976 and therefore, these officials were promoted over and above the plaintiff in the RATC. With regard to Sh. Pritam Singh, Sh. Phool Chand and Sh. Shiv Prashad, it was stated that these Group Instructors were from the ITI cadre, whereas, the plaintiff was leather instructor working in

RATC but never worked as instructor in the ITI. With respect to Sh. Manphool Singh, it was contended that he is working as an Assistant at Hansi and is only looking after the work of the leather trade, however, he has never been promoted as a Group Instructor.

5. The trial Court decreed the suit while observing that employees junior to the plaintiff in RATC were promoted to the rank of Instructors in ITI, whereas, the plaintiff has not been given similar benefits.

6. First appeal was filed by the State of Haryana. The First Appellate Court came to conclusion that the plaintiff cannot claim parity with Sh. Mohinder Singh Cheema and Sh. Sita Ram Brar as the plaintiff had not passed matriculation examination in the year 1976. The Court also held that the plaintiff cannot claim parity with Sh. Pritam Singh, Sh. Phool Chand and Sh. Shiv Prashad, as they were Instructors in the ITI cadre and they did not belong to RATC. However, the First Appellate Court held that the plaintiff was entitled to be promoted as a Leather Inspector from the date Sh. Manphool Singh, who was his junior, was promoted as a Group Instructor. Thus, the judgment and decree passed by the trial Court was modified by the First Appellate Court.

7. On 15.09.1992, the regular second appeal was admitted and the operation of the judgment was stayed.

8. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the requisitioned record and synopsis/written arguments filed by the respective parties.

9. On the one hand, the learned counsel representing the State of Haryana submits that Sh. Manphool Singh has never been promoted as Group Instructor and he retired as such. He submits that the First Appellate

Court has overlooked the fact that while filing the written statement, the State in para 7 has specifically asserted that Sh. Manphool Singh is working as an Assistant at Hansi but is only looking after the work of leather trade in absence of an instructor. The State has also tried to place on record the office order Annexure P-1 to prove that Sh. Manphool Singh retired from service on attaining the age of superannuation on 17.04.1990 as an Assistant.

10. On the other hand, the learned counsel representing the respondent (plaintiff) has submitted that the plaintiff was a senior to Sh. Manphool Singh and therefore, the decree of the First Appellate Court should be upheld. An effort has been made to produce an organizational structure at the field institute and at ITI for Court's clarity.

11. This Court has considered the submissions of the learned counsel representing the parties.

12. The learned counsel representing the respondent has not challenged the correctness of the findings of the First Appellate Court with respect to Sh. Mohinder Singh Cheema and Sh. Sita Ram Brar. He has also not challenged the correctness of the finding of the First Appellate Court with respect to Sh. Pritam Singh, Sh. Phool Chand and Sh. Shiv Prashad. It is evident that the First Appellate Court has overlooked the fact that Sh. Manphool Singh was never promoted, hence, the First Appellate Court committed a factual error in issuing direction to the State to promote the respondent from the date, his junior Sh. Manphool Singh was promoted. It is also evident that as opted by the respondent (plaintiff), he was adjusted in the cadre of Assistants in ITI. It is not the case of the plaintiff that anyone junior in the cadre of Assistants in ITI has been promoted over and above him.

13. Keeping in view the aforesaid discussion, this Court is left with no choice but to set aside the judgments passed by the Courts below.
14. All the pending miscellaneous applications, if any, are also disposed of.

January 08st, 2024

Ay
Whether speaking/reasoned
Whether reportable

(ANIL KSHETARPAL)

JUDGE

: Yes/No
: Yes/No