

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1577 of 1994 (O&M)

Date of Order:05.01.2024

Krishan Lal

.Appellant

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anil Rathee, Advocate
for the appellant.Ms. Vibha Tewari, AAG, Haryana
Mr. Jaspal Singh Pannu, AAG, Haryana**ANIL KSHETARPAL, J**

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh, is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in **Pankajakshi (Dead) through LRs vs. Chandrika and others, (2016) 6 SCC 157.**

2. This is the plaintiff's Regular Second Appeal against the findings of fact arrived at by the first appellate court which in turn has set aside the judgment and decree passed by the trial court.

3. By filing the suit on 15.06.1989, the plaintiff claimed the benefit of the period spent in the military service during emergency. He submits that he served in the Indian Army from 10.12.1962 to 28.08.1970, when he was discharged on the compensatory grounds. Thereafter, in civil side, he was originally appointed on 31.05.1972 as a Driver, where he worked till 16.08.1976. Thereafter, he was appointed on ad hoc basis as Hawaldar Instructor on 16.08.1976. He was regularized as Hawaldar

Instructors on 19.01.1977. In the year 1978, the Director General, Home Gurd-cum-Civil Defence invited applications for appointment on the post of Clerk vide circular dated 11.05.1978. He applied to work as a Clerk which was accepted and he was appointed as a Clerk on 02.08.1978. On 17.08.1985, in order to fill up the post of Hawaldar Instructor from the employees of Class-III and Class-IV, the applications were invited and the plaintiff submitted an application. It was clarified in the letter that the Hawaldar Instructor would have no lien on the previous post. On 22.11.1985, the plaintiff was appointed as officiating Hawaldar Instructor. He retired from the service on 31.01.1993. However, before retirement, he filed the suit on 15.06.1989, for the relief claimed.

4. The trial court decreed the suit, however, the First Appellate Court has reversed the judgment.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

6. The learned counsel representing the appellant submits that though the appellant has been given the benefit of military service from 01.05.1967 to 01.06.1972 vide order dated 03.09.1986, however, he is required to be given the benefit of military service as a Hawaldar Instructor.

7. On the other hand, the learned counsel representing the State of Haryana submits that the appellant has already been given the benefit and he cannot be given the benefit once again.

8. This court has considered the submissions of the learned counsel representing the parties.

9. It is evident that the appellant's posts have been changing from one to another. In the beginning he was appointed as a driver. Thereafter, he

was appointed as a Hawaldar Instructor. Subsequently, he applied for the post of a Clerk which was accepted and he was appointed as a Clerk. Vide order dated 17.08.1985, the appellant refused promotion to the post of Hawaldar Instructor. Subsequently he was inducted as a Hawaldar Instructor in November, 1985. It was specified that the plaintiff would have no lien on the previous post. In such circumstances, the learned First Appellate Court correctly drawn conclusion on the basis of the fact that the appellant himself in the year 1978, sought appointment as a Clerk while leaving his lien as a Hawaldar Instructor. In the year 1985, he refused promotion. Now, at this stage, it is not found appropriate to issue any direction to grant the benefit of military service when he was re-appointed as Hawaldar Instructor in the year 1985.

10. Hence, dismissed accordinlgy.
11. All the pending miscellaneous applications, if any, are also disposed of.

January 05, 2024

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(ANIL KSHETARPAL)

JUDGE

Whether speaking/reasoned

Whether reportable

:YES/NO

:YES/NO