

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

211

RSA-1967-1994 (O&M)
Date of Decision :02.04.2024

State of Punjab and others

...Appellants

Versus

Ajit Kaur

....Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rohit Ahuja, DAG, Punjab for the appellant-State.

Mr. Nitin Verma, Advocate for the respondent.

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Harsimran Singh Sethi, J. (Oral)

1. Present regular second has been filed against the judgment and decree of the Court below by which, the judgment and decree of the trial Court has been set aside and the suit filed by the respondent-plaintiff has been allowed.

2. Certain facts may be noticed for the correct appreciation of the issue in hand.

3. The respondent-plaintiff namely, Ajit Kaur appointed as Clerk-cum-Receptionist with the respondent-department on 23.12.1972 on contractual basis for a period of six months. The said appointment was extended time and again and ultimately, she was absorbed on regular basis w.e.f 02.08.1978 as Clerk. After getting absorbed, the respondent-plaintiff claimed the benefit of seniority in the cadre of clerk from the date of her initial appointment i.e. 23.12.1972 and as the said benefit was not being

extended to her, she filed a civil suit claiming the benefit that she be treated in the cadre of clerk from the date of her initial appointment i.e. 23.12.1972 and be given seniority for the adhoc service, which she had rendered from 23.12.1972 to 02.08.1978.

4. The trial Court after considering the facts and evidence which had come on record, dismissed the suit filed by respondent-plaintiff vide judgment and decree dated 14.01.1993.

5. Aggrieved against the said judgment and decree of the trial Court, the respondent-plaintiff filed an appeal before the lower Appellate Court, which appeal came to be decided on 08.12.1993, whereby, judgment and decree of the trial Court dated 14.01.1993 was set aside holding that the services rendered by the respondent-plaintiff on adhoc basis from 23.12.1972 to 02.08.1978 be treated as valid service for the purpose of counting her seniority in the cadre of clerk.

6. The said judgement and decree of the lower Appellate Court dated 08.12.1993 is under challenge in the present regular second appeal.

7. Learned counsel for the appellant-State submits that it is a conceded fact that the respondent-plaintiff was initially appointed for a period of six months on contractual basis on 23.12.1972, which appointment continued by giving extensions on the same terms and conditions and it was only on 02.08.1978, the petitioner came to be absorbed on the post of clerk on regular basis, from which date, she has already been given seniority hence, the grant of benefit of adhoc service rendered by the respondent-plaintiff for the purpose of seniority is not only contrary to the rules governing the service but also contrary to the settled principle of law settled by Hon'ble Supreme Court of India in **Civil Appeal**

No.6026-6028-2021 titled as Malook Singh and others vs. State of Punjab and others, decided on 28.09.2021.

8. Learned counsel for the respondent-plaintiff submits that once the respondent-plaintiff continued working without any break from 23.12.1972 to 02.08.1978 when her services were regularized, the period of adhoc service cannot be ignored for the purpose of grant of benefit of seniority and other benefits, hence, the lower Appellate Court has rightly granted the said benefit of seniority to the respondent-plaintiff and the same is liable to be upheld.

9. I have heard learned counsel for the parties and have gone through the record with their able assistance.

10. The question of law raised in the present appeal that as to whether contractual/adhoc service rendered by an employee prior to his/her regularization can be taken into account as qualifying service for the purpose of seniority or not, has already been decided by the Hon'ble Supreme Court of India in **Malook Singh (supra)** wherein, it has been held that contractual/adhoc service rendered by an employee cannot be taken into account for the grant of seniority in case the adhoc appointment was not made after following due process as envisaged under the rules and the benefit of adhoc service can only be given for the purpose of pensionary benefits.

11. In the present case, respondent-plaintiff is claiming benefit of adhoc service, which she had rendered with the respondent-department from 23.12.1972 to 02.08.1978, which benefit has been allowed by the Lower Appellate Court contrary to the settled principle of law settled by the Hon'ble Supreme Court of India in **Malook Singh (supra)** hence, the same

is to be treated as perverse. No evidence that initial appointment of the plaintiff-respondent was made after following due process has been brought to the notice of this Court.

12. Learned counsel for the respondent-plaintiff has not been able to differentiate that the judgment of Hon'ble Supreme Court of India in **Malook Singh (Supra)** is not applicable in the case of the respondent-plaintiff so as to deny her the benefit as being claimed by her.

13. Keeping in view the facts and circumstances as recorded hereinbefore, judgment and decree of the Lower Appellate Court dated 08.12.1993 is set aside being perverse to the settled principle of law noticed in **Malook Singh (supra)** and the judgment and decree of the trial Court dated 14.01.1993 is restored and the suit filed by the respondent-plaintiff is dismissed.

14. Civil miscellaneous application pending, if any, is also disposed of.

April 02, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No