

IN THE HIGH COURT OF PUNJAB AND HARYANA AT 204

203 (04) Decided on :04.03.2024

RSA-2072-1994 (O&M)

ISH KUMAR AND OTHERS . . .APPELLANTS

Versus

HARYANA STATE ELECTRICITY BOARD AND OTHERS

. . . RESPONDENTS

RSA-147-1995 (O&M)

SHRINATH . . .APPELLANT

Versus

HARYANA STATE ELECTRICITY BOARD AND OTHERS

. . . RESPONDENTS

RSA-1712-1994 (O&M)

KESHO NAND . . .APPELLANT

Versus

HARYANA STATE ELECTRICITY BOARD AND OTHERS

. . . RESPONDENTS

RSA-870-1994 (O&M)

DALIP SINGH . . .APPELLANT

Versus

HARYANA STATE ELECTRICITY BOARD AND OTHERS

. . . RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Kuldeep Sharma, Advocate for
Mr. R. N. Lohan, Advocate for the appellant(s).

Mr. Kartar Singh Malik, Advocate for official respondents.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present Regular Second Appeal, the bunch of 04 appeals

has been disposed of by common order. The facts have been taken from RSA No. 2072 of 1994.

2. The present regular second appeal has been filed challenging the judgment and the decree passed by the Lower Appellate Court by which, the judgment and decree of the trial Court dated 30.11.1992 has been set aside and the suit filed by the appellants-plaintiffs has been dismissed. For the purpose of the order, facts are being taken from RSA No. 2072 of 1994.

3. Learned counsel for the appellants argues that the appellant was promoted to the post of A.L.M. on 09.10.1991 but he was sought to be reverted back so as to accommodate defendant No. 6 on the said post of A.L.M. which act on the part of respondents was arbitrary and illegal.

4. Learned counsel for the appellant submits that the trial Court rightly allowed the suit of the appellant-plaintiff on the ground that the reversion order is being passed without giving any opportunity of hearing to the appellant-plaintiff hence, the setting aside of the said judgment and decree passed by the Lower Appellate Court is without any basis or justification and hence, the judgment and decree of the lower Appellate Court dated 30.11.1992 is liable to be set aside and the judgment and the decree of the trial Court dated 30.11.1992 is liable to be restored.

5. Learned counsel for the respondents on the other hand submits that the appellant-plaintiff was wrongly given the benefit of promotion to the post in question ignoring the claim of defendant No. 6 which promotion order was withdrawn by the respondent-department so as to promote defendant No. 6 on the post of A.L.M. and the said action was in-consonance with the law and keeping in view the fact which has also come on record

that defendant No. 6 was appointed in the organization much prior to the appellant and his services had also been regularized prior to the appellant, hence, he was entitled for the benefit of promotion to the post of A.L.M. in preference to the appellant-plaintiff which decision of the lower Appellate Court is perfectly valid and legal.

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

7. It may be noticed that in the judgment of the trial Court in paragraph No. 10, certain facts qua the regularization of the services of the appellant-plaintiff as well as defendant No. 6 have been mentioned. As per the said fact, the plaintiff was regularized in service on 16.10.1987 and defendant No. 6 was regularized in service on 22.09.1987. It has also come on record that defendant No. 6 had been appointed in the year 1980 whereas the appellant was appointed in the year 1982 on the temporary basis. That being the factual position, which has not been rebutted by the learned counsel for the appellant-plaintiff, defendant No. 6 has to be treated senior to the appellant with regard to the promotion to the post of A.L.M.

8. The arguments which has been raised by the learned counsel for the appellant-plaintiff is that he has not been given any notice before issuing the reversion order. Though, It would have been apt to give a notice to the appellant-plaintiff before reversion but, as a period of 32 years have elapsed since then and both the appellant-plaintiff as well as defendant No. 6 have already retired from service, the question needs to be decided in the facts and circumstances of the present case. The rules of natural justice is to give an opportunity to a candidate to show cause/object to the proposal but

where, it has already come on record that defendant No. 6 was senior to the appellant-plaintiff and the promotion of the appellant-plaintiff was effected to the post of A.L.M. ignoring the claim of defendant No. 6, no prejudice has been shown to have been caused to the appellant-plaintiff so as to withdraw the promotion so as to grant promotion to defendant No. 6. Where, no prejudice has been shown to have been caused, the rules of natural justice cannot be a ground to set aside the impugned judgment and decree of the lower Appellate Court.

9. At this stage, Learned counsel for the respondents further submits that it has come on record that as per the decision taken by the respondent-Board, the seniority of the employees was fixed from the date of their initial appointment and not from the date of regularization of their services which act of the respondent-Board was as per the promotion/recruitment policy.

10. Learned counsel for the appellant has not been able to rebut the said fact hence, even if it is assumed that the defendant was regularized in service after the appellant, but once he was appointed in the respondent-Board on temporary basis prior to the appellant-plaintiff, the seniority list which has been issued shows defendant No. 6 as senior to the appellant-plaintiffs and there is no challenge to the said seniority list at any given point of time at the hands of the appellant-plaintiff, no grievance can be raised by the appellant-plaintiff qua his reversion so as to accommodate employee who is senior to him. The facts qua the appellants in other appeals are also similar that they were junior to the employee, who was promoted after withdrawing the promotion from the appellants-plaintiffs.

11. Keeping in view the facts mentioned here-in-before, no perversity could be pointed out in the findings of the Lower Appellate Court, especially when in the seniority list which is being framed by the department concerned, the defendants were shown senior to the appellants-plaintiffs and defendants had a preferential rights of promotion to the post of A.L.M., which has been granted to them though, by withdrawing the benefit of promotion from the appellants-plaintiff, hence, no ground is made out for interference in the present regular second appeals as no perversity qua the judgment challenged in the appeals has been pointed out by learned counsel appearing on behalf of the appellants-plaintiffs.

12. Dismissed.

13. Pending miscellaneous application, if any, shall also stand disposed of.

14. A photocopy of this order be placed on the files of connected cases.

04.03.2024

Riya

Whether speaking/reasoned:Yes/No
Whether Reportable:Yes/No

(HARSIMRAN SINGH SETHI)
JUDGE