

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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RSA-2343-1994 (O&M)
Decided on : 02.04.2024

State of Punjab

...Appellant

Versus

Raj Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Rohit Ahuja, DAG, Punjab.

Mr. Ashok Sharma (Nabhewala), Advocate for the respondent.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present appeal, the challenge is to the judgments and decrees of the Courts below vide which, the suit filed by the respondent-plaintiff has been allowed.

2. It may be noticed that the respondent-plaintiff filed a civil Suit challenging the seniority list of JBT teachers (Male and Female) of Patiala Division issued on 31.12.1959 by the Deputy Director Schools (Administration of Punjab) as well as the seniority list of the teachers (Male) issued by the District Education Officer, Patiala on 07.12.1981 and the seniority list dated 01.09.1981 qua the female teachers, being arbitrary, illegal, discriminatory, invalid and ineffective.

Further prayer was made in the suit that the seniority list should be framed on the basis of date of joining of an employee and not from the date of confirmation of an employee in service. The further challenge was to the tentative seniority list dated 19.11.1987. The suit filed by the respondents-plaintiffs was allowed by the trial Court on 14.06.1990 qua all the plaintiffs except plaintiff No. 8, against whom, the said suit was

dismissed.

3. The State of Punjab filed an appeal against the Said judgment and decree dated 14.06.1990 passed by the trial Court and the plaintiff No. 8 against whom suit was dismissed also filed an appeal against the judgment of the trial Court. Both the appeals came to be decided by the Lower Appellate Court on 04.02.1994 and both the appeals were dismissed upholding the judgments and decree of the trial Court, hence the regular second appeal at the hands of the State of Punjab.

4. Learned counsel for the appellant argues that once there was a challenge to the seniority list, in the absence of the aggrieved persons i.e. the employees over and above whom the respondent-plaintiff was claiming the seniority, being party to the suit, suit could have been entertained and the same was liable to be dismissed on the ground of maintainability itself whereas, the said objection has not been discussed at all by the Courts below while granting the relief to the respondent-plaintiff.

5. Learned counsel for the respondent-plaintiff submits that though, it would have been better to array all the employees over and above whom the respondent-plaintiff was claiming the relief as party to the suit but, once the findings have been recorded by the Courts below that the seniority cannot be fixed from date of confirmation in service and the same has to be fixed from the date of joining the service, the said findings are perfectly in-consonance with law and hence, the appeal filed by the State is liable to be dismissed.

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

7. It is a conceded position before this Court that in case, the relief claimed by the respondent-plaintiff is allowed, a large number of employees

whose seniority has already been determined were likely to be effected so as to be treated junior to the respondent-plaintiff. It is also a conceded position that none of the said affected employees were made party to the civil suit. That being the factual position which has gone un-rebutted, the suit could not have been entertained by the Courts below keeping in view the settled principle of law.

8. While passing judgment in the regular second appeal No. 247 of 1991 titled as **Punjab State Electricity Board v. Bimal Kumar**, decided on 20.07.2000, the Co-ordinate Bench of this Court has held that without impleading the necessary parties, when there is a challenge to the seniority, the suit cannot be held to be maintainable.

The relevant paragraphs No. 23, 24, 25 and 27 are as under:-

“23. *In the last, now I take up the third contention raised by the appellant that the suit was bad for non-joinder of necessary parties. The learned Counsel for the appellant thirdly contended that the suit filed by the appellant was bad for non-joinder of necessary parties. According to him, the persons whose seniority was likely to be affected by the decision of the suit ought to be heard prior to passing such orders because if the plaintiffs succeed they will supersede a number of persons and may even affect their promotion. For this purpose, he relied upon a Division Bench judgment of this court in the case of **Jaswinder Singh Passi v. The Registrar, Cooperative Societies, Punjab and others, 1998(5) S.L.R. 244 and Jatinder Kumar and others v. State of Haryana and others, 1991(5) S.L.R. 748, B.P. Chudasama v. State of***

Gujarat and others, 1998(5) (sic) 290 : 1998(3) SCT 598 (Gujarat) and Davinder Bathia and others v. Union of India, 1998(5) Supreme Court Cases 262.

24. *On the other hand, learned Counsel for the respondents has relied upon the judgment of the Hon'ble Supreme Court in the case of V.P. Shrivastava and others v. The State of M.P. and others, 1996(1) S.L.R. 819 : 1996(2) SCT 192 (SC), to contend that wherever the plaintiff is not challenging the ad hoc promotion but the position of the said ad hoc promotees in the seniority list, then it is not obligatory upon him to implead the said parties as defendant to the suit.*
25. *I am of the considered view that the case of Shri V.P. Srivastava (supra) is not of any help to the respondents as the principle of determination of seniority adopted by the Government is neither under challenge nor questioned. In other words, it is a letter of appointment of an individual, the validity and effect whereof has been challenged in the suits, but obvious result thereof would be disturbing the seniority list prepared by the State Government as back as in the year 1981. It was contended by the appellant that various persons have been given promotion not only on ad hoc basis but even on regular basis during this intervening period of seven years. The respondents cannot be permitted to take advantage of their own wrong and disturb the established seniority since 1981. Admittedly, letters of appointment*

were issued to the respondents in the year 1978-80 while seniority list was issued more than a year/years thereafter, giving ample opportunity to the respondents to challenge the said seniority list. However, the respondents opted to keep quiet for a considerable period. The persons whose seniority is bound to be affected by decreeing the suit have not been impleaded as parties to the suit.

27. *Applying the above said principles to the facts of the present case, I am of the considered view that presence of all the persons who are likely to be adversely affected, in the event of the plaintiff succeeding, before the court is essential. In other words, all such persons mentioned in the seniority list of 1981 are necessary and proper parties to the present suit. De hors the above findings, the suit of the plaintiffs would be liable to be dismissed for non-joinder of necessary parties and consequently respondents herein would not be entitled to the relief claimed. The decree of the courts below would be liable to be set aside.”*

9. Even the Hon'ble Supreme Court in **Vijay Kumar Kaul & Ors. v. Union of India & Ors. (2012) 7 SCC 610** has also emphatically reiterated the settled position of law that the claim for re-determination of seniority cannot be entertained in the absence of the employees when it is likely to jeopardize the interest of those employees who have not been impleaded parties to the proceedings.”

10. Keeping in view the settled principle of law, the suit filed by the respondent-plaintiff especially in absence of the necessary parties, could not have been entertained by the Courts below, hence, the judgments and decrees of the Courts below are perverse to the provisions of the Civil Procedure Code as well as to the settled principle of law hence, cannot sustain.
11. It may be noticed that while issuing notice of motion in the present regular second appeal, the judgments and decrees passed by the Courts below were stayed, hence, keeping in view the facts and circumstances recorded herein above as the judgments and decrees passed by the Courts below are perverse, the same are set aside and consequently, the suit filed by the respondent-plaintiff stands dismissed being not maintainable.
12. The present regular second appeal stands disposed of.
13. Pending civil miscellaneous application, if any, stands disposed of.

(HARSIMRAN SINGH SETHI)

JUDGE

02.04.2024

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Whether speaking/reasoned: Yes/~~No~~

Whether Reportable: Yes/No