

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102

RSA-1232-1995 (O&M)
Date of Decision :18.01.2024

Birbal

..Appellant

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ishminder Pal Singh, Advocate for
Mr. Alok Mittal, Advocate for the appellant.

Mr. Rohit Ahuja, DAG, Punjab.

* * *

Harsimran Singh Sethi, J. (Oral)

1. In the present regular second appeal, challenge is to judgment and decree of the lower Appellate Court dated 06.08.1994 by which, the judgment and decree of the trial Court dated 16.07.1993 was set aside and the suit filed by the appellant/plaintiff was dismissed.

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

3. Appellant as well as private respondents were initially appointed on temporary basis on the post of clerk. It is a conceded position that as per the facts which have come on record, services of the private respondents were regularized on 01.04.1977 whereas, the services of the appellant were regularized on 23.05.1977. It is also a conceded position that said orders of regularization were not under challenge in any manner.

4. Keeping in view the date of regular appointment, the respondent-department framed the tentative seniority list in the cadre of clerks against which, the appellant-plaintiff filed an objection that as he was appointed much prior to the date as compared to private respondents, he is entitled for seniority in the cadre of clerk over and above the private respondents. It has come on record that seniority list in the cadre of clerk was finalized by the respondents on 23.09.1982, which seniority list was ultimately challenged by the appellant by way of filing a civil suit on 29.11.1990. The said civil suit filed by the appellant was allowed by the trial Court vide judgment and decree dated 16.07.1993 on the ground that once the appellant was appointed on temporary basis prior to the private respondents, he needs to be treated senior to the private respondents in the cadre of clerk. The question of limitation raised qua filing of the said civil suit was also decided in favour of the appellant/plaintiff on the ground that seniority list dated 03.09.1982 was never brought to the notice of the appellant-plaintiff.

5. Aggrieved against the judgment of the trial Court, an appeal was preferred by the State as well as private respondents, which came to be decided on 06.08.1994 and the suit filed by the appellant-plaintiff was dismissed on the ground of limitation by recording that once the impugned seniority list was sent to the office where the appellant/plaintiff was posted, it cannot be said that appellant/plaintiff did not have knowledge of the same.

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

7. The grievance which is being raised by the appellant in the present appeal is that he is entitled for seniority over and above the private respondents. It is a conceded position that seniority is to be maintained as per the rules governing the service keeping in view the continuous length of service in the cadre. Services of the private respondents was regularized on 01.04.1977 whereas, appellant/plaintiff's service was regularized on 23.05.1977. It is also a conceded position that appellant/plaintiff never challenged the regularization of services of the private respondents in preference to him. That being the factual position, it is to be recorded that regularization of the services of the private respondents were on a prior date as compared to the appellant-plaintiff hence, keeping in view the rules governing the service as per which, continuous length of services is to be taken into account for determining the seniority, private respondents are to be treated senior from appellant/plaintiff.

8. The question that whether the suit was within a limitation or not, the same need not be a point of consideration as per the facts, the appellant/plaintiff cannot claim seniority over and above the private respondents unless and until he challenges the date of regularization of services of the private respondents or claims regularization of his service with effect from the date the services of the private respondents were regularized. As the said relief has never been claimed, question of limitation becomes immaterial for deciding the present appeal, keeping in view the facts and circumstances of the present case, especially when as of now, appellant/plaintiff as well as private respondents are no longer in service and have already retired.

9. Keeping in view the facts and circumstance and evidence which have come on record of the present case, the present regular second appeal is being dismissed on merits but not upholding the grounds given by the lower Appellate Court qua barred by limitation.

10. Civil miscellaneous application pending if any is also disposed of.

January 18, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No