

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(206)

RSA-1149-1997 (O&M)

Date of Decision : March 20, 2024

Punjab State Electricity Board and another**.. Appellants****Versus****Kanta Kumari****.. Respondent****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Y.P. Khullar, Advocate, for the appellants.

Mr. Jaskaran Singh, Advocate, for
Mr. Anurag Chopra, Advocate, for the respondent.**HARSIMRAN SINGH SETHI J. (ORAL)**

1. In the present appeal, the challenge is to the judgment and decree of the trial Court dated 16.08.1995 by which, the suit filed by the respondent-plaintiff claiming the seniority from the date of initial appointment on adhoc basis has been allowed as well as the judgment and decree of the lower Appellate Court dated 09.10.1996 by which, the appeal filed by the appellants-defendants has been dismissed.

2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

3. The respondent-plaintiff was initially appointed as Lower Division Clerk in the Punjab State Electricity Board on 09.11.1978. She was appointed on adhoc basis and she continued working till her services were regularized on 01.01.1981. The respondent-plaintiff claimed that as

she was appointed as Lower Division Clerk on 09.11.1978 and her services were regularized later on, she is entitled for seniority from the initial date of appointment as the seniority is to be given on the basis of continuous length of service. Keeping in view the evidence which has come on record, the suit filed by the respondent-plaintiff was allowed by the trial Court vide judgment and decree dated 16.08.1995 holding that the respondent-plaintiff will be entitled for seniority w.e.f. 09.11.1978 and not from 01.01.1981 alongwith all consequential benefits on the basis of continuous length of service.

4. Aggrieved against the said decision, an appeal was preferred by the appellants-defendants, which appeal also came to be dismissed on 09.10.1996 hence, the present regular second appeal.

5. Learned counsel for the appellants-defendants argues that the claim of the respondent-plaintiff to claim seniority from the initial date of appointment on adhoc basis in the cadre of Lower Division Clerk could not have been granted by the lower Appellate Court on the ground that the employees, who were shown senior to the respondent-plaintiff in the seniority list, were not made party alongwith the fact that the benefit of adhoc service cannot be given towards seniority under any circumstances keeping in view the settled principle of law, which has been ignored by the Courts below while decreeing the suit filed by the respondent-plaintiff.

6. Learned counsel for the respondent-plaintiff submits that once as per seniority Rules, the employee is entitled to get seniority on the basis of continuous length of service and it has already come on record that the respondent-plaintiff was appointed in the cadre of Lower Division Clerk on adhoc basis on 09.11.1978, she is entitled for the grant of said benefit, which has rightly been extended by the Courts below.

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

8. The appellants-defendants in their reply have taken a preliminary objection that the suit is not maintainable due to the non-joinder of the affected parties. As per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Vijay Kumar Kaul and others vs. Union of India and others, 2012 (7) SCC 610***, where there is a challenge to the seniority, all the employees, over and above whom the seniority is claimed, are required to be impleaded. In the absence of affected parties, the Court does not have jurisdiction to adjudicate the seniority between the employees concerned.

9. The same question of law also came up for consideration before this Court in ***LPA No.1743 of 2016 titled as Harpal Singh and others vs. State of Haryana and others, decided on 14.09.2016***, wherein it has been held that where the affected persons are not party, the plea for the grant of benefit of seniority towards adhoc/temporary service cannot even be entertained. Relevant paragraph of the judgment is as under:-

*“16. We are also constrained to observe that no writ petition claiming benefit of ad hoc service towards seniority can be entertained and is liable to be dismissed out-rightly if all those employees whose seniority is likely to be affected are not impleaded as party respondents. There is not one but several such orders cited before us where none of the affected person was a party respondent. The Hon'ble Supreme Court in ***Vijay Kumar Kaul & Ors. v. Union of India & Ors. (2012) 7 SCC 610*** has emphatically reiterated the settled position of law that the claim for re-determination of seniority cannot be*

entertained when it is likely to jeopardize the interest of those who have not been impleaded parties to the proceedings.”

In the present case, it is a conceded position that the affected parties were not impleaded and the Courts below have not dealt with the said issue in the manner required, which shows that the findings of the Courts below is perverse to the settled principle of law.

10. Even otherwise, it is also a settled principle of law that the benefit of adhoc service cannot be given the seniority and such service can only be taken into account for the grant of pensionary benefits. The Hon’ble Supreme Court of India in ***Civil Appeal No.6026-6028 of 2021 titled as Malook Singh and others vs. State of Punjab and others, decided on 28.09.2021***, has held that the benefit of adhoc service cannot be given for the purpose of seniority in case, the initial appointment has not been done in a manner required.

11. Learned counsel for the respondent-plaintiff has not been able to show any evidence which has come on record that the initial appointment of the respondent-plaintiff was as per law by following the process envisaged under the Rules governing the service and by the competent authority.

12. In the absence of any such evidence that the initial appointment of the respondent-plaintiff in the year 1978 was as per law by following process envisaged under Rules, the benefit of adhoc service cannot be given to the respondent-plaintiff hence, the judgments and decrees of the Courts below are perverse to the settled principle of law settled by the Hon’ble Supreme Court of India in ***Malook Singh’s case (supra)***.

13. No other argument was raised.

14. Keeping in view the above, the judgments and decrees of the Courts below are perverse to the settled principle of law noticed hereinbefore and the same cannot sustain hence, the judgment and decree dated 16.08.1995 passed by the trial Court as well as judgment and decree dated 09.10.1996 passed by the lower Appellate Court are set aside and the suit filed by the respondent-plaintiff is dismissed.

15. The present appeal is allowed in above terms.

16. Any civil miscellaneous application pending if any, also stands disposed of.

March 20, 2024*harsha***(HARSIMRAN SINGH SETHI)****JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No