

Neutral Citation No. 2024:PHHC:010078

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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RSA-2746-1996 (O&M)
Date of Decision:24.01.2024

State of Punjab and others

... Appellants

Vs

Nachhatar Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Vikas Arora, AAG, Punjab.

Mr. S.S. Salar, Advocate for the respondent.

SUVIR SEHGAL, J.(ORAL)

1. State-defendants are before this Court challenging the judgments and decrees passed by both the courts below.
2. Nachhattar Singh, plaintiff-respondent was promoted as a Head Constable on 27.07.1979 and was confirmed. He was deputed for intermediate promotion course in the year 1989 and cleared it in March, 1990 and his name was included in the approved 'D'-list for promotion as Assistant Sub-Inspector of Police. The entire batch was promoted, however, plaintiff-respondent was not considered for promotion due to an adverse entry in the ACR for the year 1988-89. It has been pleaded that even a junior to the plaintiff-respondent has been promoted as ASI in October, 1990. Representation submitted by the plaintiff-respondent against the adverse remarks was rejected by State-appellant No.3 on 01.04.1990 and the appeal thereagainst was

rejected on 16.08.1990. Plaintiff-respondent filed a suit for declaration and mandatory injunction to the effect that adverse entry in the ACR for the year 1988-89 and the orders rejecting his representation are illegal, null and void and for directing the State-defendants to promote him as ASI from the date when his junior has been promoted.

3. Upon notice, State-defendant contested the suit by taking various objections. It has been submitted that FIR No.83 dated 02.06.1990 has been lodged under the Prevention of Corruption Act against the plaintiff-respondent, who did not have a good record. It has been further stated that the plaintiff-respondent had been given warnings both verbally and in writing to improve his work. A stand has been taken that the plaintiff-respondent was not promoted because of dissatisfactory work as well as the adverse ACR. This stand has been controverted by the plaintiff-respondent by filing the application.

4. After the framing of issues and leading of evidence by the parties, trial Court vide judgment and decree dated 13.09.1994 rejected the challenge to the adverse ACRs but issued a mandatory injunction to the defendant-appellant to consider the plaintiff-respondent for promotion as ASI when his turn came along with his batch mates. Plaintiff-respondent went up in first appeal, which was dismissed by the learned Additional District Judge vide judgment dated 03.05.1996 however, findings recorded on issue No.2 were modified and it was held that the plaintiff-respondent is deemed to have been promoted as ASI w.e.f. 1990.

5. I have heard counsel for the parties and considered their respective submissions.

6. Rule 13.9(4) of the Punjab Police Rules, which is relevant for the decision of the appeal, is reproduced as under:-

“(4) Promotion to the Rank of Assistant Sub-Inspector shall be made in accordance with the seniority of Head Constables of List ‘D’ which may be ignored by the Superintendent of Police in exceptional circumstances only for reasons to be recorded in writing with the approval of the Deputy Inspector-General of Police.”

7. A perusal of the rule shows that a Head Constable can be ignored for promotion as ASI in exceptional circumstances for reasons to be recorded in writing with the prior approval of the DIG. In the evidence lead by the State-appellant, Hem Raj, who has been examined as DW-1, has admitted in his cross-examination that exceptional circumstances have not been recorded nor the approval has been taken from the DIG. It has further come on the record that although plaintiff-respondent was named as an accused in the FIR but the FIR stands cancelled by report Ex.D-2 and he was subsequently promoted w.e.f. 27.11.1992. As the plaintiff-respondent has been ignored for promotion in breach of Rule 13.9(4) *ibid*, this Court does not find any reason to interfere with the findings recorded by both the Courts below.

8. In the net result, there is no merits in the appeal, which is hereby dismissed.

24.01.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No