

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

RSA-299 of 1996 (O&M)
Reserved on: 16.04.2024
Pronounced on: 23.04.2024

Chander Bhan

.....Appellant

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Naveen Daryal, Advocate, and
Mr. Vivek Daryal, Advocate, for the appellant.
Mr. Saurabh Mohunta, DAG, Haryana.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree 05.09.1994, passed by the Court of learned Additional District Judge, Karnal, whereby appeal preferred by the respondents-defendants against the judgment and decree dated 24.08.1994, passed by the Court of learned Sub Judge Ist Class, Karnal, has been accepted and suit of the appellant-plaintiff for declaration, has been dismissed.

2. Parties to the *lis* are being referred as per their status before the trial Court. Brief facts of the case are that plaintiff filed a suit for declaration with consequential relief of injunction on the plea that he joined as clerk in PWD, B&R branch, on 06-09-1972. The appointment of the plaintiff was made on the recommendations of the Haryana Subordinate Services Selection Board, vide letter no. 191

dated 12-08-1971. Total 89 candidates i.e. 72 belonging to the General category and 17 belonging to the reserve category were recommended. The plaintiff belongs to reserved category. The Superintending Engineer, Ambala circle prepared the seniority list of the clerks of Ambala Circle. Initially the plaintiff was shown at Serial no.54. The plaintiff made representation and he was placed at serial no.51 of the seniority list as it stood on 31-08-1981. The above seniority list was not prepared correctly. The plaintiff made representation but the same was again rejected by the departmental authorities. The plaintiff was granted the selection grade in the pay scale of Rs.480-760 in the year 1983. The Superintending Engineer, Ambala Circle PWD B&R Ambala Cantt issued a show cause notice dated 07-08-1991 for withdrawal of the selection grade from the plaintiff. Plaintiff submitted detailed reply to the show cause notice. But without considering the reply/representation of the plaintiff, the same was rejected vide order dated 04-01-1990. The selection grade awarded to the plaintiff was withdrawn vide order dated 11.01.1990. It was further ordered to refix the pay of the plaintiff and to effect recovery from the pay of the plaintiff. Plaintiff assailed the impugned order dated 11.01.1990 on the ground that the Superintending Engineer Ambala circle had not prepared the seniority list in accordance with the roster issued by the Government of India and the Chief Secretary to Haryana Government. The persons belonging to the Scheduled Castes should have been assigned the seniority at serial no.4, 8, 14, 18, etc. The Superintending Engineer, Ambala Circle has not finalized the seniority list of clerks up

to the year 1981. In the meantime, 19 persons left the job. The seniority list was finalized which has adversely effected the placement of the plaintiff in the seniority list. Name of the plaintiff should have been shown above to S/Shri Daya Nand Garg, Babu Ram, Mange Ram, Basawa Ram, Godhu Ram, Shanti Saroop, Prabh Daya. and Ram Singh. The plaintiff has been reduced in rank by way of wrong fixation of the seniority, whereas the juniors to plaintiff have been promoted to the rank of S.D.C in the year 1988. Thus, the plaintiff suffered his status and financial loss. The representation of the plaintiff for assigning him the correct seniority in accordance with the instructions of the Chief Secretary to the Government of Haryana vide letter dated 09.02.1979 and 16.12.1980, has been wrongly rejected by the Superintending Engineer. It is further alleged that the defendants are bent upon to effect recovery from the plaintiff and the selection grade of the plaintiff has been illegally withdrawn vide order dated 11.01.1990. Hence plaintiff has brought this suit for declaration that the order dated 11.01.1990, passed by the Superintending Engineer, Ambala is illegal and not binding on the rights of the plaintiff and the plaintiff is entitled to get restored all the benefits withdrawn in the garb of the impugned order.

3. Defendants contested the suit on the plea that seniority of the plaintiff was rightly fixed as it stood on 31.08.1981. Before preparing the seniority list, objections were invited by the competent authority. The plaintiff was considerably benefited as initially his name was proposed at 54, but in the final list his name was shown at serial

no.51. The representation of the plaintiff with regard to the fixation of seniority was rejected on 05-09-1986. So the claim of the plaintiff at a belated stage is not maintainable. It is further submitted that S/Shri Jagdish, Jai Singh, Om Parkash, Gurdasa, Tara Chand and Rati Ram felt aggrieved with their fixation of seniority. The seniority of Jai Singh and Gurdasa was fixed in accordance with the civil court decree. S/Shri Jagdish, Om Parkash, Tara Chand, Rati Ram were also granted seniority in view of the Board's seniority as well as benefit of military service. With this development the seniority was granted to these six incumbents. However, before revising the seniority list, defendant no.2 had invited objections. After hearing the objections seniority was granted to Shri Jagdish etc. As a consequence of granting seniority to them, the plaintiff and five others were deprived of the selection grade being the junior most. Before depriving them of selection grade, they were given opportunity of making representation, and after considering their representation the impugned order for withdrawal of selection grade from the plaintiff was passed. So there is no illegality in the order dated 11-01-1990 vide which the selection grade of the plaintiff has been withdrawn, as a result of seniority granted to those persons above the plaintiff. The defendants also raised preliminary objections that the plaintiff is estopped from seeking any relief and that the suit is bad for not impleading necessary parties. With these pleas, defendants prayed for the dismissal of the suit.

4. Plaintiff filed replication to the above written statement, wherein the pleas raised in the written statement were controverted and those of the plaint were re-affirmed.

5. From the pleadings of the parties, the following issues were framed vide order dated 05-09-1991:-

1. Whether the order dt. 11.1.1990 passed by Superintending Engineer, Ambala PWD B&R by which the selection grade of Rs. 480-760 was withdrawn and orders passed to refix the pay and effect from plaintiff is illegal, void, abinitio and not binding on the plaintiff and the same is liable to be set aside, as alleged? OPP.
2. Whether the plaintiff is entitled to benefit thereto ? OPP
3. Whether plaintiff is estopped from filing the present suit? OPD
4. Whether the suit is bad for want of notice under Section 80 CPC? OPD
5. Relief.

6. The parties led their respective evidence. The Court of the first instance, after appreciating evidence on record decreed the suit filed by the plaintiff vide judgment and decree dated 24.08.1994.

7. Feeling aggrieved against the said judgment and decree of the trial Court, respondents preferred an appeal before the lower appellate Court, which has been accepted vide judgment and decree dated 05.09.1995. Hence, this Regular Second Appeal by the appellant-plaintiff.

8. Learned counsel for the appellant contended that the lower Appellate Court without appreciating the evidence on record reversed the well-reasoned judgment of the trial Court. He further contended

that lower Appellate Court failed to appreciate that no reason for withdrawal of the selection grade has been disclosed in the impugned order. He further contended that judgment and decree of the lower Appellate Court being based on surmises and conjectures is liable to be set aside.

9. On the other hand, learned counsel for the respondents-State has supported the judgment and decree of the lower Appellate Court. He further contended that selection grade was admissible to first 20% of the members of the cadre and appellant did not fall in that ratio, therefore, the selection grade was withdrawn from him.

10. I have heard learned counsel for the parties and perused the record.

11. Perusal of the record shows that plaintiff-appellant joined as Clerk in the PWD, B&R Branch, on 06.09.1972 on the recommendations of the Haryana Subordinate Services Selection Board vide letter dated 12.08.1971. Initially, in the provisional seniority list, name of the appellant was proposed at serial No.54. After considering the representation of the appellant, in the final seniority list (Ex.D3) as it stood on 31.08.1981 (Ex.P4), name of the appellant was placed at serial No.51. However, plaintiff-appellant, dissatisfied with the seniority list (Ex.D3) moved a representation for re-fixation of his seniority, which was rejected by the department on 05.09.1986 and impugned order was passed on 11.01.1990. The lower Appellate Court has rightly held that suit of the plaintiff-appellant being filed after three years i.e. on 24.03.1990 was beyond limitation and was wrongly decreed by the trial

Court. Moreover, order dated 11.01.1990 was passed after issuing show-cause notice to the plaintiff and after considering his reply. Therefore, impugned order dated 11.01.1990, whereby selection grade earlier granted to the appellant was withdrawn, passed by the respondents, based on the said seniority list was legal and valid. Further the appellant has failed to prove that his case was covered under the instructions of the Haryana Government dated 09.02.1979 regarding reservation policy. Satish Kumar DW1 in his cross-examination has admitted that they have prepared roster for the candidates belonging to the Scheduled Castes and candidates belonging to general category separately. Seniority of S/Sh. Jagdish, Jai Singh, Gurdas, Tara Chand and Rati Ram, belonging to general category and Sh. Om Parkash belonging to Scheduled Caste has been refixed pursuant to the civil Court decree and as a benefit of military service. Plaintiff-appellant in his cross-examination has admitted that some of them have obtained seniority as a result of Court's judgment and seniority to other persons was granted by the Government and they have been granted the benefits of seniority rightly and selection grade has also been rightly granted to them. Further, while granting selection grade to 20% of the cadre post, no benefit of reservation can be claimed as the said benefit is granted to senior-most employees in the seniority list who fall within 20% of the cadre post. This Court does not find any illegality or perversity in the judgment of the lower Appellate Court.

12. No question of law muchless substantial question of law arises for consideration in the present appeal.

13. Dismissed.
14. Pending application(s), if any, stand disposed of accordingly.

23.04.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No