

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

(207)

RSA-3435-1998

Date of Decision : February 08, 2024

Gurbax Singh**.. Appellant****Versus****State of Punjab and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Ishaan Bhardwaj, Advocate, for the appellant.

Mr. Rohit Ahuja, Deputy Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present regular second appeal, the grievance of the appellant-plaintiff is that the appellant-plaintiff who was working as a Clerk on regular basis since 07.11.1974 was entitled to be given promotion against one of the five post of Tehsil Welfare Officer, which was lying vacant instead of filling the same by way of direct recruitment. The said civil suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 15.09.1992 on the ground that under the Rules, which governs the filling up of the post of Tehsil Welfare Officer, the same can only be filled by way of direct recruitment and any decision especially Ex.P-3 dated 13.05.1988 to fill the post by way of promotion is contrary to the Rules governing the service. The appeal filed against the judgment and decree of the trial Court by the appellant-plaintiff was also

dismissed by the lower Appellate Court vide judgment and decree dated 17.07.1998.

2. Learned counsel for the appellant-plaintiff argues that though as per the Rules governing the service which deals with the appointment to the post of Tehsil Welfare Officer, the same is required to be filled up by way of direct recruitment only but once the Department had taken a decision on 13.05.1988 to fill the post by way of promotion amongst the Clerk, Stenographer and Steno-Typist, the appellant-plaintiff being in the feeder cadre of Clerk was entitled for promotion against one of the five post of Tehsil Welfare Officer, which are lying vacant.

3. The said argument has already been dealt by the Courts below and there is no infirmity in the findings recorded by the trial Court.

4. Learned counsel for the appellant-plaintiff conceded even while addressing the arguments that as per the Rules governing the service qua the post of Tehsil Welfare Officer, the same can only be filled up by way of direct recruitment. That being the position, merely a letter written by the Department, which is contrary to the notified Rules, the Rules will prevail over any letter written by the Department especially the letter dated 13.05.1988 so as to fill the post of Tehsil Welfare Officer by way of promotion.

5. Learned counsel for the appellant-plaintiff further submits that during the pendency of the present appeal, one Joginder Singh, who was also working as a Clerk, has been granted promotion to the post of Tehsil Welfare Officer vide order dated 14.06.1989, which has already come on record as Ex.P-4 and therefore, the appellant-plaintiff should have also been given the same benefit.

6. A bare perusal of the said order would show that Joginder

Singh filed an application for direct recruitment which application was not considered. It was under these circumstances that a direction was given that he should also be considered for direct recruitment keeping in view the application rather than filling up the post under the letter dated 13.05.1988 by way of promotion. It was under these circumstances that the claim of Joginder Singh who was claiming that he should be allowed to compete for direct recruitment, his claim was allowed, which is not the case qua the appellant-plaintiff as nothing has been shown to this Court that the appellant-plaintiff ever applied for the post of Tehsil Welfare Officer when the same was advertised to be filled up by way of direct recruitment. Rather, the claim of the appellant-plaintiff in the civil suit was that the post of Tehsil Welfare Officer should be filled up by way of promotion in view of the letter dated 13.05.1988 and interview fixed for filling up the said post in question by direct recruitment be stopped. Therefore, parity with Joginder Singh by the appellant-plaintiff is not correct.

7. Learned counsel for the appellant-plaintiff submits that the appellant-plaintiff also competed for the post in question by way of direct recruitment but was placed in the waiting list.

8. That being the fact asserted by the appellant-plaintiff, the claim of the appellant-plaintiff for direct recruitment has already been considered and was not found feasible, as he could not get selected against the advertised post therefore, even on this ground, once the claim of the appellant-plaintiff has already been considered for direct recruitment, which is in consonance with the services Rules, no further benefit can be given to the appellant-plaintiff qua the claim of promotion on the same post, which claim is contrary to the statutory rules governing the appointment to the post of Tehsil Welfare Officer.

9. No perversity in the findings recorded by the Courts below could be pointed out by the learned counsel for the appellant-plaintiff hence, no ground is made out for the grant of any relief to the appellant-plaintiff in the present regular second appeal.
10. The regular second appeal is accordingly dismissed.

February 08, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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