

**101+203 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CM-1189-C-2024 in/and
RSA-375-1998
Date of Decision: 14.02.2024**

MOHAN LAL

...Appellant

Vs.

STATE OF HARYANA AND OTHERS

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Puneet Jindal, Senior Advocate with
Mr. Rahul Bansal, Advocate
for the appellant.

Mr. Saurabh Mohunta, DAG, Haryana and
Mr. Harish Nain, AAG, Haryana.

HARSIMRAN SINGH SETHI, J. (Oral)

CM-1189-C-2024

The present application has been filed under Order 22 Rule 4 read with Section 151 CPC for bringing on record Lrs of deceased appellant/plaintiff.

CM is allowed as prayed for.

Amended memo of parties is taken on record.

Registry to tag the same at appropriate place.

RSA-375-1998

1. The present appeal has been filed challenging the judgment and decree of the Lower Appellate Court dated 14.01.1998 by which the judgment and decree of the trial Court dated 10.04.1997 has been set aside and the suit filed by the appellant/plaintiff has been dismissed.

2. Learned senior counsel appearing on behalf of the

appellant/plaintiff submits that the Lower Appellant Court has taken into consideration that there were punishments which were effected upon the appellant/plaintiff in the year 1992 and had placed reliance on those punishments which fact was brought on record as Ex.D3, which document could not have been taken into account and the same was only a photocopy of the list of punishment which was imposed upon the appellant/plaintiff.

3. Learned senior counsel further submits that once the ACR of the appellant/plaintiff was recorded as good by the Initiating Officer, the same could not have been downgraded by the Accepting authority and the representation filed by the appellant against the adverse remarks has wrongly been rejected hence, in case the remarks as been given by the Initiating Officer are taken into account and the document Ex.D3 is not read, there is nothing on record to prove that there was any impediment in the release of the efficiency bar which the petitioner was entitled to cross in the year 1993. Hence, the judgment and decree of the Lower Appellate Court is liable to be set aside and that of the trial Court is liable to be maintained.

4. Learned counsel appearing on behalf of the respondent/State submits that even if it is assumed for the sake of argument that Ex.D3 cannot be taken into account as the same was only a list of punishment, still, it is a matter of fact which has come on record that ACR of the appellant/plaintiff for the year 1992-93 carried adverse remarks qua the integrity doubtful as well as the other observations with regard to the working including the punishment imposed on the appellant, which fact as well as document is already on record, which fact/document alone is enough to deny the benefit of crossing of the efficiency bar from the year 1993, as being claimed in the

civil suit.

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

6. It has been conceded before this Court that in order to cross the efficiency bar, the 10 year record prior to the date when the efficiency bar is to be crossed, should be good enough so as to entitle an employee a promotion. This Court is now to evaluate keeping in view the evidence which has come on record, whether the denial of the crossing of the efficiency bar by the respondent is valid or not.

7. Even if the argument of the learned Senior counsel that Ex.D3 which only consists of list of punishment which was imposed upon the petitioner in a period of 10 years prior to the date of crossing of the efficiency bar is not to be taken into account, then also as the conceded fact which has come on record is that the ACR of the appellant for the year 1992-93 was having adverse remarks *qua* his integrity as well as his conduct. Once the integrity of an employee is doubtful and the representation of the appellant/plaintiff has already been rejected, it cannot be said that the record of the appellant in 10 years preceding the date on which crossing of efficiency bar is being claimed was good so as to entitle the appellant the relief as being claimed in the suit.

8. Learned senior counsel further submits that the ACR has also not been recorded in a manner required. He submits that once the initiating officer has graded the appellant/plaintiff as a good employee, the downgrading of the said ACR by the Accepting authority is without any valid jurisdiction. It may be noticed that ACR of the appellant/plaintiff

contains the reasons for downgrading of the same by the Accepting authority such as the punishment and the conduct. Once, the Accepting authority is relying upon a fact which is mentioned while recording the remarks in the ACR, then this Court does not have any power to sit over as an Appellate authority to decide whether the said power exercised is valid or not especially when there is no allegation of any *mala fide* attached against the officer recording the said ACR.

9. In these circumstances, the prayer of the appellant/plaintiff that his ACR should be treated as good and outstanding for the year 1992-93 so as to allow him to get the benefit of the crossing of the efficiency bar cannot be accepted.

10. No further ground is raised. Keeping in view the above, as no perversity in the findings recorded by the Courts below has been pointed out by the learned Senior counsel appearing on behalf of the appellant, no ground is made out for any interference in the regular second appeal. The appeal is accordingly dismissed.

(HARSIMRAN SINGH SETHI)
(JUDGE)

14.02.2024

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