



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

717

RSA-1770-2001

Date of Decision: October 22, 2024

State of Haryana and others

.....Appellant(s)

Vs.

Chhotu Ram

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Harish Nain, AAG, Haryana.

Mr. Kartikey Chaudhary, Advocate for
Mr. Samrat Malik, Advocate
for the respondent.

SUDEEPTI SHARMA J. (ORAL)

The present appeal has been filed by the State of Haryana against the judgment and decree dated 09.1.2001 passed by the Ld. first Appellate Court, Narnaul whereby the said Court has set aside the judgment and decree dated 21.04.1993 passed by Sub Judge, IInd Class, Narnaul without discussing any issue and giving any finding thereon.

BRIEF FACTS OF THE CASE

2. The brief facts of the case are that respondent/plaintiff filed suit for declaration against the actions of the authorities concerned for not regularising the services of respondent/plaintiff and also withholding the pay and salary on the post of Water Pump Operator-II (in short WPO-II) w.e.f. 22.1.1986. The respondent/plaintiff was initially appointed as work-charge Keyman on 02.09.1982 and remained posted at Rewari from 02.9.1982 to

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31.05.1983. Thereafter, he was transferred from Public Health Division, Rewari to Public Health Sub-Division No.1, Mohindergarh against a vacant post vide order No.9534-37 dated 25.05.1983. The respondent/plaintiff was given additional duty of the post of WPO-II w.e.f. 22.01.1986 but he was not given the salary of that post.

3. Further that in the month of August 1988, the services of respondent/plaintiff were regularized on the post of Keyman. He filed the suit on the ground that since he was working against the post of WPO-II, therefore his services should have been regularized to the post of WPO-II and he should have been granted the pay scale of WPO-II. Therefore, he challenged the action of the State of Haryana (appellant-herein) withholding the promotion of the respondent/plaintiff as WPO-II and also withholding the salary of the WPO-II post w.e.f. 22.1.1986 onwards.

4. Upon notice, the defendants appeared and filed joint written statement submitting that the plaintiff was appointed as Keyman work charge with effect from 2.09.1982 under Public Health Division, Rewari and lateron, he was transferred to Sub Divisional Engineer, Public Health Sub Division No.1 Mahendergarh. He was entrusted to perform the additional duties of W.P.O-II vide order dated 22.01.1986. He was never promoted on the post of WPO-II. It is submitted that the order of the entrusting of additional duties to the plaintiff as W.P.O-II were withdrawn by Executive Engineer, P.H.Division, Narnaul vide order No. 6115-19 dated 13.05.1986 and the plaintiff was to work as keyman. He only performed the additional duties of W.P.O-II and hence he was not eligible for the pay and allowances of the post of WPO-II. According to the instructions of the Government, the official who had completed four years of his services on 31.12.1986 was to be regularized as per availability of

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vacancies. The plaintiff joined on 2.09.1983 and the last official who was regularized as Keyman after completion of four years service of whom the date of joining is 28.06.1982, and the plaintiff was junior to him. As no vacancy was available, therefore, he was not regularized as W.P.O-II. Rest of the averments made in the plaint were denied and prayer for dismissal of the suit was made.

5. From the pleadings of the parties, the following issues were framed:-

1. Whether the impugned order dated 22.1.1986 is illegal, nul and void? OPP

2. Whether the plaintiff is entitled for promotion ? OPP

3. Relief.

6. After hearing both the parties and perusing the whole record, learned Sub Judge, IInd Class, Narnaul dismissed the civil suit vide judgment and decree dated 21.04.1993. The appeal against the said judgment and decree was preferred by the respondent/plaintiff, which was allowed by the learned Additional District Judge, Narnaul. Hence, the appellant/respondent filed the present Regular Second Appeal.

SUBMISSIONS OF COUNSEL FOR THE PARTIES

7. Ld. State counsel for the appellant contends that the Ld. first appellate Court did not appreciate the evidence on record in correct perspective and wrongly decided the appeal filed by the respondent/plaintiff. He further contends that the Ld. Trial Court has not properly framed the issues and prays for allowing the appeal.



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8. *Per contra*, Ld. counsel for the respondent contends that the appeal has rightly been decreed in favour of the respondent and prays for dismissal of the appeal.

9. I have heard learned counsel for the parties and perused the whole record of the case.

10. The relevant portion of the judgment dated 21.4.1993 passed by Sub-Judge, IInd Class, Narnaul is reproduced as under:-

10. From the perusal of the plaint, it is observed that the plaintiff has claimed that he was promoted on the post of W.P.O.II with effect from 22-1-1986 in the regular scale of the post of W.P.O.II where as there is no such order by which it can be said that the plaintiff was promoted on the above post on 22-1-1986. From the perusal of the copy of order dated 22-1-1986, the copy of which is Ex.D1, it is observed that the additional duties of W.P.O-II were entrusted to the plaintiff. The additional duties given to the plaintiff vide impugned order were withdrawn vide order dated 13-5-86 and the copy of office order is Ex.D2. From the perusal of the Ex. D4, it is observed that a note has been appended in the order year 1983, it is clear that no T.A./D.A./joining time will be admissible to the plaintiff and as such it is proved that the plaintiff was transferred to the Public Health Sub Division, Mahendergarh on his own request. It is also pertinent to mention here that at the time of institution of the suit, the service of the plaintiff were not even regularised on the post of keyman and his services on the post of keyman were regularised in the year 1987. It is also pertinent to mention here that the plaintiff has not placed the seniority list on the file, by which, it can be established that the juniors have been promoted. The plaintiff withhold the necessary documents which were necessary for the proper adjudication of the case. It is also pertinent to mention here that the civil court has very limited jurisdiction and the civil court can not direct the defendants for promotion of the plaintiff. It is settled law that the



promotions are made on the basis of seniority-cum-merit and this fact is only decided by the concerned authorities/department. Seniority is not only the basis of the promotion. The civil court has no jurisdiction to direct the authorities to promote an employee and in these circumstances, the direction cannot be issued to the defendants for the promotion of the plaintiff and the court can only issue direction to consider the employee for promotion. Reliance is placed on Dharshan Singh applicant Vs. State of Punjab, respondent, 1993 (1) SCT 180. In view of the above discussion, I find no illegality in order dated 22-1-1986 and as well as there is no material by which it can be directed that the plaintiff is entitled for promotion. Both these issues are decided accordingly in favour of the defendants and against the plaintiff.”

11. A perusal of the above shows that the Id. Trial Court has taken into consideration each and every aspect of the case and the evidence on record and passed a self speaking judgment. Therefore, I do not find any infirmity in the same.

12. The relevant portion of the judgment passed by Id. Additional District Judge, Narnaul dated 9.1.2001 is reproduced as under:-

20. From the perusal of the case file it is clear that from the date of passing of order EX. D1 the plaintiff is working on the post of WPO-II and the above fact is corroborated by P-4 Hukam Chand J. E. and recommendation letter Ex. PW5/D in this regard. The defendants had taken a plea that vide order dated 13.5.1986 (EX.D2) work of WPO II was order to be withdrawn from the plaintiff and the said order was never acted upon by the defendants and the plaintiff continued to perform his duties as WPO-II. It will not be out of place to mention that no orders of this



sort were either conveyed to the plaintiff nor any intimation was sent to him and admittedly no show cause notice was even served before passing the impugned reversion order EX. D2 and EX. PW2/B which was necessary before passing any adverse order against the employee and on this score only the order EX.D2 is not binding on the rights of the plaintiff. It is also clear that junior persons and similarly placed persons like Laxman Singh, Pardeep Kumar, Shyam Sunder Dev Karan, Om Parkash Ami Lal etc. have been regularised on the post of WPO-II after completing four years service but the plaintiff has been treated discriminately by the defendants on the plea that no vacant post of WPO-II is available although this plea of the defendants is falsified by the evidence placed on record and discussed in the foregoing para that plaintiff had been performing the duties of WPO-II since 22.1.1986 regularly and admittedly vide order dated 16.8.2000 during the pendency of the appeal, the plaintiff was ordered to be promoted on the post of WPO-II.

21. Even otherwise the plaintiff has been performing the duties of WPO-II since 22.1.1986 after passing of the order Ex.D1 but the salary of the said post was not allowed to him for which he is entitled. That the defendant had taken a new plea in evidence and not in written statement which evidence cannot be taken into consideration and plaintiff is transferred from another division vide order Ex.D2 on his own request. so for the purpose of seniority of the plaintiff to be counted from the date of the order of transfer and not from the date of appointment. Therefore, no junior



were regularised on the post of WPO-II. They also tender in evidence instruction EX. D3 and after perusal of the instructions it is clear that if a person is transferred from one division to another on his own request then authorities are bound to make note in this regard which is reproduced:-

"That while issuing such transfer order it should be made absolutely clear in the order of transfer that the person transferred shall not be entitled to any benefit of past service in the new unit for the purposes of seniority in the new unit."

But according to the instructions Ex.D3 as mentioned above, is also not included in transfer order EX.D4. so the plaintiff cannot be denied the benefit of his past service in previous suit. It was further submitted that even otherwise there is no evidence on the file which shows that plaintiff was transferred at his own request except the note in transfer order EX.D4 "NO TA/DA/joining time will be admissible. So only on the ground of foregoing note it cannot be inferred that the plaintiff had been transferred vide order Ex.D4 at his own request in absence of his written request regarding transfer which has to be produced by the defendants in their evidence to establish their plea. It was further submitted that even otherwise the plaintiff also brought on file the service book of Laxman Singh who had been transferred from Bhiwani Division to Naranul Division in the year 1984 as work charge on his own request and his date of appointment is 3.12.1982. He was also ordered to be posted on WPO-II vide order dated 17.2.1986 and



regularised vide order dated 8.2.1990 on the post of WPO-II who is junior to the plaintiff on all account”

13. A perusal of the above shows that ld. Additional District Judge, Narnaul totally ignored the evidence on record. The finding of the ld. Additional District Judge, Narnaul even after noticing that no junior to the respondent was regularised on the post of WPO-II, and after noticing instructions Ex. D3, whereby it is made clear that if a person is transferred from one division to other division on his own request then he shall not be entitled to any benefit of past service in the new unit for the purpose of seniority in the new unit, still the appeal filed by the respondent was allowed. The finding given by Ld. Additional District Judge, Narnaul is not acceptable to this Court.

CONCLUSION

14. The undisputed facts in the present case are that:-

- i) the respondent/plaintiff was appointed as Keyman on work-charge basis on 2.9.1982.
- ii) he was regularized on the same post in August 1988.
- iii) he was given additional charge to the post of WPO-II on 22.1.1986
- iv) that the additional charge given of WPO-II was withdrawn vide order No.6115-19 dated 13.05.1986 by Executive Engineer, PH Division Narnaul.
- v) Admitted fact is that there was no seniority list placed on record by the respondent seeking promotion to the post of WPO-II and neither it is the case of the respondent that he was ignored and his juniors were promoted to the post of WPO-II.
- vi) Admittedly, he was promoted to the post of WPO-II vide order dated 16.08.2000 during the pendency of the appeal filed by the respondent.



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vii) It is an admitted fact on record that no junior was regularized on the post of WPO-II as per Ex.D-3.

viii) It is an admitted fact on record that the respondent/plaintiff was transferred on his own request and as per the instructions of State of Haryana, the person transferred on his own request shall not be entitled to any benefit of post in the new unit for the purpose of seniority in the same.

ix) A perusal of the record shows that even the issues framed by the Ld. Trial Court are against the facts and were not properly framed and are against the disputed facts.

15. In view of the above undisputed facts, the respondent was given additional charge to the post of WPO-II for just four months. He was appointed as Keyman on work-charge basis on 2.09.1982. An additional duty of WPO-II was given to him on 22.01.1986 and withdrawn on 13.05.1986 vide order No. 6115-19. He was regularized on the same post in August 1988. Therefore, the civil suit filed by the respondent/plaintiff for declaration that he should be regularized to the post of WPO-II w.e.f 22.01.1986 was itself against the settled preposition of law.

16. A perusal of the record further shows that as per his turn, the respondent/plaintiff was promoted as WPO-II vide order dated 16.8.2000. Therefore, there is nothing wrong in the action of State of Haryana.

17. In view of the above, I find merit in the present appeal and the same is allowed. The judgment and decree dated 09.01.2001 passed by the Ld. first Appellate Court, Narnaul is set aside.

18. However, it is made clear that whatsoever financial benefits have been given by State of Haryana to the respondent/plaintiff, no recovery would be effected from him qua the amount already deposited /paid to him.

(SUDEEPTI SHARMA)
JUDGE

October 22, 2024
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Whether speaking/reasoned:	Speaking
Whether reportable	Yes