

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

RSA-1594-2004 (O&M)

Date of Decision: 11.03.2024

KRISHANA WANTI AND ANR

...Appellants

Vs.

C.C.S.H. A UNIVERSITY AND ORS

...Respondents

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

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Kartikey Chaudhary, Advocate for the appellants.

Mr. B.S. Walia, Advocate and
Mr. Deepinder Singh Walia, Advocate for the respondents.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present appeal, the challenge is to the judgment and decree of the lower Appellate Court vide which the judgment and decree of the trial Court dated 19.05.2003 has been set aside and the suit filed by the appellants/plaintiffs has been dismissed.

2. It may be noticed that the appellants/plaintiffs were working on the post of Steno-Typist with the respondent/University since the year 1990. There are certain posts of Stenographers which were to be filled up, and in order to adjudge the eligibility, a type test was conducted by the respondent-University in March 1996 and the same was cleared by the appellants/plaintiffs.

3. From the candidates, who had cleared the type test conducted by the respondent-University, in order of merit/seniority, the candidates were promoted to the post of Stenographers in October 1998. Keeping in view the number of posts filled up and the seniority of the appellants/plaintiffs, they could not get promotion to the post of Stenographers. It may be noticed that as per the record, all the posts which were existing upto October 1998, had already been filled up.

4. Thereafter, certain posts of Stenographers had become vacant and in the year 2001, the appellants/plaintiffs filed suit seeking promotion to the post of Stenographers. The said suit was decreed by the trial Court vide judgment and decree dated 19.05.2003, directing the University to make promotions of the appellant-plaintiff to the post of Stenographers which are lying vacant on the ground that as the appellants/plaintiffs had already attained the eligibility for promotion to the post in question and the posts had become available, the Department was under obligation to fill up the said post by promoting the appellants/plaintiffs.

5. Feeling aggrieved against the judgment and decree of the trial Court, the University filed an appeal wherein, the University asserted before the Lower Appellate Court that the Government had directed the University that the Cadre Management exercise should be undertaken, and it is only after ascertaining as to which post is necessary to be retained, so that only the post which is required will be retained by the University, to be filled up.

6. Keeping in view the evidence, which had already come on record, the Lower Appellate Court held that mere acquiring eligibility for promotion to the post of Stenographers does not give a right to the appellants/plaintiffs to seek promotion on the post in question, and once the Government had given the direction to the University to first decide the cadre management, merely that the post of Stenographers were available, is no ground to give a direction to make promotion of the appellants/plaintiffs and that too retrospective. The judgment and decree of the Lower Appellate Court dated 24.12.2003, by which the judgment and decree of the trial Court was set aside and suit filed by the appellants/plaintiffs, is under challenge in the present regular second appeal.

7. Learned Senior counsel appearing on behalf of the

appellants/plaintiffs submits that once the appellants/plaintiffs had gained the eligibility for promotion to the post of Stenographer by clearing the test conducted by the respondent-University as far back in the March 1996, the respondents were under obligation to grant the promotion to the appellants/plaintiffs as and when any vacancy arose keeping in view their undertaking given before the competent Court of Law to the said vacancy.

8. It may be noticed that there is no right which vests with the employee to seek promotion even if, the post is lying vacant. The only right which exists with an employee is for consideration for promotion as and when the employer decide to fill up the vacant posts in question.

9. In the present case, when the employer decided to fill up the vacant post in October 1998, all the posts were filled up, but unfortunately the appellants/plaintiffs could not get promotion keeping in view their seniority in the cadre of steno-typist.

10. That being so, the decision of the trial Court that once the vacancy had already become available in the cadre of Stenographers, the respondent/University was under obligation to grant promotion to the post in question to the appellants/plaintiffs, has rightly been set aside by the Lower Appellate Court. No employer can be forced to promote an employee against his wishes. The jurisdiction to fill up the promotion post vests with the employee only and the Court does not have jurisdiction to give direction to promote an employee even if a post is lying vacant unless and until any junior to the said employee had been promoted in preference.

11. In the present case, no junior employee of the appellant has been promoted but still, the trial Court issued the direction to the University to give promotion to the appellants/plaintiffs merely on the ground that the post of

Stenographers was lying vacant. The said decision is perverse to the settled principle of law that no employee has a right to seek promotion even if the post is lying vacant.

12. Further, it may be noticed that in the present regular second appeal, the jurisdiction of the Court is to interfere where the judgment under challenge is perverse either to the facts, evidence or the law. Learned Senior counsel appearing for the appellants/plaintiffs has not been able to point out the perversity in the judgment of the Lower Appellate Court by which, the suit filed by the appellants/plaintiffs was dismissed.

13. In the absence of any perversity being pointed out the appellants/plaintiffs in the order passed by the Lower Appellate Court, no case for interference is made out. Hence, the present regular second appeal is dismissed.

14. It may be noticed that the claim of the appellants/plaintiffs for promotion as directed by the trial Court has been decided in the present Regular Second appeal. In case after the cadre management, any rights accrues for the appellants/plaintiffs thereafter any remedy availed for the said grievance, the said relief will be governed by the decision in those proceedings.

Any civil miscellaneous application pending if any, also stands disposed of.

(HARSIMRAN SINGH SETHI)
(JUDGE)

11.03.2024

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