

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

RSA-3747-2004 (O&M)
Date of decision: 20.01.2024

Vimal Kumar

....Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Naveen Daryal, Advocate for the appellant

Mr. Jagdish Manchanda, Addl. AG Haryana

AMAN CHAUDHARY, J.

1. The present regular second appeal is filed challenging the judgment and decree dated 27.04.2004 passed by Addl. District Judge, Karnal reversing the findings of fact returned by the trial Court. For the sake of convenience, parties shall be referred as per their original status.

2. The brief factual matrix of the case is that the father of the plaintiff-appellant was an Ex-Serviceman and having applied as dependent for appointment to the post of Gram Sachiv, he was appointed after getting recommended by the S.S.S. Board, Haryana. While in service, in the year 1996, the plaintiff was called by the department on several dates to submit affidavits to verify his eligibility. Thereafter, a show cause notice proposing termination was issued as the above said recommendation was withdrawn. With an assertion that the reply was not considered, suit for declaration and mandatory injunction was filed.

3. The contest by the defendant was primarily on the ground of the suit being barred by principles of res judicata and in view of the judgment passed by Hon'ble the Supreme Court in **Dilwan Singh vs. State of Haryana**, (1996) 8 SCC 369, the same was not maintainable. Further, the plaintiff being unable to fulfill the conditions laid down, resultantly his candidature had been cancelled.

4. The trial Court after framing the issues and hearing the arguments decreed the suit vide judgment and decree dated 17.01.2003 in favour of the plaintiff. It was held that it was the duty of the Department to inquire about the factum of the candidate being dependent on deceased-Ex-Serviceman.

5. Aggrieved State filed an appeal and the learned appellate Court reversed the above findings by observing that though the plaintiff had claimed to be dependent on his father but had himself made a statement that he worked as an Accounts Clerk for about 9 years and drew a salary of Rs.1200/- per month. It was thus held that he was not dependent upon the income of his father and could not be given the benefit of dependent of Ex-serviceman.

6. The plaintiff is thus in regular second appeal.

7. Learned counsel for the appellant contends that no certificate of previous employment has been placed on the file. The plaintiff-appellant had even submitted an affidavit in this regard that he was not previously employed. As per the law laid down in **Dilwan Singh** (supra), wherein it was specifically decided that it would be the Board's duty to call upon the candidate, in case of any doubt. Reliance is placed on **Sat Pal vs. State of Haryana**, 1998 SCC OnLine P&H 424 also.

8. Learned State counsel submits that the appellate Court had rightly dismissed the case of the plaintiff-appellant and he was terminated in view of

Dilwan Singh (supra), after proper verification and being found to be not dependent on the Ex-serviceman.

9. Heard learned counsel for the parties.

10. It is explicit from the above that the plaintiff was appointed as a Gram Sachiv in 1993 under the category of Dependent of Ex-Serviceman. In the year 1996, Hon'ble the Supreme Court in **Dilwan Singh** (supra) while dealing with the selection held that it was the duty of the Board to find out whether a candidate had fulfilled the criteria and thereby directed the respondent-State to call upon the candidates to satisfy the requirements and then process their applications according to law and consider their cases against the unfilled posts reserved for the Ex-Serviceman. Pursuant thereto, verification was got done through a formal inquiry, conducted after associating the plaintiff and he was found to be ineligible as it was ascertained therein that he was serving as an Accounts Clerk in a private company and drawing a salary of Rs.1,200/- per month for more than 9 years. The learned appellate Court observed that this fact in itself was enough to substantiate that even at the time of inviting applications for the post of Gram Sachiv, the plaintiff was profitably working, thus was not dependent on his father. The judgment in the case of **Sat Pal** (supra) also does not come to the rescue of the appellant, it being distinguishable on facts, it having been observed by the appellate Court that the Division Bench of this Court in it had held that the approach of the Board was not correct in treating the petitioners ineligible merely on basis of they owning or having inherited agricultural land from their ancestors. It was required to examine the question whether their land yielded substantial crop to provide a perennial source of income and only after reaching such conclusion could the candidature be cancelled but no such exercise was undertaken.

Resultantly, the orders of revoking the candidacy were nullified. However, in the present case, it was proved with the aid of documents that the plaintiff was sustainably employed, which he miserably failed to contradict. In **Jatinder Kumar vs. State of Haryana**, 2015 SCC OnLine P&H 12311, this Court while rejecting the prayer of the petitioner, who applied in the category of Dependent of Ex-serviceman but was already employed and getting salary of Rs.13,500/- per month, relied on the observations of Hon'ble the Apex Court in **Haryana Public Service Commission vs. Harinder Singh**, (1998) 5 SCC 452, which reads thus:

"7. The said certificate was issued on 18-7-1989. According to his own showing, an affidavit filed in this Court, the respondent was a Civil Engineer working with Astra Construction Company on that day. He was not then or thereafter "dependent" on anyone

8. The whole idea of the reservation is that those who are dependent for their survival on men who have lost their lives or became disabled in the service of the nation should not suffer. The public purpose of such reservation would be totally lost if it were to be made available to those who are gainfully employed. There is no justification for construing the words "dependents of ex-serviceman" in any manner other than that in which the appellant has construed them. This is in accord with the reservation policy itself, as shown by the quotation therefrom afore stated."

Thus, being gainfully employed, the appellant cannot be considered under the definition of "dependent of Ex-servicemen".

11. Before arriving at a judicious conclusion, the lower appellate Court is found to have meticulously sifted through the evidence and recorded its own findings without any flaw. It being the last Court of facts have examined the same and rightly held that the trial Court had erred in coming to the conclusion that the plaintiff was eligible under the above category, which in view of this Court, cannot be faulted with. Neither any misreading nor ignorance of evidence could be pointed out during the course of hearing .

12. In **Satyender vs. Saroj**, 2022 SCC OnLine SC 1026, Hon’ble the Supreme Court has held that, “Be that as it may, though the requirement of formulation of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a “question of law”. In other words, second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court”.

13. From the above conspectus, it is evident that neither is any question of law involved nor the impugned judgment suffers from any infirmity or illegality, as such, the present appeal being devoid of merit, is hereby dismissed.

(**AMAN CHAUDHARY**)
JUDGE

20.01.2024
Hemant

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