

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3021-2005(O&M)
Date of decision:-01.02.2024

Haryana State and others

...Appellants

Versus

Shiv Kumar and another

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr.Aman Bahri, Addl.A.G., Haryana
for the appellants.

Mr.Raman B. Garg, Advocate and
Mr.Mayank Garg, Advocate
for the respondent No.1

None for respondent No.2.

SUVIR SEHGAL, J.(ORAL)

1. State – defendants No.1 to 3 are in appeal before this Court assailing the judgments and decrees passed by both the Courts below.

2. Factual matrix leading to the filing of the appeal is that plaintiff – respondent No.1 filed a suit averring that he joined Haryana Roadways in the year 1986 as Helper Electrician on daily wages and his service was regularized on 31.03.1993. In September, 1995 on account of his longer stay, he was transferred to Kurukshetra Depot and defendant – respondent No.2 was posted at Fatehabad Depot. Defendant – respondent No.2 was promoted from the post of Helper Electrician to Assistant Electrician on 4.1.1996 in violation of the promotion policy dated 23.05.1995 of the Department as he was the junior most employee

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in the Fatehabad Depot. Rather, the plaintiff – respondent No.1 claims that he was entitled to the promotion on the said date because of his seniority. Upon coming to know of the transfer policy, plaintiff – respondent No.1 served a notice in November, 2001 staking claim for promotion before filing a suit for declaration to the effect that he is entitled to promotion w.e.f. 04.01.1996 instead of 25.01.1999.

3. Upon service, defendants No.1 to 3 filed a joint written statement wherein it was submitted that the services of plaintiff – respondent No.1 were regularized on 01.11.1993. It was submitted that that his case was considered for promotion on 04.01.1996 but he was not found eligible as he did not fulfill the eligibility condition. It was further submitted that the promotion of defendant – respondent No.2 was made as per the promotion policy. The suit was also resisted on various preliminary submissions. Defendant – respondent No.2 was served, but he was proceeded ex-parte. On the basis of the pleadings of the parties, issues were framed and after the parties led evidence, Trial Court by judgment and decree dated 20.11.2004, decreed the suit of plaintiff – respondent No.1. State – defendants No.1 to 3 filed an appeal, which was dismissed by the First Appellate Court by judgment and decree dated 04.03.2005. Hence, this second appeal.

4. Mr. Aman Bahri, learned State counsel, representing the appellants has relied upon the order dated 29.10.1993, Ex.D1, to submit that the service of the plaintiff – respondent No.1 was regularized as Assistant Electrician w.e.f. 01.11.1993. By making a reference to the Haryana Transport Deptt., (Group-C), Haryana Roadways Service Rules, 1995 (for short – ‘the Rules’) Ex.D3, he urges that he did not

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possess the requisite experience when defendant No.4 – respondent No.2 was promoted. He submits that the plaintiff was promoted in 1995 when he completed the requisite period. Mr.Bahri, has further argued that the suit of plaintiff – respondent No.1 was barred by time inasmuch as it had been instituted in 2002, whereas he was challenging the promotion order of defendant – respondent No.2, which had been passed on 04.01.1996. He has placed reliance on various judicial precedents to buttress his argument.

5. Counsel for plaintiff – respondent No.1 has supported the judgments and decrees passed by both the Courts below and has referred to order dated 21.04.1994, Ex.P3, to assert that respondent No.1 was made regular on 31.03.1993.

6. I have heard counsel for the parties and examined the record with their able assistance.

7. In order to adjudicate the claim of the plaintiff/respondent No.1 for promotion when his junior was promoted, it is necessary to examine two very crucial orders passed by the defendant- State. The first order dated 29.10.1993 Ex.D1 and it is reproduced as under:

“ORDER

No. /RK Dated Fatehabad, the _____

1. Reference The Transport Commissioner, Haryana, Chandigarh vide letter No.8087-9005/E-1/E-5 dated 27.07.1993 on subject regularisation of daily wages employees in Haryana Roadways.

The service of following Generator Helper daily wages are hereby regularised as Helper Electrician against vacant post of

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Assistant Electrician w.e.f. 01.11.1993 after completing the five year service as daily wages as on 31.03.1993 in the pay Scale of Rs.750-940 Plus usual allowances sanction by Govt. from time to time. Their appointment is subject to good character and antecedent verified by Police Authority. Their service are liable to be terminated at any time without prior notice and any reason.

<i>Sr. No.</i>	<i>Name Official and Father's name</i>	<i>Designation</i>	<i>Date of appointment as daily wages</i>
<i>1.</i>	<i>Sh.Shiv Kumar s/o Sh.Bharat Singh</i>	<i>Generator Helper</i>	<i>16.09.86</i>
<i>2.</i>	<i>Sh.Umed Singh s/o Sh. Deep Chand</i>	<i>-do-</i>	<i>19.03.87</i>

*Sd/-
General Manager,
Haryana Roadways,
Fatehabad.*

Endst No.5048 /RK Dated Fatehabad, the 29.10.93”

8. Subsequently on 21.04.1994, Ex.P3 appellants – State had passed the following order:

“ORDER

No.1663 /RK Dated Fatehabad, the _____

In continuation this office order No.5047/RK dated 29.10.93.

Reference Secretary to Govt. Haryana Memo No.6/4/90-2 GSI, dated 3.12.93 and Transport Commissioner, Haryana, Chandigarh Memo No.227-254/E-1/E-4 dated 5.1.94 on the subject regularisation of daily wages employees in Haryana

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Roadways.

The service of the following daily wages technical employees who have completing the five years service as on 31.03.1993 are hereby regularised w.e.f. 31.03.93 on the post in the scale as mentioned against each below:-

Sr.No.	Name and Father's name	Name of post	Pay scale
1.	Sh.Shiv Kumar s/o Sh.Bharat Singh	Helper Electrician	750-940
2.	Sh.Umed Singh s/o Sh. Deep Chand	-do-	-do-

Sd/-
General Manager,
Haryana Roadways,
Fatehabad.

Endst No.1664-67 /RK Dated Fatehabad, the 21.04.94.”

9. When both the orders are examined successionaly, it becomes evident that the plaintiff was appointed as a Generator Helper on *ad hoc* basis and he was working as such till the time order dated 29.10.1993, Ex.D1 was passed. By order dated 29.10.1993 Ex.D1, he was regularized as Helper Electrician w.e.f. 01.11.1993. By subsequent order Annexure P3, which in fact is in continuation to order Annexure D1, the services of the plaintiff were regularized w.e.f. 31.03.1993 on the same post. Once the plaintiff has been regularized as Helper Electrician w.e.f. 31.03.1993, his claim for promotion has to be considered with effect from that date.

10. Turning to the Rules, Serial No.34 to Appendix-B provides

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the experience, qualification etc. required for promotion to the post of Assistant Electrician and its relevant extract is reproduced as under:

APPENDIX B
(SEE Rule – 7)

Sr. No .	Designation of posts	Academic Qualification and experience, if any, for direct recruitment	Academic qualification and experience, if any for appointment other than by direct recruitment	Remarks , if any
1	2	3	4	5
		1 to 33		
		xx xx xx		
34.	Assistant Electrician	(i) Industrial Training Institute Certificate in Electrician Trade, with two years experience in an auto workshop	(i)Middle with Hindi. (ii)Three years experience as Helper Electrician in Haryana Roadways	

11. An perusal of these Rules makes it clear that besides educational qualification of Middle with Hindi, three years experience as Helper Electrician is mandatory for promotion to the post of Assistant Electrician. When order dated 04.01.1996 was passed, promoting defendant - respondent No.2 to the post of Assistant Electrician, plaintiff – respondent No.1 did not possess the requisite experience of three years. He was, therefore ineligible for promotion. It has come on the record that the plaintiff – respondent No.1 was promoted to the said post on 25.01.1999 after he acquired the necessary experience. Findings to the contrary recorded by the Courts below, therefore cannot be sustained.

12. Findings on issue No.1 recorded by both the Courts below,

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therefore, are reversed. As the plaintiff – respondent No.1 has not been found entitled to be promoted, this Court does not deem it necessary to examine the issue of limitation.

13. In view of the above, judgments and decrees passed by both the Courts below are set aside. Appeal filed by the appellants – defendants No.1 to 3 is allowed and the suit of plaintiff – respondent No.1 is dismissed with no order as to costs.

(SUVIR SEHGAL)
JUDGE

01.02.2024

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No