



IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

1019

RSA-1889-2006 (O & M)

Decided on: 27.11.2024

Partap Singh

... Appellant

Vs.

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. A.K. Agnihotri, Advocate for  
Mr. U.K. Agnihotri, Advocate  
for the appellant.

Mr. Vikas Bhardwaj, AAG, Haryana.

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**HARPREET SINGH BRAR, J.(ORAL)**

1. The appellant through instant second appeal is seeking setting aside of judgment and decree dated 13.10.2004 passed by learned Additional Civil Judge (Sr. Div.), Sonapat, while dismissing the suit filed by the appellant for declaring selection and appointment of respondent-defendant no.5 to the post of *Mali/Beldar* in the Government Senior Secondary School, *Farmana* dated 14.06.1995 as illegal and void and liable to be cancelled as well as for mandatory injunction directing the respondents-defendants to appoint the appellant-plaintiff to the said post in place of respondent-defendant no.5 with retrospective effect from 14.06.1995 with all service benefits. At the same time, prayer is also made in the instant second appeal for setting aside the judgment and decree dated 01.02.2006 passed by learned Additional District Judge, Sonapat, vide which, the first appeal of the appellant was dismissed.

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2. Succinctly, the facts as per the plaint are that the appellant-plaintiff, who belongs to Harijan Community (Scheduled Caste), got his name registered with Employment Exchange, Kharkhoda for seeking employment. On 12.06.1995, the appellant was informed about a potential job opportunity for the post of Mali/Beldar at the respondent-defendant School. He appeared for the interview on 12.06.1995 which was held by respondent-defendant no.4, i.e., the Principal of the school. The said post became vacant after an employee belonging to Harijan community retired from the post of peon and one matriculate Class IV employee was adjusted to the post of peon. In the interview for the said post, the appellant appeared along with several other candidates including respondent no.5. After interview, the appellant-plaintiff was informed by respondent-defendant no.4 of his selection on account of being the only suitable candidate for the said post and was also told that he would receive his appointment letter within 5/6 days. However, the appellant-plaintiff found out that respondent no.5 had been appointed to the said post in spite of being a General Category candidate and in direct contravention to the existing policy whereby vacancy could be filled only with a candidate belonging to the same category as the one who vacated the post. The appointment of respondent-defendant no.5 was challenged on the grounds that it was a result of misuse of his position by respondent-defendant no.4 being the father of respondent-defendant no.5. After receiving a dismal response from the respondents-defendants, the appellant preferred the present suit.

3. Upon notice, the respondents appeared before the learned trial Court and contested the suit. Respondent-defendant nos.1 to 3 filed a written

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statement whereas respondent-defendant nos.4 & 5 filed a separate written statement. In their written statements, the respondents took preliminary objections of cause of action, maintainability, estoppel, mis-joinder and conjectures. On merits, it was pleaded by the respondents in their respective written statements that appointment of respondent no.5 was made by a selection committee after duly following department rules and respondent no.4 did not even take part in the selection process. Thereafter, replication to the aforesaid written statements was filed by the appellant-plaintiff wherein all the averments made by the respondents-defendants were denied. From the pleadings, as many as eight issues were framed including the issue of relief. Evidence of the parties was considered and ultimately, the suit of the appellant-plaintiff was dismissed with costs. Affronted, the appellant-plaintiff preferred an appeal before the learned lower Appellate Court, which also met with the same fate. Now, the appellant has approached this Court for a second bout.

4. Learned counsel for the appellant, at the very outset, challenges the appointment of respondent no.5 by contending that since the post was vacated by an employee belonging to Harijan community (Scheduled Caste), it could have been only filled by a candidate belonging to the same community. Respondent no.5, who belonged to General Category, was illegally appointed just because his father, i.e., respondent no.4 was the Principal of the school. Converting a reserved post into a non-reserved post is illegal and arbitrary. He further contends that the *mala fide* intent of respondent nos.4 & 5 can be noted from the fact that soon after the appointment of respondent no.5 to the post of

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Mali/Beldar, he was promoted to the post of Lab Attendant by respondent no.4. On protest raised by other senior Class IV employees, respondent no.4 transferred his son-respondent no.4 to another school but he was soon reverted back to the same school and had to be demoted back to the post of Mali/Beldar and even excess payment of Rs. 1340/- was also recovered from him. It is further argued that respondent no.4 was in fact present in the school on 12.06.1995, when interview for the post of Mali/Beldar was conducted and the selection committee was just an eye wash and it was respondent no.4 who pulled all the strings. The learned counsel also moves this Court to take notice of the way in which respondent no.5 was adjusted to the post of Mali/Beldar. He contends that actual vacancy arose when an employee retired from the post of peon but in order to adjust his son, respondent no.4 first adjusted the employee already working as Mali/Beldar to the post of peon leading to a vacancy for Mali/Beldar which could then be filled by his son. He submits that impugned judgments and decrees have been passed without appreciating the evidence on record and therefore, are liable to be set aside.

5. Learned State counsel submits that impugned judgments and decrees have been passed after correct appreciation of the evidence on record and in accordance with the law and therefore, do not deserve any interference by this Court.

6. I have heard the learned counsel for the parties and perused the paper-book with their able assistance. It transpires that the appellant-plaintiff has miserably failed to put forth any evidence in support of his allegations.

The question relevant to the matter at hand is if respondent no.5 was favoured

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in any way for his selection as *Mali/Beldar* on account of being the son of the school Principal-respondent no.4, rendering the selection illegal and unconstitutional. As per the order dated 12.06.1995 (Ex. D4, DW/5/C) passed by the Principal of the school, i.e., respondent no.4, a selection committee was constituted to hold interview for the post of *Mali/Beldar*. This five-member selection committee conducted the interviews of eight candidates, including appellant-plaintiff and respondent no.5, for the post of *Mali/Beldar*. It further transpires from the evidence on record that respondent no.4 did not participate in the selection process as he was sick on 12.06.1995. He only played a role in constituting the selection committee. Furthermore, the appellant-plaintiff has failed to show that respondent-defendant no.5 was also registered with Employment Exchange, Gohana.

7. As far as the contention of the appellant is concerned that an employee belonging to Harijan community (Scheduled Caste) vacated the post which was illegally filled by respondent no.4 who belongs to General Category, is also sans merit. As per the case of appellant-plaintiff himself, it is the post of Peon which was vacated by the employee, namely Shri Thawaria, and the same was filled by another employee namely Sukhbir, who was already working as *Mali/Beldar*, subsequent to which the post of *Mali/Beldar* actually fell vacant. There is nothing on record to show as to which community Sukhbir belonged. On the contrary, the demand notice (Ex. D1), which was sent by respondent no.4-Principal of the school to Employment Exchange, wherein it was clearly mentioned that there was no reservation for that one post of *Mali/Beldar*. Therefore, the appellant-plaintiff appeared for

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his interview with prior knowledge that the said post was not reserved for candidates of any particular category. He has remained unable to support his contention that if a post is vacated by an employee belonging to Scheduled Caste, the same has to be filled by a candidate belonging to the same category. Whereas, the instructions issued by the Chief Secretary, Government of Haryana (Ex.DW5/K), which have been placed on record by respondents-defendants, show that post in a block of hundred for the candidate belonging to Scheduled Castes is to be filled at serial No.5 and the first four posts are to be filled by General Category candidates. As a consequence, the impugned judgments and decrees are upheld.

8. As a sequel to the above discussion, no reason is made out to warrant any interference in the judgment and decree dated 13.10.2004 passed by learned Additional Civil Judge (Sr. Div.), Sonapat and the judgment and decree dated 01.02.2006 passed by learned Additional District Judge, Sonapat.

9. Resultantly, the instant second appeal is hereby dismissed.

10. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

**27.11.2024***manisha***(HARPREET SINGH BRAR)  
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No