



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(105)

RSA-4894-2019 (O&M)
Date of decision:- 31.07.2024

Ajit Singh

... Appellant

Versus

Punjab State and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Rajinder Sharma, Advocate
for the appellant.

Ms. Amrita Garg, AAG, Punjab
for the respondents.

SUVIR SEHGAL, J. (ORAL)

CM-13938-C-2019

1. Exemption, as prayed for, is granted. Annexure A-1 is taken on record.
2. Application is allowed.

RSA-4894-2019 (O&M)

1. Plaintiff-appellant is in second appeal before this Court challenging the judgment and decree passed by the First Appellate Court, whereby the judgment and decree passed by the Trial Court decreeing the suit has been set aside.
2. Plead case of the plaintiff-appellant is that he retired from the post of Conductor from the Punjab Roadways on 31.05.2009 on attaining the age of superannuation. By order dated 11.12.2012, a departmental



appeal, filed by the plaintiff, was accepted by defendant No.1, whereby orders imposing punishment of stoppage of annual increments were set aside and he was granted periodical increments. By this order, the original date of appointment of the plaintiff, i.e., 10.04.1970, was also restored and his previous service was counted as qualifying service, pay was refixed and the revised pension was granted to him, after sanction. It has been pleaded that consequent to this order, plaintiff was entitled to be placed at Sr. No.453-A in the seniority list, circulated vide No. 2265/EA-2 dated 06.03.2002, of Conductors/Sub-Inspectors, below Shir Bali Singh and above Sh. Ramesh Lal. He has further claimed that on being placed at the rightful place in the seniority list, plaintiff was entitled to be promoted to the post of Inspector from the date his juniors were promoted along with consequential benefits. He also claimed selection grade of Rs.1200-2100/- as recommended by the 3rd Punjab Pay Commission w.e.f. 1986.

3. Upon notice, suit was contested by the defendants by filing a written statement raising various preliminary objections regarding the maintainability of the suit as well as limitation. It was submitted that the suit is barred by time as the suit was filed in 2014, i.e., after five years of retirement. A stand was taken that the plaintiff did not have a clean service record and eleven different punitive orders were passed against him and increments were withheld with cumulative effect, out of which, some orders have been set aside. He was also placed under suspension on numerous occasions and, due to his adverse record, he is not entitled to the selection grade or promotion. Plaintiff filed replication controverting the stand taken by the defendants in their written statement. Issues were framed on the



basis of the pleadings of the parties, who led evidence in support of their place. After the parties were heard, Trial Court by judgment dated 27.11.2017, decreed the suit. Defendants, preferred an appeal, which was accepted by the learned Additional District Judge, Tarn Taran, by judgment dated 06.07.2019, the Trial Court judgment and decree was reversed and the suit was dismissed. Plaintiff-appellant is before this Court in second appeal in the above background.

4. I have heard counsel for the parties and considered their respective submissions, besides examining the record with their able assistance.

5. Undisputedly, after the plaintiff-appellant had retired from service, a departmental appeal, filed by him, was accepted by the defendants vide order dated 11.12.2012, Ex. P-1, whereby seven different punishment orders passed against him were set aside. Besides this, punitive order dated 02.07.1976, whereby some of his service had been forfeited, was modified and his past service was restored and instead punishment of stoppage of one grade increment with cumulative effect, was imposed. This order was passed after the plaintiff-appellant had retired from service and it furnished a fresh cause of action to the plaintiff to claim reliefs, which flowed as a consequence of this order. After serving a notice under Section 80, CPC, he filed a suit for declaration in August, 2014. This suit is, therefore, within the prescribed period of limitation and the finding, recorded by the First Appellate Court under “Issue E” that it was barred by time, cannot be sustained.

6. Furthermore, the plaintiff-appellant has sought a decree to the



effect that he is entitled to be placed at Sr. No. 453-A in the seniority list circulated in the year 2002 as a consequence of the order, Ex. P-1. Till the time of the passing of the order, Ex. P-1, he could not anticipate his placement at the rightful place in the seniority list. The finding returned by the appellate Court that the plaintiff-appellant did not file any objection to the seniority list circulated in the year 2002 and is debarred on that account, cannot be sustained. The First Appellate Court has also erred in holding that the case for promotion can only be considered by the Departmental Promotional Committee. Instructions bearing I.D.L. No.4/43/09-3PP1/573 dated 17.03.2012 have been circulated by the Personnel Department, Government of Punjab, to the effect that no DPC is required to be held for ministerial services, which are lower than the post of Superintendent Grade-I. A copy of these instructions, supplied by the counsel for the appellant, are taken on record as Mark 'A'. As a consequence of the above discussion, the judgment by the First Appellate Court deserves to be set aside and that of the Trial Court deserves to be restored though with a modification.

7. While accepting the suit, Trial Court has, *inter-alia*, passed a decree promoting the plaintiff-appellant to the post of Inspector from the date his juniors were promoted vide order dated 05.10.2006. No employee has a right to be promoted to a higher post, however, consideration for promotion cannot be denied, in case the employee is otherwise eligible. Therefore, the Trial Court's judgment deserves to be altered.

8. For the reasons foregoing, the judgment and decree passed by the First Appellate Court is reversed and that of the Trial Court is restored with the modification that the case of the appellant for promotion to the

post of Inspector from the date his juniors stood promoted shall be considered by the respondents by examining his case and passing an order within a period of four months from the date of communication of a copy of this judgment.

9. Appeal is disposed of.
10. Pending application, if any, shall also stand disposed of.

(SUVIR SEHGAL)

JUDGE

31.07.2024

Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No