

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

423

RSA-1802-2013 (O&M)
Date of Decision: 11.01.2024

State of Haryana and others ...Appellants

Versus

Ashok Kumar ...Respondent

CORAM : HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Jagdish Manchanda, Addl. A.G., Haryana.

Mr. B.S. Mittal, Advocate for the respondent.

AMAN CHAUDHARY, J.

1. Challenge in the present regular second appeal is to the concurrent findings of facts returned by Courts below in favour of the plaintiff-respondent in a suit filed for declaration and mandatory injunction.
2. Summarily, the facts of the case are that the plaintiff-respondent was appointed as a helper on 01.04.1984 on daily wages and was accorded regularisation vide order dated 03.02.1988, whereas the defendant-Department had regularized the services of other employees on the completion of 240 days of continuous service. The plaintiff claimed that he was also legally entitled to the same benefit and thereby, issued a legal notice but it was denied to him. Resultantly, suit for declaration and mandatory injunction claiming parity with the similarly situated employees was filed.
3. The defendants resisted the same by filing a written statement and apart from taking of the preliminary objections, submitted that the said employees of Haryana Roadways were regularized in their services as per the orders of this Court and not in accordance with any Government policy. Therefore, it is clear

that there was no similarity between the matter of the plaintiff and that of other employees.

4. The learned trial Court, after framing the issues, decreed the suit in favour of the plaintiff by considering the statement of DW1- Dilbag Singh disclosing that the matter was in fact similar to that of other employees who were made regular by the defendant-Department and that he did possess requisite conditions of service, thereby concluding that he cannot be discriminated against. Consequently, he was held entitled to be regularized on completion of 240 days continuous service as well as to attending benefits.

5. Aggrieved-State filed an appeal, asserting that the services of other employees were regularized in compliance with the order of this Court. The lower appellate Court, however, returned a concurrent finding, considering the admission of DW1-Dilbag Singh as well as taking notice of order Ex.P5 vide which it was further proved that the services of similarly situated employees were made regular by the General Manager merely on the ground that the decree of the civil Court was in their favour.

6. Hence, the present appeal.

7. Learned State counsel would submit that the Courts below have erred in decreeing the suit in favour of the plaintiff, as the circumstances under which regularisation was granted to the employees, with whom he sought parity and those of his own were not similar. Therefore, he had rightly been regularised w.e.f. 03.02.1988.

8. On the other hand, learned counsel for the respondent contends that since similarly placed employees have been regularised from the day of completion of 240 days of service in view of the judgment, the same cannot be denied to the plaintiff. Thus, the appeal is liable to be dismissed. Reliance is

placed on **Satbir Singh vs. State of Haryana**, 2002(2) S.C.T. 354, wherein it was held that once relief has been granted to similarly situated persons, the same must be respected, enforced and implemented qua others as well.

9. Heard the learned counsel on either side and perused the file.

10. Notably, the Courts below have correctly concluded that an unfair distinction was made between the plaintiff-respondent and others who were made regular solely on the ground that they had the order of this Court on their side, and thus, he was regularised after an unjustified delay of four years as opposed to those who were granted the benefit of regular service by the defendant-Department. A worthwhile reference, in this regard can be made to the judgment of Hon'ble the Supreme Court in **E.S.P Rajaram vs. Union of India** (2001) 2 SCC 186, whereby it was held that, "The cumulative effect of the above settled principles is that the State must avoid discrimination in grant of service benefits to the members of the same cadre identically situated. If the employees had not approached the Court, but the judgments otherwise pronounced relating to the same matter have attained finality, the State must show its grace and in fact carry out its implicit duty to grant benefit to the other members of the cadre." Hence, the stand taken by the Department was rightly not accepted as it was held that the plaintiff-respondent cannot be discriminated against in the matter of regularization and was equally entitled to the same benefits as had been received by the employees of the same cadre.

11. 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”.

12. During the course of hearing, learned State counsel has not been able to point out any jurisdictional error or illegality apparent on the record of the case so as to convince this Court to take a different view. The learned Courts below have meticulously analysed and sifted through the evidence adduced, arriving at a judicious conclusion by allowing the suit and dismissing the appeal, thus are aligned in their decisions and findings. There is no misreading or ignorance of evidence made out.

13. As an upshot, in the absence of any question of law being involved and there being no infirmity or perversity in the impugned judgments and decrees, the present appeal is without merit and accordingly dismissed.

(AMAN CHAUDHARY)
JUDGE

11.01.2024
Hemant

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