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

RSA-2558-2016(O&M)

Date of decision:-25.07.2024

Bhupinder Singh

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present : Mr.Pawan Kumar, Senior Advocate with
Ms.Vidushi Kumar, Advocate and
Ms.Parul Dhingra, Advocate
for the appellant.

Mr.Anil Bansal, DAG, Punjab.

SUVIR SEHGAL, J.(ORAL)

1. Plaintiff – appellant is in second appeal before this Court challenging the concurrent finding recorded by the Courts below.

2. Pleaded case of the plaintiff – appellant is that he was working as a Carpenter with the defendants since May, 1972 and after he met with an accident, he was adjusted as a Clerk. He passed the Assistant Grade examination and was made Senior Assistant on 25.09.1984. Although he completed the requisite service on the feeder

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cadre post, but he was not promoted to the post of Superintendent when the promotion became due in the year 2007. He retired on 30.04.2010. He filed a suit for declaration challenging order dated 14.09.2010 whereby his name was not included in the list of persons to be promoted to the post of Superintendent and for mandatory injunction directing the defendants to promote him to the said post by modifying the said order.

3. Upon notice, defendants contested the suit by filing a written statement, wherein it was submitted that the Departmental Promotion Committee was never convened after 2006 up to the date of retirement of the plaintiff. It was averred that promotion is not a matter of right and no junior to the plaintiff was promoted till his retirement. A stand has been taken that as the plaintiff had retired, his name was not included in the promotional list, which was circulated in September, 2010. Plaintiff filed a replication reasserting his claim. Issues were framed on the basis of the pleadings of the parties, who led evidence in support of their case. After hearing them, Trial Court by judgment and decree dated 15.07.2014 dismissed the suit. Plaintiff remained unsuccessful in the first appeal, which was rejected by judgment dated 02.02.2016, resulting in the filing of the present appeal.

4. While referring to the Trial Court record, learned counsel for the appellant has argued that the plaintiff had filed a writ petition before the High Court seeking extension in service till the age of 60 years because of his disability and by order dated 16.09.2014, Supreme Court accepted his plea. It has been asserted that the appellant's retirement order was revised by the defendants and he was deemed to



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have retired from service on 30.04.2012. He submits that as the appellant was in service when promotional order dated 14.09.2010 was passed, he was entitled to be considered for promotion. Counsel asserts that an application for additional evidence under Order 41 Rule 27 CPC was filed before the lower Appellate Court to bring these facts on the record and even though a reply was filed by the defendants contesting it, yet the application remained undecided.

5. *Per contra*, learned State counsel has opposed the appeal and supported the orders passed by the Courts below. He submits that the application filed by the appellant is deemed to have been rejected.

6. I have heard the counsel for the parties and considered their respective submissions as well as examined the Trial Court record.

7. Perusal of the interim orders passed by the First Appellate Court show that an application for additional evidence was filed by the plaintiff – appellant and was taken up for the first time on 09.07.2015 when it was adjourned for reply and consideration. On 28.07.2015 and 25.09.2015, the application was adjourned for filing of reply, which was filed by the defendants on 19.10.2015. Thereafter, there is no reference in any of the orders passed by the lower appellate Court to the application for production of additional evidence moved by the plaintiff – appellant. It is, therefore, evident that the application has remained undecided.

8. While deciding the appeal, the First Appellate Court had failed to take notice of the application under Order 41 Rule 27 CPC and to decide whether additional evidence could be permitted to be brought



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on the record. The First Appellate Court ought to have passed an order in respect of the application, either allowing it or rejecting it. Reliance is placed upon judgments of the Supreme Court in *M/s Eastern Equipment and Sales Ltd. Versus ING. Yash Kumar Khanna (2008) 12 SCC 739* and *Namdeo Versus Tukaram, 2008 (69) AIC 18*. It was the duty of the Court to take a decision on the application, on merits, however, this has not been done. Once the application has not been dealt with, then it cannot be taken that it is deemed to have been dismissed. Non – consideration of application has lead to miscarriage of justice. In such a situation, this Court has no alternative but to set aside the judgment passed by the First Appellate Court and remit the appeal for decision afresh along with the application for permission to produce additional evidence.

9. For the reasons aforesaid, impugned judgment dated 02.02.2016 passed by the Lower Appellate Court is set aside and the appeal is allowed to the extent indicated above without any order as to costs.

10. It is made clear that this Court has not gone into the merits of the appeal or application for adducing of additional evidence under Order 41 Rule 27 CPC, which will be decided by the First Appellate Court in accordance with law.

11. Appeal is disposed of.

12. Parties are directed to appear before the learned First Appellate Court on 16.09.2024 at 10:00 a.m. for further proceedings. Considering the facts and circumstances of the case, learned First

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Appellate Court shall make an endeavour and decide the appeal at an early date preferably within a period of 6 months from the date of the receipt of the copy of this order.

13. Pending application, if any, is disposed of.

(SUVIR SEHGAL)
JUDGE

25.07.2024**Brij****Whether reasoned/speaking : Yes/No****Whether reportable : Yes/No**