

2024:PHHC:172554



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

**RSA-2789-2014 (O&M)
DECIDED ON:25.11.2024**

STATE OF HARYANA & ORS.

.....APPELLANTS

VERSUS

HARI OM AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Baljinder Singh Virk, Sr. DAG, Haryana
for the appellants.

None for the respondents.

SANDEEP MOUDGIL, J

CM-6648-C-2014

Prayer in this application is for condonation of delay of 149 days
in filing the present appeal.

In view of the averments made in the present application, the same
is allowed and delay of 149 days in filing the present appeal is condoned.

Civil misc. application stands disposed off.

RSA-2789-2014 (O&M)

1. This Regular Second Appeal has been preferred against the
judgements dated 18.09.2013 passed by the Appellate Court (Additional

District Judge, Rewari) whereby the appeal filed by the State of Haryana and others challenging the judgment of the Civil Judge (Junior Division) Rewari, dated 29.11.2012, decreeing the suit of the plaintiff for declaration with consequential relief, was dismissed, for setting aside the judgements of both the Courts below.

2. The brief facts of the case is that the suit for declaration with consequential relief was filed by the plaintiff – Hari Om (now respondent No.1) alleging that he is entitled to promotion on the post of Pump Operation w.e.f. 20.11.1986 instead of 13.01.2000 when the defendant No.6 (junior to the plaintiff) was promoted, with all consequential relief i.e. all arrears of pay w.e.f. 20.11.1986 alongwith interest @ 24% per annum from due date till actual payment, on the ground that the plaintiff was initially appointed on the post of Keyman on 28.06.1982 on adhoc basis and defendant No.6 was also appointed on 20.11.1982 as Keyman. Their services were regularized on 01.01.1987. The plaintiff has been performing his duties ever since his date of initial appointment with complete honesty, faithfulness, sincerity and without any complaint whatsoever either from the defendants or from the public. No disciplinary action/proceedings of any kind were ever initiated against the plaintiff. No charge-sheet was ever served upon him and no penalty of any kind was ever imposed upon the plaintiff during his while service career under the defendants. It was further averred in the plaint that plaintiff is getting monthly salary @ Rs.13,000/- whereas defendant No.6 is getting approximate monthly salary @ Rs.20,000/- as such plaintiff many a times made requests to the defendants to promote him from the date when defendant No.6 was promoted as Pump Operation i.e. 20.11.1986 but to no avail and his

representations dated 16.03.2009 and 12.05.2009 have also not been responded by the defendants. Even the legal notice dated 28.12.2009 served by the plaintiff failed to serve any purpose because defendant No.4 gave a vague reply to the legal notice. Hence, the suit was filed.

3. It is contended by learned State counsel that the judgments passed by the learned Courts below are patently illegal and erroneous being against the facts and material available on record; the learned Courts below have failed to appreciate the evidence in its correct perspectivity and have erroneously relied upon the plaintiff version rather than weighing and appreciating the evidence and case of the defendants/appellants in a correct manner. It is also contended that the services of respondent No.1 (Hari Om-plaintiff) were regularized on 01.01.1987 as Keyman under the State Policy/notification whereas the respondent No.3 was regularized as WPO-II by the Executive Engineers of Rewari and Mahendergarh, on the basis of seniority list maintained in their separate offices/divisions on the post they were working prior to their regularization in service before 01.01.1987, as per policy of Haryana Govt. shows that the respondent No.3 was already working in the higher post on the next/promotional post having higher pay scale than respondent No.1 and as plaintiff could not claim parity with respondent No.3, however, the learned Courts below have failed to appreciate this material fact before holding in favour of the plaintiff and against the defendants/appellants.

4. The learned Courts below have erred in deciding the issues No.1 & 2 collectively whereas these should have been decided separately and independently. The learned Appellate Court has erred in law in deciding issues No.1 & 2 against the appellants/defendants because of the fact that case of

respondent/defendant and that of proforma defendants pertain to two different and independent Divisions/Offices viz. contesting respondent/plaintiff is working under Appellant No.4 and proforma respondent is working under Proforma respondent No.2 and the regularization of their services was done as per instructions of the government policy and that the temporary/work charge period seniority was decided at Division level, as per rules, therefore, in this situation the above issues were required to be decided independently and separately in favour of the appellants and against the plaintiff/respondent. The learned trial Court has erred in not relying upon the evidence of appellants and the judgment led in evidence on behalf of the appellants. It is further contended that the judgments passed by the learned Courts below are based on conjectures and surmises and are, thus, liable to be set aside.

5. There is no representation on behalf of the respondent No.1. However, respondent No.2 is the one, who was impleaded as respondent No.5 before the learned trial Court, to claim parity with by the plaintiff, as such, his presence or representation is not needed.

6. Heard.

7. This Court, after going through the case file, has found that the appellants/defendants have failed to adduce any evidence to show, as to why the promotion of the plaintiff was withheld for over four years when there was no adverse entry in his service record/service book, including ACRs. The only plea taken by the defendants/appellants is that seniority list was maintained Division-wise but this plea cannot be acceptable because it is the own case of defendants that seniority was fixed at division level but subsequently the cadre was merged and seniority was fixed at circle level, however, no evidence in

this regard has been lead by defendants in evidence, which prima facie falsifies the stand/plea taken on behalf of the defendants. It is also an admitted fact on behalf of the defendants that services of the plaintiff and defendant No.6 were regularized on the same date i.e. 01.01.1987 as such both are similar as far as seniority is concerned and there is no case/reason given much less pleaded by the defendants as to why their seniority became upset. This shows that there was certainly pick and choose method adopted by the defendants in promoting defendant No.6 to the next post of Water Pump Operator, before promoting the plaintiff, who was otherwise senior than defendant No.6 keeping in view date of joining service by both of them because date of joining service by plaintiff is 28.06.1982 (on adhoc basis) whereas defendant No.6 also joined service (on adhoc basis) on 20.11.1982 i.e. after a period of five months approximately. Both had joined service as Keyman, therefore, the promotion of the plaintiff to the post of Water Pump Operator was withheld by the defendants without any reasonable and justifiable cause and reason whatsoever. Even the defendants have denied the case of the plaintiff in written statement but have admitted the case of the plaintiff in their cross-examination before the Hon'ble Court, as such, in view of the own admission of the defendants, the plaintiff has successfully proved his case and for that reason, both the Courts below have recorded a just and proper judgment on the basis of evidence and material before them.

8. Since there is concurrent findings of both the Courts below, this Court, after going through the entire material on file and the judgments of both the Courts below, has failed to take a different view in the matter because both the Courts have left no material much less corner untouched which would

warrant interference of this Court in the judgements of the Courts below.

9. Therefore, the present regular second appeal is found to be bereft of merits and, accordingly, is hereby ordered to be dismissed.

10. Pending application, if any, also stands dismissed, accordingly, with the final dismissal of the main appeal.

25.11.2024
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(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>