

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-5154-2014 (O&M)

Decided on 13.11.2024

Lt. Niaz Ahmed (through LR)

... Appellant

VS.

DHBVN & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Ajaivir Singh, Advocate for the appellant

Mr. Kewal Krishan, Advocate for

Mr. SK Mahajan, Advocate for the respondents

Sandeep Moudgil, J.

(1). This regular second appeal under Section 100 CPC preferred by the appellant is directed against the judgment dated 30.11.2013 passed by the Civil Judge (Junior Divn.), Gurgaon dismissing the suit of the appellant-plaintiff and judgment and decree dated 08.07.2014 passed by the Addl. District Judge, Gurgaon.

(2). Appellant-plaintiff Niaz Ahmad filed a civil suit, seeking a declaration and mandatory injunction wherein it was submitted that he joined the Haryana State Electricity Board as Assistant Lineman on November 3, 1970, and was promoted as Lower Division Clerk in August 1985 and despite being eligible, he was denied additional increments and Assured Career Progression (ACP) benefits, which affected his pension. He was also overlooked for promotions to Upper Division Clerk, Commercial Assistant, and Circle Assistant during his 37-year service. Thus he sought arrears of pay and allowances with 24% interest, as well as promotion to the post of UDC with consequential benefits with interest @ 18% p.a.

(3). The respondents-defendant took a preliminary stand before the trial court that the appellant had no locus standi, cause of action as he has concealed the material facts and has no jurisdiction to file the suit. It was averred that the appellant had already been granted two ACPs and additional increments on completion of 8 and 18 years of service as he joined the service w.e.f. 01.01.1985 and as far as consequential promotion as claimed by him is concerned, the appellant did not fulfill the service conditions as per rules inasmuch as he could not clear the departmental examination.

(4). Before the trial court, the following issues were framed:-

“1. Whether the plaintiffs are entitled to a decree of declaration with consequential relief of permanent injunction and mandatory injunction as prayed for ?OPP.

2. Whether the suit of the plaintiff is not maintainable?OPD.

3. Whether the plaintiff has concealed the true and material facts from this court?OPD.

4. Whether the plaintiff has no cause of action and no locus standi to file the present suit ?OPD.

5. Whether the plaintiff is estopped from filing the suit by his own act, conduct, acquiescence, latches, omission and commission?OPD.

6. Relief.”

(5). The appellant-plaintiff examined himself as PW1 and tendered documents Ex.PD1 to PD10 to support his case. On the other hand, the respondents-defendants examined Sandeep, Divisional Accountant as DW1 only and no evidence was led.

(6). It was an admitted case before the trial court that the plaintiff joined the Haryana State Electricity Board as ALM on 03.11.1970 on temporary basis and after passing typing test, he was appointed as LDC on 01.08.1985 as a

fresh and new appointment, however, thereafter, the appellant could not qualify the departmental examination. It was the case of the respondents that the services of the appellant are countable w.e.f. 01.01.1985 i.e the day when he was appointed as LDC as a new appointment and not from 03.11.1970 which was a temporary appointment as is evident from the offer of appointment (Ex.PD1). The trial court referred to Explanation (b) attached with Rule 3.17 Vol.II of Punjab Civil Services Rules (Haryana) and came to the conclusion that:-

“In the present case, admittedly, the plaintiff joined his service as LDC typist on dated 1.8.1985 after passing the type test and said appointment was afresh and new and not in continuation of his earlier services as ALM. Hence, from the above discussion as well as the Rule 3.17 of Punjab Civil Services (Haryana) for the increment and promotional purposes etc. his services shall be counted from 1.8.1985.”

(7). Appellant's contention that he was neither granted additional increments on completion of 8/18 years of service nor ACP in the 3/1998, the trial court placed reliance on the order which the HSEB adopted the circular of Haryana Government (Ex.PD6), in terms whereof, the appellant-plaintiff is entitled to additional increment on completion of 8/18 years of regular satisfactory service as LDC Typist and that he was given first ACP on completion of 10 years of regular satisfactory service w.e.f. 01.01.1996 and second ACP was granted on 01.09.2005 and thereafter the appellant got voluntary retirement w.e.f. 31.08.2007 and therefore counting his services from 01.08.1985, he has not completed 30 years' service till his date of voluntary retirement, hence the third ACP was not admissible to him. As such, the suit filed by the appellant was dismissed.

(8). The appellate court vide its judgment dated 08.07.2014 also did not find favour with the contentions raised by the appellant and thus dismissed the appeal on the ground that the appellant failed to show any provision that the service rendered by him from 1970 to 1985 as ALM on temporary basis were liable to be counted for the purpose of service and pensionary benefits including additional increments/ACP etc. Hence this Regular Second Appeal.

(9). Learned counsel for the appellant argued that the courts below have erred on the following factual aspects which forms the contentions on behalf of the appellant:-

- (i) the appellant had discharged his duties w.e.f. 03.11.1970 as ALM and his services are to be counted w.e.f. 01.08.1985 for all intents and purposes, however, the courts below ignored the fact that the appellant was appointed as ALM w.e.f. 03.11.1970 against a regular/permanent post of ALM though the appointment was tagged as on *ad hoc* basis and was allowed to work as such for a period of 15 years and therefore, his appointment as LDC w.e.f. 01.08.1985, by any stretch of imagination cannot be termed as fresh/direct appointment;
- (ii) the courts below wrongly pressed into aid Rule 3.17 of the Punjab Civil Services Rules Vol. II against the appellant being totally inapplicable in his case inasmuch as, in terms of Rule 3.17(A) of the Rules *ibid*, service rendered in work-charged capacity and service paid from contingencies has been specifically included as qualifying service for the purpose of

pension and as such, the judgment passed by the courts below in not taking into account appellant's 17 years of service as ALM in the same department towards pension and other service/retirement benefits is *per se* contrary to law and service rules;

- (iii) the departmental rules do provide for grant of promotion without passing departmental accounts examination in administrative exigencies when posts are lying vacant and due to non-availability of qualified LDCs. That apart, there are previous instances where a number of LDCs were promoted to higher post by granting exemption from passing the departmental accounts examination and the said benefit has been denied to the appellant by the respondents and this fact has been totally ignored by the courts below.

(10). Learned counsel for the appellant then vehemently urged that if a government employee is holding a substantive post at the time of his retirement, his qualifying service shall be computed from the date of his first appointment either substantively or in an officiating capacity or temporary capacity and admittedly, in the present case, the appellant had been given temporary appointment as Assistant Lineman and this fact has been conceded by the respondents before the courts below also in their reply. Therefore, the entire period of service from the date of his joining initially w.e.f. 03.11.1970 on a substantive regular post would have to be counted for the purpose of computing his entitlement and quantum of service and pensionary benefits including ACP etc.

(11). On the contrary, the counsel for the respondents countered the appellant's arguments and supported the concurrent findings returned by both the courts below in the impugned judgments. He submitted the courts below correctly applied Rule 3.17 of the Punjab Civil Services Rules in the given the circumstances of the case since the appellant was newly recruited as a Lower Division Clerk (LDC) in August 1985 on fresh terms and conditions, his previous service as ALM from November 3, 1970, to August 1985 was correctly disregarded. He then argued that the appellant even failed to clear the departmental test, and his first and second Assured Career Progressions (ACPs) were granted on January 1, 1996, and September 1, 2005, respectively and since he did not complete 30 years of regular service, he was not entitled to a third ACP.

(12). Heard learned counsel for the parties and gone through the record.

(13). The controversy revolves around certain undisputed facts. It is acknowledged that the appellant-plaintiff was appointed as an Assistant Lineman (ALM) on November 3, 1970, on an ad-hoc basis, and worked as such until August 1985. Notably, the appellant-plaintiff applied for the Lower Division Clerk (LDC) position without obtaining prior departmental permission, and he received a fresh appointment as LDC (Ex.D1). A perusal of the Ex.D1 reveals that the appellant-plaintiff was freshly appointed as a temporary LDC typist with a pay scale of Rs.400-700, plus usual allowances. The appointment offer was new, with no reference to counting past services towards pensionary benefits for the new position. Instead, Ex.D1 indicates that the appointment was provisional. It is also conceded that the appellant-

plaintiff sought voluntary retirement, as evidenced by Ex.D2, and he his request as such was accepted and was allowed retire voluntarily w.e.f. September 1, 2007.

(14). Learned appellate court was rightly drawn attention towards the circular Ex.PD6 dated September 10, 1992, issued by the Haryana State Electricity Board (HSEB), the predecessor-in-interest to the defendants, the relevant provision (III) of Ex.PD6 reads as under:-

"For the purpose of counting service for group C of D the whole service rendered in a particular group will be reckoned as prescribed length of service. For example service as a clerk, Assistant and Deputy Supdt. Etc. will count in group C and service rendered as Peon daftari, Jarmadar etc. will count in group D."

(15). A perusal of Clause II reproduced above would clearly show that an employee's Group D service after 8 and 18 years will not be considered for granting additional increments when combined with Group C service. The courts below have rightly observed that the appellant-plaintiff received two Assured Career Progressions (ACPs) i.e. first on January 1, 1996 on completion of 10 years of regular service and the benefit of second ACP w.e.f. September 1, 2005. Thus it was rightly held by the courts below that since he did not complete 30 years of service on 01.08.1985, therefore, the third ACP was not admissible to the appellant as he himself took voluntarily retirement w.e.f. 31.08.2007 and as such, he fell short of completing 30 years so as to make him eligible to claim the benefit of 3rd ACP.

(16). Neither the learned counsel for the appellant has been able to convince this court on law that the period between temporary/ad hoc appointment and regular appointment can be counted towards all service and retiral benefits for all intents and purpose. Further, the appellant has conspicuously failed to adduce evidence on record, illustrating instances of discriminatory treatment, wherein similarly situated employees have been accorded the benefit now claimed by the appellant. Since the appellant himself took voluntary retirement on 31.08.2007 and if his service which has been reckoned w.e.f. 01.08.1985 is taken into consideration, then he could not complete 30 years of service for making him entitled for claiming 3rd ACP.

(17). In the light of the above discussion, there is no illegality or perversity in the judgments passed by the Courts below. Hence, dismissed.

13.11.2024
V.Vishal

(Sandeep Moudgil)
Judge

- 1. *Whether speaking/reasoned?*
- 2. *Whether reportable?*

Yes/No
Yes/No