



RSA-2959-1994

-1-

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

(102)

RSA-2959-1994

Date of decision: - 26.03.2025

Punjab State Electricity Board, Patiala**....Appellant****Versus****Harbhajan Singh and others****.....Respondents****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Kunal Mulwani, Advocate
for the appellant.

Mr. Virinder Shukla, Advocate
for the respondents.

VIKAS BAHL, J. (ORAL)

1. Present appeal has been filed by appellant/defendant No.1- Punjab State Electricity Board, Patiala, under Section 41 of the Punjab Courts Act, 1918 (hereinafter referred to as “the 1918 Act”).

2. Challenge in the present Regular Second Appeal is to the judgment of the trial Court dated 12.04.1991 vide the suit filed by the respondents-plaintiffs to the effect that the they were deemed to have been promoted as J.E. II from the date when the next juniors were promoted had been decreed. Challenge is also the judgment dated 10.08.1994 vide which the appeal filed by the present appellant/Punjab State Electricity Board, Patiala had been dismissed.



RSA-2959-1994

-2-

3. Learned counsel for the appellant has submitted that in the present case, in May, 1970 a quota rule was introduced for the purpose of promotion from Lineman to Line Superintendent from amongst the diploma holders and non-diploma holders and in pursuance of the same about 969 persons were promoted on the basis of they being diploma holders in Electrical Engineering. It is further submitted that the plaintiffs, who were non-diploma holders, never challenged the said quota rules immediately after 1970 and filed the present suit on 30.01.1987 after a period of 17 years and in the suit placed reliance upon the judgment of the Hon'ble Supreme Court in the Case of “Punjab State Electricity Board, Patiala and another Vs. Ravinder Kumar Sharma and others, reported as 1986(4) SCC 617”, vide which the abolition of the said quota rules was upheld up to the Hon'ble Supreme Court. It is argued that the said judgment of the Hon'ble Supreme Court has been overruled by a Larger Bench of the Hon'ble Supreme Court in the case of “P. Murugesan and others Vs. State of Tamil Nadu and others”, reported as 1993(2) SCC 340. It is further argued that even the judgments of the trial Court as well as the 1st Appellate Court are based on the judgment of the Hon'ble Supreme Court in the case of Ravinder Kumar Sharma and others (supra), which judgment has been overruled by the Hon'ble Supreme Court in the subsequent judgments. It is submitted that a Co-ordinate Bench of this Court in **RSA No.447 of 1994** titled as “Punjab State Electricity Board and another Vs. Mohinder Paul”, decided on **20.05.2024**, after considering the facts which are similar to the facts of



RSA-2959-1994

-3-

the present case, was pleased to allow the Regular Second Appeal and also set aside the judgments of the trial Court as well as of the 1st Appellate Court. It is submitted that the plaintiffs had filed the suit after much delay and even on merits in view of the law laid down in the above-said judgment, the present appeal is meritorious and deserves to be allowed. It is further pointed out that the plaintiffs had given up and withdrawn the case against defendants No.2 to 5 and accordingly, the suit qua them was dismissed on 02.05.1988. It is stated that the judgments of the trial Court as well as of the 1st Appellate Court had been stayed vide order dated 29.11.1994 and thus, no benefit from the judgments has been derived by the respondents-plaintiffs, who have since retired.

4. On the other hand, learned counsel for the respondents has submitted that the trial Court as well as the 1st Appellate Court had rightly relied upon the judgment of the Hon'ble Supreme Court in the case of **Ravinder Kumar Sharma and others (supra)**, and had rightly observed that the quota system fixed by the Board for promotion from the diploma and non-diploma holders Linemen had been abolished and thus, the respondents/plaintiffs were also entitled to relief under the said judgment and the suit had been filed by the plaintiffs/respondents on 30.01.1987 immediately after the passing of the judgment in the case of **Ravinder Kumar Sharma and others (supra)**, and the present respondents/plaintiffs were also entitled to the benefit of the said judgment.

5. This Court has heard learned counsel for the parties and has



RSA-2959-1994

-4-

perused the paper-book and finds that the judgments of the trial Court as well as of the 1st Appellate Court are against law and thus, deserve to be set aside for the reasons stated hereinafter.

6. The respondents-plaintiffs had filed a suit for declaration to the effect that the plaintiffs be deemed to have been promoted as J.E. II in the Punjab State Electricity Board from the date their juniors were promoted. It is the case of the plaintiffs that all of them were Lineman and were matriculate and ITI trained although, were non-diploma holders. It is further their case that the Linemen who were employed were either diploma holders or non-diploma holders, but the seniority list of all the Lineman was common and joint and since the quota rule had been formulated by the present appellant/defendant No.1 between diploma and non-diploma holders, the diploma holders were being promoted over the non-diploma holders and the said policy was held to be bad by the High Court, which was upheld by the Hon'ble Supreme Court in the case of **Ravinder Kumar Sharma and others (supra)**. It was stated that the respondents-plaintiffs were also entitled to the same relief as was granted to the plaintiff(s) in the case of **Ravinder Kumar Sharma and others (supra)**.

7. The suit against defendants No.2 to 5, including defendants No.4 and 5 who are alleged by the plaintiffs to be juniors to them, was withdrawn and the same was dismissed vide order dated 02.05.1988, as has been recorded in para 3 of the judgment of the trial Court, which fact has not been disputed before this Court. In the written statement filed by



RSA-2959-1994

-5-

defendant No.1/appellant, several preliminary objections, including the objections with respect to the suit being barred by time, were raised. On merits, it was stated that the said quota rule was introduced for the first time in the year 1970 for the purpose of promotion from Lineman to Line Superintendent from amongst the diploma holders and non-diploma holders and that from May, 1970, when the quota rule was introduced, to 24.11.1986, when the quota rule was set aside, about 969 persons were promoted on the basis of they being diploma holders in Electrical Engineering in accordance with the prevalent quota rules. It was also stated that it was physically impossible to reschedule the promotions already made on the basis of quota rules as many diploma holders had further been promoted to the post of J.E. I and thereafter to the post of Assistant Engineer and since none of the said persons were made parties to the said suit, the same was bad for non-joinder of necessary parties.

8. The trial Court, by primarily relying upon the judgment of the Hon'ble Supreme Court in the case of **Ravinder Kumar Sharma and others (supra)**, allowed the suit and the appeal filed by the present appellant was also dismissed by taking into consideration the said judgment of the Hon'ble Supreme Court.

9. It is not disputed before this Court that the judgment of the Hon'ble Supreme Court in the case of **Ravinder Kumar Sharma and others (supra)** has not been followed by a Larger Bench of the Hon'ble Supreme Court in the case of **P. Murugesan and others (supra)**. The relevant portion of the said judgment is reproduced as under: -



*“-The learned counsel for respondents relied upon the decision in **Punjab State Electricity Board v. Ravinder Kumar Sharma** a decision rendered by a Bench comprising A.P. Sen and B.C. Ray, JJ. The category of linemen in the service of the Punjab State Electricity Board comprised both diplomaholders and others who may be referred to as non-diplomaholders. They constituted one single category having a common seniority list. **By means of the rules issued under the proviso to Article 309, a quota was prescribed for diplomaholders, the result of which was that diplomaholders who were far junior to the non-diplomaholders were promoted ignoring the non-diplomaholders. The rule was held to be bad by the learned Subordinate Judge, Patiala. On appeal, the Additional District Judge, Patiala affirmed the judgment. It was affirmed by the High Court as well. The matter was brought to this Court. This Court affirmed the judgment of the High Court. A perusal of the judgment shows that the attention of the Bench was not drawn either to T.N. Khosa or to other decisions. Reference was made only to the observations in Shujat Ali quoted hereinbefore and it was held that the distinction made between the diplomaholders and non-diplomaholders was discriminatory and bad. Apart from the distinction on facts between that case and the case before us, it is evident that non-consideration of the T.N. Khosa and other decisions relevant under the subject has led to the laying down of a proposition which seems to run counter to T.N. Khosa. With great respect to the learned Judges who decided that case, we are unable to accept the broad proposition flowing from the case.**”*

A perusal of the above judgment would show that it had been specifically observed by the Hon'ble Supreme Court that they were unable to accept the broad proposition flowing from the case of **Ravinder Kumar Sharma and others (supra)**. The Co-ordinate Bench of this Court in the case of **Mohinder Paul (supra)** had, in similar circumstances as in the present case, allowed the Regular Second Appeal and set aside the



RSA-2959-1994

-7-

judgments of the trial Court as well as of the 1st Appellate Court. It is thus apparent that the judgments of the trial Court as well as of the 1st Appellate Court in the present case are against the latest law laid down by the Hon'ble Supreme Court in the case of **P. Murugesan and others (supra)** and thus, deserves to be set aside on the said ground alone.

10. Additionally, it would be relevant to mention that it is also not in dispute that the said quota rule was introduced in the year 1970 and a large number of persons who were diploma holders were promoted. Although some persons had challenged the said quota rule, the plaintiffs however chose to remain dormant and filed the present suit in the year 1987 i.e. after a delay of 17 years and after the judgment of the Hon'ble Supreme Court in the case of **Ravinder Kumar Sharma and others (supra)** was delivered. It is the stand of the present appellant in the written statement that from May,1970 to 24.11.1986, as many as 969 persons were promoted on the basis of they being diploma holders and had further been promoted to the posts of Junior Engineers and Assistant Engineers and that the said persons had not been made parties to the suit. Even with respect to defendants No.4 and 5 who were made parties in the suit, the suit was withdrawn and was accordingly dismissed on 02.05.1988. Apparently, the present plaintiffs/respondents were fence sitters and had permitted much water to flow before instituting the present suit. At any rate, since the judgment in the case of **Ravinder Kumar Sharma and others (supra)**, which was the basis of the case set up by the respondents/plaintiffs, has subsequently not been followed by a



RSA-2959-1994

-8-

Larger Bench, thus, at this stage, no benefit of the said judgment can be given to the respondents/plaintiffs. It would also be relevant to note that vide order dated 29.11.1994, the Co-ordinate Bench of this Court, while issuing notice of motion, had stayed the execution of the judgment and decree and thereafter, the matter was admitted and the said interim order has continued till date and thus, no benefit of the impugned judgments had been given to the respondents/plaintiffs, who had subsequently retired.

11. It would be relevant to note that the present Regular Second Appeal has been filed under Section 41 of the Punjab Courts Act, 1918 and not under section 100 of CPC and that in paragraph 27 of the judgment of the Constitutional Bench (Five Judges Bench) of the Hon'ble Supreme Court in the case of “Pankajakshi (dead) through legal representatives and others v. Chandrika and others and other connected matters, reported as (2016) 6 SCC 157, it was observed that since section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force. Section 41 of the Punjab Courts Act provides that an appeal would lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the grounds mentioned therein and one such ground i.e., ground No.(a) is when the decision is contrary to law or to some custom or usage having the force of law. In the present case, as has been stated hereinabove, the judgment of the trial Court and of the 1st Appellate Court is contrary to

**RSA-2959-1994****-9-**

the law laid down by the Hon'ble Supreme Court and by this Court and thus, falls within the parameters of Section 41 of the 1918 Act for interference by this Court.

12. Keeping in view the above-said facts and circumstances, the present appeal being meritorious is allowed and the judgment and decree dated 12.04.1991 of the trial Court as well as the judgment and decree dated 10.08.1994 of the 1st Appellate Court are set aside and the suit filed by the plaintiffs is dismissed.

March 26, 2025*naresh.k***(VIKAS BAHL)
JUDGE**

Whether reasoned/speaking?	Yes
Whether reportable?	Yes