

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2025:PHHC:068377



RSA No. 201 of 2001 (O&M)

Date of decision: 20th May, 2025

Shashi Pal and others

..Appellants

Versus

The State of Punjab and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA.

Present: Mr. Bikramjit Singh Patwalia, Advocate with
Mr. Gaurav Jagota, Advocate and
Mr. Dhruv Gupta, Advocate for appellants.

Mr. R.S.Pandher, Addl. AG Punjab.

SUDEEPTI SHARMA, J(Oral)

1. The present appeal is preferred against the judgment and decree dated 21.01.1995 passed by the Sub Judge Ist Class, Pathankot, whereby the Civil Suit filed by the appellants for declaration to the effect that appellants were entitled to be promoted on the basis of Seniority-cum-Merit to the rank of leading Fireman w.e.f. 16.05.1989 when the juniors were promoted, was dismissed and judgment and decree dated 18.12.1999 passed by the Additional District Judge, Gurdaspur, vide which the appeal filed against the judgment and decree dated 21.01.1995 was also dismissed.

2. Brief facts of the case are that the appellants were employed as Firemen on work charge basis in RSD Project at Shahpur Kandi on different dates. Certain vacancies accrued for promotion to the post of leading Firemen in the Fire Department where the appellants were working and the appellants were entitled for promotion on the basis of Seniority-cum-Merit. Vide order dated 16.05.1989, the private respondents No. 6 and 7 were

promoted to the post of leading Firemen in supersession of appellants who were admittedly senior to the private respondents. The suit for declaration was filed by the appellants to the effect that the appellants are entitled to be promoted to the rank of leading Firemen w.e.f. 16.05.1989 on the basis of Seniority-cum-Merit when the Juniors (respondents No. 6 and 7) were promoted. The Civil suit filed by the appellants was dismissed vide judgment and decree dated 21.01.1995 and the appeal filed against the judgment and decree dated 21.01.1995 was also dismissed vide judgment and decree dated 18.12.1999, hence, the present appeal.

3. Learned counsel for the appellants contends that as per rules the promotion to higher grade is to be granted on the basis of Seniority-cum-Merit but the respondents conducted the test for promotion which altogether changed the rules from Seniority-cum-Merit to Merit-cum-Seniority. He further contends that regarding conducting of examination for promotion, no notice was placed on the notice board, therefore, he could not appear in the same. Further both the Courts did not take into consideration the rules which were applicable to the appellants.

4. *Per-contra* learned counsel for respondents contends that circular for examination which was to be held for promotion was put on the notice board on 19.01.1989. Notice dated 19.01.1989 for examination was circulated at two Fire Stations amongst all the firemen including the appellants and they were directed to appear in the said examination to be conducted on 30.1.1989 and 31.1.1989 and the appellants did not appear in the said examination.

5. From the pleading, the Sub Judge Ist Class, Pathankot, framed the following issues:

“1. Whether the plaintiffs are entitled to be promoted as leading Firemen w.e.f. 16.5.89 alleged, OPP

2. Whether the suit in the present form is not maintainable ? OPD

3. Whether the plaintiffs are estopped to sue by their act and conduct? OPD.

4. Relief.”

6. A perusal of the Rule 18 of the standing order in respect of work charge staff of Ranjit Sagar Dam Project, Shahpur Kandi (Gurdaspur) which is Ex.2/A, on record shows that the promotion to the higher grade is to be made on the basis of Seniority-cum-Merit. There is no mention of holding any test/examination for promotion. Therefore as per the rules, the promotion is to be made on the basis of Seniority-cum-Merit. Meaning thereby that the seniority of the person cannot be ignored. Further when it is prescribed in the Rules that the promotion is to be held on the basis of Seniority-cum-Merit then the seniority as well as the ACRs (merit) are to be seen. No justification is given by the respondents for altogether going in contravention of Rules by conducting the test for promotion without amending the Rules. The respondents have admittedly held the promotion on the basis of Merit-Cum-Seniority instead of Seniority-Cum-Merit as provided under the Rules applicable to the appellants.

7. The basic issue which was to be framed in the present case was, as to whether the respondents could change the procedure for promotion as laid down in Rule 18 of the Standing order in respect of work charge staff of Ranjit Sagar Dam Project Shahpur Kandi (Gurdaspur) which lays down the criteria for promotion?. Whereas both the Courts did not take into consideration Rule 18 of the standing order which was very much on record as Ex.2/A. Further, both the Courts failed to appreciate that no test is envisaged under the Rules and by holding the test the respondents have

changed the criteria for promotion as envisaged in the Rule 18. i.e. from, on the basis of 'Seniority-cum-Merit' to on the basis of 'Merit-cum-Seniority'. Admittedly, all the appellants are senior to the private respondents and were ignored for promotion only on the ground that they never appeared in the test without taking into consideration the admitted fact that the appellants were not aware of any notice regarding the test to be conducted for promotion. Both the Courts justified the written examination conducted by respondents by totally ignoring the Rules as are applicable to the appellants for promotion.

8. Learned counsel for the appellants has placed reliance upon the decision of Hon'ble the Supreme Court of India in **B.V. Sivaiah Versus K. Addanki Babu** 1998 AIR (Supreme Court) 2565 wherein meaning of 'Seniority-cum-Merit' has been categorically defined. Relevant Para-14 of the same is reproduced as under:

“14. We thus arrive at the conclusion that the criterion of 'seniority-cum-merit in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit.”

9. In view of above, the present appeal is allowed and the judgments and decrees passed by both the Courts are set-aside. The Civil

Suit filed by the appellants is decreed in their favour with no order as to costs.

10. As per instructions of learned counsel for the appellants, all the appellants have retired from service.

11. The matter pertains to the year 2001. This Court does not wish to force the appellants to go in further round of litigation by filing the execution application before the Executing Court, therefore, the respondents are directed to notionally grant the benefits as prayed for in the Civil Suit by the appellants and payment be made in their accounts within a period of six months from the date of receipt of copy of the judgment.

12. Decree sheet be drawn accordingly.

13. Pending application(s) if any also stand disposed of

20th May, 2025

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**(SUDEEPTI SHARMA)
JUDGE**

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