
(2012) 06 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2907 of 1997

Satya Bhushan Gupta

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 01-06-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2012) 06 P&H CK 0003

Hon'ble Judges : Paramjeet Singh, J

Bench : Single Bench

Advocate : Madan Gupta, for the Appellant; Sandeep S. Mann, D.A.G., Haryana and None, for the Respondent

Final Decision : Dismissed

Judgement

Paramjeet Singh, J.—Present regular second appeal has been filed by the appellants-plaintiff against the judgment and decree dated 24.04.1997 passed by the learned Additional District Judge, Kurukshetra, as well as, against the judgment and decree dated 30.01.1995 passed by the learned Sub Judge Ist Class, Kurukshetra, whereby suit filed by the appellant-plaintiff has been dismissed. Brief facts of the case are that the plaintiff-appellant filed a suit for permanent injunction restraining defendant Nos. 1 and 2 from implementing order dated 30.05.1986, order dated 19.02.1987, order dated 20.02.1990 and order dated 26/27.02.1990 (Annexures P/3, P/4, P/5 and P/6 attached with the plaint) with regard to fixation of seniority of the appellant-plaintiff and private defendant Nos. 3 and 4. The case set up by the appellant-plaintiff is that he joined as Inspector in the Co-operative Department as promotee in the month of July, 1968. He passed the departmental examination and co-operative training class in the month of January, 1972. The service conditions of the plaintiff and the private defendants are governed by the Punjab Co-operative Subordinate Services Rules, 1936 (Part II Executive) and under Rules 6(i) and (ii) of Seniority of Inspector Co-operative Societies to be determined from the date of passing of

the departmental examination or from the date of completion of prescribed period of training. It is the case of the appellant-plaintiff that in the first seniority list of Inspectors of Co-operative Societies prepared on 01.04.1975, name of the plaintiff figured at Serial No. 169, whereas the name of defendant Nos. 3 and 4 appeared at serial No. 295 and 296 respectively. In the subsequent seniority list dated 01.02.1978, the name of the plaintiff was at Sr. No. 142 and the name of defendant Nos. 3 and 4 was at Sr. No. 224 and 225. It is the case of the appellant that vide orders dated 30.05.1986 and 19.02.1987, the seniority of defendant Nos. 3 and 4 has been re-fixed without affording any opportunity of hearing to the plaintiff-appellant. In spite of many representations, no action was taken. As per the rules, seniority is required to be fixed from the date of passing of the departmental examination. The private defendants had earlier filed a Civil Writ Petition whereby the vires of Rules 5 and 6 of the 1936 Rules were challenged, but it was dismissed. The claim of the plaintiff was resisted by defendant Nos. 1 and 2 by filing written statement by submitting that no notice u/s 80 C.P.C. was given, civil Court has no jurisdiction to try the suit. It is the case of the department that the appellant-plaintiff was promoted from the post of Sub Inspector, Cooperative Societies to the post of Inspector and he joined as such on 12.07.1968 and he passed the departmental examination / training in January, 1972. It is submitted that in the seniority list dated 07.07.1975, the appellant-plaintiff was shown to be senior to defendant Nos. 3 and 4 as defendant Nos. 3 and 4 who were senior to the plaintiff could not be promoted along with the plaintiff w.e.f. 12.07.1968 as some complaints / criminal cases were pending against them. The allegations in the complaint were not proved so they were promoted in the year 1971 and later on vide order dated 30.03.1978, they had been given the deemed date of promotion as Inspector w.e.f. 12.07.1968 date of promotion of the plaintiff. As a result of it, seniority of defendant Nos. 3 and 4 has been re-fixed at that place and re-fixation was done in pursuance of their promotion and they were placed at Sr. No. 141-A and 141-B respectively. This has been rectified in view of the promotions of the defendants subsequently with retrospective effect. The Trial Court framed the following issues:

1. Whether the impugned order dated 30.5.86, 19.2.87, 20.2.90 and 26/27.2.90 effecting the seniority of the plaintiff are illegal, null and void and not binding on the rights of the plaintiff? OPP
2. Whether the plaintiff is senior in service to the defendant Nos. 3 and 4 and is entitled for all monetary benefits? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the Civil Court has no jurisdiction to decide this case? OPD
5. Whether the suit is bad for want of notice u/s 80 C.P.C.? OPD
6. Relief.

2. The learned Trial Court, after appreciating the evidence on record, dismissed the suit of the plaintiff-appellant vide judgment and decree dated 30.01.1995. Against the said judgment and decree, an appeal was preferred by the plaintiff-appellant, which has also been dismissed by the learned Additional District Judge, Kurukshetra vide judgment and decree dated 24.04.1997. Hence, this regular second appeal.

3. At the time of filing of the appeal, no substantial question of law was framed nor mentioned in the grounds of appeal. However, at the time of arguments, learned counsel for the appellant submitted that following questions of law arises in this appeal:

Whether the judgment and decree of the learned Courts below are based on mis-interpretation of relevant rules and thus perverse?

4. I have heard learned counsel for the parties and perused the record.

5. Before I consider the contentions of the parties, I deem it appropriate to extract relevant rule of seniority. Rule 6 Sub Section (ii) reads as under:-

The seniority of Inspector candidates recruited from Sub Inspectors of Co-operative Industrial Societies and Sub Inspectors of the Punjab Co-operative Union will first be determined by the date of passing the departmental examination and if in the case of two or more candidates, the date of passing the examination is the same, seniority will be determined by the length of service as Sub Inspector or, in other words, by the date from which service as Sub Inspector began.

Note: If the dates as determined under sub-paragraphs (i) and (ii) above are the same in the case of direct and promoted candidate Inspector the former will be considered as Senior.

5. A perusal of the rule clearly indicates that date of passing of the departmental examination will be determining factor, but rule does not state about the cases where the promotion is delayed and subsequently given from the date the junior is promoted. In the present case, there was a specific condition in the promotion order of the appellant that promotion of the appellant was provisional and would not confer any right of seniority over persons who may be promoted later. There is Rule 13 which states about the relaxation. On passing of departmental examination by respondent Nos. 3 and 4, the competent authority granted them promotion retrospectively w.e.f. the date their junior passed the examination by relaxing the rules keeping in view the fact that the private respondents could not appear in the departmental examination due to pendency of departmental proceedings. Both the Courts below have taken into consideration the rules and thereafter appreciating the evidence on record have recorded findings.

6. The Trial Court after appreciating the evidence on record, recorded a finding that the private defendants were promoted subsequently from the back date as a result of which they were allowed to take the Departmental Examination later on,

although their promotion is from the back date i.e. the date from which the plaintiff-appellant was promoted. It is admitted that the private defendants have also passed the departmental examination later when they were promoted with retrospective effect. As a consequence of it, they are entitled to the benefits which accrued to them on the basis of due promotion given to them. To controvert the above finding, reliance has been placed upon the judgment of Ram Singh Yadav and others vs. The State of Haryana and others, C.W.P. No. 589 of 1992 by the plaintiff-appellant which is not applicable. This question will arise only when both the persons have been promoted on the same date. If the junior person is promoted earlier due to pendency of some inquiry against the seniors and the seniors are promoted subsequently with retrospective date, then the rights of the seniors are not lost. Since the private defendants were promoted from back date i.e. date on which the appellant-plaintiff was promoted and they have also passed the departmental examination, so they would be deemed to be senior as they were senior in the cadre of Sub Inspectors. The learned Additional District Judge has also recorded a finding, which is as under:

10. Thereafter the counsel for appellant has submitted that before giving such relaxation, the plaintiff was not given any opportunity to be heard, and as such, it is violative of the principle of natural justice. In support of his contention, he has placed reliance upon Ravi Dutt RSA No. 2907 of 1997 7 Sharma vs. Haryana Housing Board and others, 1990 (4) SLR (P&H) 113. I have perused this authority very carefully and I find that the same is not applicable on the facts of the present case. It is correct that before giving relaxation in the rules, no notice was given to the plaintiff. However, the right of defendant Nos. 3 and 4 being considered on the ground of hardship it was not required that the Government should issue notice to the plaintiff. Before fixation of seniority, notice Annexure 4 was issued to the plaintiff as to why the seniority be not granted to defendants Nos. 3 and 4 and as to why that should not be granted selection grade. This letter was issued on 28.4.1988 requiring the plaintiff to appear on 4.5.1988. After giving this notice, order Ex.P6 was issued on 26.2.1990 whereby seniority of defendants Nos. 3 and 4 above the plaintiff and granting them selection grade. Thus, the argument of the counsel that no notice was given prior to the fixation of seniority is without force. As already observed, before relaxation of Rule, the Government was not required to give notice to every person affected by such relaxation. It was for the Government to see as to whether any hardship has been caused to the applicants i.e. defendant Nos. 3 and 4. Thus, I fully agree with the learned trial Court that in the present case the Government having given relaxation of rules under rule 13, the seniority of the plaintiff and defendant Nos. 3 and 4 is not to be governed under rule 6(ii) of the Rule whereas they could revert back to the seniority already existing amount them while they were Sub Inspectors. It is also not disputed that the departmental examination is passed only when a person is sent by the department after being promoted. In the present case, the plaintiff was sent in the departmental examination prior to defendants No. 3 and 4 because defendants Nos. 3 and 4

were promoted subsequently. Thus, the power exercised by the Government in favour of defendants Nos. 3 and 4 cannot be said to be in any manner uncalled for an unjust.

7. Both the Courts below have recorded findings correctly appreciating Rule 6(ii) and Rule 13.

8. In view of the concurrent findings recorded by both the Courts below, I do not find any ground to interfere in the judgments passed by the learned Courts below. As such, no substantial question of law is involved in the present appeal. The Regular Second Appeal is accordingly dismissed. No order as to costs.