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**(2007) 09 P&H CK 0067**  
**In the Punjab And Haryana At Chandigarh**

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|------------------------|----|------------|
| Smt. Kavita Devi       | Vs | APPELLANT  |
| Sumer Singh and Others |    | RESPONDENT |

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**Date of Decision :** 25-09-2007

**Acts Referred:**

**Citation :** (2007) 09 P&H CK 0067

**Hon'ble Judges :** S.D. Anand, J

**Bench :** Single Bench

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### **Judgement**

S.D. Anand, J.—This order shall dispose of two Regular Second Appeals (one filed by Kavita Devi ? hereinafter referred to as ?the defendant- appellant?, and the other filed by Haryana Co-operative Sugar Mill Ltd., Rohtak ? hereinafter referred to ?the employer?). Both the appeals are directed against the judgment and decree dated 6.9.2006 passed by the learned First Appellate Court. The learned Trial Court had (vide judgment and decree dated 16.12.2003) dismissed the suit filed by plaintiff-respondent Sumer Singh. In a judgment of reversal, learned First Appellate Court decreed the suit in favour of plaintiff respondent Sumer Singh. It was held that the plaintiff-respondent was entitled to be considered for promotion to the post given to appellant Kavita. The finding was that appellant Kavita had been wrongly absorbed in one of the posts as Cane Clerk Grade III. The learned First Appellate Court had directed the employer to rescind the promotion of Kavita as Cane Clerk Grade III and to promote one of the senior most persons to that post. It was further held that if respondent No. 2 so desired, they may create separate post of Hindi Typist Grade III but they cannot utilize it from the common pool. It was clarified that the plaintiff shall be entitled to be promoted prior to respondent No. 4 in higher grade i.e. Cane Clerk grade III.

2. Defendant Kavita and the employer have filed the Regular Second Appeals bearing Nos. 4234 of 2006 and 4255 of 2006 respectively.

3. Mr. PK Mutneja, learned Counsel appearing on behalf of defendant-appellant Kavita, argued that the promotion given to defendant-appellant Kavita by the

employer could not have been invalidated on a plea preferred by the plaintiff-respondent in view of the fact that the former (defendant-appellant Kavita Devi) was duly qualified for promotion from the post of Daily Paid Hindi Typist to that of Hindi Typist (Seasonal) Clerical Grade against the vacant post of a Clerk. She was thereby promoted from the post of Clerk Grade-IV (Seasonal) to Cane Clerk Grade-III. He further argued that the Rules provide that promotions by the employer were to be governed on the basis of merit-cum-seniority and, thus, the averment made by less qualified plaintiff-respondent Sumer Singh on plea of seniority was meaningless. It was argued, in the context, that it was only defendant- appellant Kavita Devi who possessed the qualification required for appointment for promotion as Hindi Typist. Learned Counsel for the employer adopted the line of argument put forth by the learned Counsel for the defendant-appellant Kavita Devi.

4. Learned Counsel for the plaintiff-respondent Sumer Singh resisted the plea advocated on behalf of the appellant and vehemently argued that there being a joint seniority list, defendant-appellant Kavita Devi placed at Serial No. 86 in the seniority list could not steal a march for the purposes of promotion over the plaintiff-respondent whose name appeared in that list at Serial No. 62.

5. It is common ground that in the joint seniority list, plaintiff-respondent had been recorded senior as against defendant- appellant Kavita Devi. Plaintiff-respondent Sumer Singh figured at Serial No. 62, as against defendant-appellant Kavita Devi who was at Serial No. 86 in the list. Both of them were in Grade IV. Further, both of them had been appointed Daily Paid Seasonal Clerks. The next promotion for both of them was to the post of Cane Clerk Grade II. The fact that the services of defendant-appellant Kavita Devi were being utilized as Daily Paid Typist, is irrelevant inasmuch as the nature of duties being performed notwithstanding, her appointment was to the post of Cane Clerk (Seasonal) in Clerical Grade IV. There was no independent post of Hindi Typist or Hindi Typist (Seasonal) Clerical Grade.

6. Further, the quoted pleadings of the parties do not indicate any averment by defendant-appellant that the promotions to the post under reference were governed by the merit-cum-seniority rule. There is obviously lot of difference in the manner of consideration if the promoted post is governed by seniority-cum-merit or merit-cum-seniority. In the former eventuality, the seniority shall have greater weightage, of course subject to the candidate fulfilling the minimum condition of eligibility. However, in the case of the latter eventuality, it is the comparative merit of the candidates which will score over the seniority.

7. In the light of the above facts, it is evident that the promotion given to defendant-appellant Kavita Devi was violative of the principles of seniority. The view recorded by the learned First Appellate Court is in accord with the law of the land and legally appropriate, apart from being in consonance with the principles of natural justice and fair play.

8. The reliance placed by the learned Counsel for the appellant upon The Central Council for Research in Ayurveda and Siddha v. Dr.K.Santha Kumari 2001 (2) SCT 1116 is mis-conceived. In that case, the promotion as a Research Officer was governed by the merit- cum-seniority rule. The promotion as a Research Officer was to a non-selection post. It was held by the Apex Court that if a selection is based on merit-cum-seniority, the seniority plays a secondary role and that seniority brings a person in consideration zone and if two persons are found to carry an equal merit, the seniority is preferred. It was further held that if, on the other hand, the selection is on seniority-cummerit, the merit will mean only fitness and suitability of that person to hold the promotional post. If a person is not found unfit or unsuitable, the senior will get promotion on his right. As already noticed, there is no plea in the present case that the promotion to the post of Cane Clerk Grade II was to be governed by merit-cum-seniority, and, in the absence of a pleading to that effect, due regard had been given to the seniority. In view of the fact that the plaintiff-respondent was recorded senior to defendant-appellant Kavita Devi, the promotion granted to the latter was invalid.

9. The facts noticed by the learned First Appellate Court have relevant bearing on the controversy in issue and the line of reasoning adopted by that Court is fully supported by the material obtaining on the file.

10. After the arguments had been initially addressed, learned counsel for the appellant placed on file certain documents evidencing the manner of promotion of appellant Kavita Devi in RSA No. 4234 of 2006. The reception of that document was validly resisted by the learned Counsel for the respondent on the plea that it did not form a part of the evidence adduced at the trial and reception of any evidence in second appeal is foreign to law.

11. No question of law, much less substantial in character, arises for consideration in this case. Both these Regular Second Appeals shall stand dismissed.

12. A copy of this order be placed on the connected file.