

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3401 OF 2009
(Arising out of SLP(C) No. 18279 of 2008)

State of Haryana & Ors.

.....Appellant

Versus

Rameshwar Dass

.....Respondent

JUDGMENT

H.L. Dattu,J.

Leave granted.

1) This is an appeal by Special Leave against the judgment and order of the Chandigarh High Court dated 28.8.2007 which arises in the following circumstances. On 27.6.1984, Rameshwar Dass, respondent before us, was appointed on the post of Fitter Coolie and subsequently his services were regularized on 1.4.1993. Meanwhile three other employees were appointed namely, Tej Pal, Rajinder Kumar and Dharmapal on 5.7.1984, 19.11.1984 and 20.11.1984 respectively, and were promoted on 26.3.1987 to the post of Water Pump Operator Grade-II and regularized on 1.4.1993.

2)The respondent went before the Trial Court with the principal plea, that, he is entitled to be promoted to the post of Water Pump Operator (WPO) Grade-II from the date when his juniors were promoted to the same post and for other consequential reliefs. The claim was opposed by the State of Haryana, stating that the respondent has no locus standi for filing the suit as there is no cause of action and also it is barred by limitation. It was also alleged that the co-employees of the respondent, who have been promoted, were appointed in different circles and did not belong to the Karnal Circle, where the respondent is continuing his service. Trial Court recorded that the appellants did not produce any seniority list being maintained at Divisional Level or Circle Level which could show that Tej Pal, who was appointed just after the respondent, was not junior to the respondent on the day when he was promoted as WPO on 26.3.1987. Similarly is the case with other employees named Dharam Pal who was appointed on 20.11.1984 and Rajinder Kumar who was appointed on 19.11.1984. Therefore, on the given date, respondent was senior to the other employees, who were promoted. Regarding locus standi and cause of action to file the suit is concerned, it was held that the cause of action is recurring and accrues every month when the benefit for promotion is denied to the respondent. Accordingly, the Civil Suit was dismissed by the Trial Court granting relief to the respondent herein to the extent that

he may be promoted to the post of WPO from 26.3.1987 and his salary accordingly be fixed.

3) Against the said judgment the appellants went before the Appellate Court contending that the seniority of work charge employees is maintained at Divisional Office Level and that of regular employees is maintained at Circle Office Level. Since respondent and other co-employees being work charge employees, at the given time, their seniority was being maintained in respective divisions, therefore, there was no necessity of maintaining seniority in different divisions collectively.

4) The First Appellate Court affirming the findings of the Trial Court observed that the respondent was appointed as Fitter Coolie on 28.6.1984 in the Karnal division and was regularized on 22.1.1994 on the same post and other co-employees, Tej Pal was appointed as electrical helper on 5.7.1984 in the Karnal division and was promoted to the post of WPO 22.1.1985, but was regularized only on 1.2.1994 and Rajinder Kumar was appointed as Mali-cum-Chowkidar on 19.11.1984 in the Kaithal division and was promoted to the post of WPO after being regularized on 21.1.1985. The Deputy Superintendent of appellants department admitted that prior to 1998 all the employees such as Fitter Coolie, Mali-cum-

Chowkidar, Keyman etc. used to be promoted as WPO. Thus, it becomes evident that respondent was senior to other co-employees.

5) Another similar case was brought to the notice of the First Appellate Court, *Om Prakash Bairagi v. State of Haryana*, wherein one Chander Prakash, junior to the Om Prakash, was promoted earlier to Om Prakash as WPO. The Trial Court in the said case held that Om Prakash was entitled to be promoted to the post of WPO from the date on which his junior Chander Prakash was promoted, which was confirmed by this Court.

6) The First Appellate Court after considering submissions of the learned counsel for the parties and documents on record, has come to the conclusion that the respondent ought to have been promoted from the date when his junior Tej Pal was promoted and modified the relief granted by the Trial Court to the extent that the respondent is entitled to the arrears of salary for a period of three years prior to the date of filing of the suit.

7) The appellants then moved an appeal before the High Court *inter alia* challenging the correctness of the order passed by the First Appellate Court. The High Court upholding the findings of the First Appellate Court dismissed the appeal.

8)The only point that would arise for our consideration in the present appeal is, whether the respondent is entitled for promotion and consequential benefits from the date claimed despite the fact that the employees whom the respondent is trying to compare, belong to different divisions.

9)On behalf of the appellants, it is contended that seniority of work charge employees is maintained at Divisional office level and that of regular employees made regular from work charge cadre from time to time is maintained in Circle office level. The employees who were promoted prior to the respondent belong to different circles or divisions therefore the respondent is not entitled for any promotion.

10)Learned counsel for the respondent has argued that the respondent being the senior most employee was not considered for promotion for the post of WPO while his juniors were promoted, and therefore he is entitled for the promotion and all the consequential benefits including the entire back wages.

11)It is beyond doubt and in fact admitted by the appellants that the respondent was appointed prior to other employees but was not promoted to the post of WPO. In all the replications filed before the Courts, the appellants have mainly stressed only on the ground that the other employees, who were promoted, were appointed in different divisions

and were promoted in those Divisions, and accordingly the claim of the respondent is not maintainable. It may be incidentally pointed out that the appellants in their petition have made some vague allegations suggesting that the respondent belongs to the work charge category and not regular employees category.

12)The High Court while considering the submissions made by the learned Counsel for the parties to the lis has observed that nothing has been produced by the appellants which could show that the Electrical Helper, Mali-cum-Chowkidar and Filter Coolie were having separate seniority lists in the year 1987.

13)It is evident that the appellants, while appointing the respondent and other employees, did not put them in different heads, cadres, circles or divisions, as the case may be, for the purpose of seniority. Therefore, when the appellants were giving promotions amongst the Grade IV employees for the post of WPO, they should have considered every employee, including the respondent, irrespective of the aforesaid categories and according to the seniority and past record.

14)This Court in the case of State of Orissa v. Durga Charan Das, (1966) 2 SCR 907, has stated that the promotion to a selection post depends upon several relevant factors, the number of vacancies in the posts is one factor; the number of persons eligible for the said promotions is another

factor; and the seniority of the said competitors along with their past record and their merits, is yet another factor.

15) It was also observed by this Court in the case of Brooke Bond India (P) Ltd. v. Workmen, (1963) 1 LLJ 256, that at a given time, if more than one person are eligible for promotion, seniority should be taken into account and should prevail unless the eligible persons are not equal in merit.

16) In the case of Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715, wherein it has been held by this Court that once an incumbent is appointed to a post according to the rules, his seniority has to be counted from the date of his appointment and not from the date of confirmation.

17) This Court in the case of State of U.P. v. Dinkar Sinha, (2007) 10 SCC 548, held that the seniority may not be a fundamental right, but is a civil right. Infringement of the said right would be permissible only if there exists any rules validly framed under a statute and/or the proviso appended to Article 309 of the Constitution of India.

18) The respondent in the present case was in no way at fault. He had served faithfully in various capacities without any blemish from 27.7.1984. The treatment meted out to the respondent can be characterized as discriminatory. Thus, appellants should have promoted

the respondent before promoting other employees according to the seniority of the employees.

19) In view of the above discussions, the appellants are directed to give promotion to the respondent with effect from 26.03.1987 and consider his name for further promotions and benefits on the basis of seniority. Further appellants are directed to pay only Rs. 35000/- in full and final settlement for all his back wages.

20) With the aforesaid modifications, the appeal is dismissed. No order as to costs.

**New Delhi,
May 08, 2009.**



.....J.
[TARUN CHATTERJEE]

.....J.
[H.L. DATTU]