

PUNJAB STATE ELECTRICITY BOARD LTD.

v.

JAGDEV SINGH AND ORS.

(Civil Appeal No. 3977 of 2006)

JUNE 12, 2008

[DR. ARIJIT PASAYAT AND P.P. NAOLEKAR, JJ.]

Service Law – Promotion – Suit seeking injunction from promoting their juniors dismissed – First Appellate Court holding the plaintiffs entitled to promotion from the date their juniors were promoted – Dismissal of Second Appeal – On appeal, held: Order of High Court set aside as Office Orders/Circulars relied on by both the parties were not taken into consideration by High Court – Matter remitted to High Court.

Respondents-plaintiffs filed a suit claiming their promotion. They stated that their juniors had already been promoted on 23.5.1991 while they had qualified for the promotion on 19.11.1990. Trial Court dismissed the suit. First Appellate Court held that the plaintiffs were entitled to promotion from the date their juniors were promoted. Second Appeal was dismissed upholding the Order of First Appellate Court.

In appeal to this Court appellant-Board contended that the High Court while passing the judgment had not taken into consideration Circular No.4/18/81-IPP/5594 dated 27.4.1982 wherein instructions regarding determination of eligibility for promotion to higher posts were given.

Respondents contended that the Regulations were amended vide Office Order No. 615/Reg. 293 (Circular No. 46/87) dated 15.10.87 and Office Order No. 674/Reg.-25/A/ Vol.IV dated 5.10.89 (Circular No. 35/89) were not taken into consideration by the High Court.

A Disposing of the appeal, the Court

HELD: Keeping in view the fact that certain office Orders/Circulars, relied on by both the parties were not considered by High Court, the impugned order of the High Court is set aside and the matter remitted to it for consideration on merits. The relevant Circulars and regulations including the amendments applicable to the facts of the case have to be duly considered. [Para 7] [1150-B & C]

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C CIVIL APPELLATE JURISDICTION : Civil Appeal NO. 3977 of 2006

From the final Judgment and Order dated 22.7.2003 of the High Court of Punjab and Haryana at Chandigarh in regular Second Appeal No. 1176 of 2001

D Vivek Kishor, Ruchi Guar Nanda, Sangeeta Bharti and Rajiv Nanda for the Appellant.

R.K. Kapoor, Mansi Dhiman and Anis Ahmed Khan for the Respondents.

E The Judgment of the Court was delivered by

F **Dr. ARIJIT PASAYAT, J.** 1. The appellant-Punjab State Electricity Board Ltd. (in short the 'Board') has questioned correctness of the judgment rendered by a learned Single Judge of the Punjab and Haryana High Court dismissing the Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 (in short the 'CPC').

G 2. A suit was filed by the respondents-plaintiffs in the Court of Senior Sub-Judge, Patiala for declaration with consequential relief of permanent injunction. They claimed to be entitled to be considered for promotion as Assistant Engineer (Electrical) in terms of the order dated 5.10.1989 passed by the Board being Technical Subordinates grade-I. Relief of permanent injunction was claimed for restraining the Board and its functionaries from promoting any Technical Subordinate Grade-I on the basis of the departmental examination, as the plaintiffs were

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senior to private defendants, and had qualified in the departmental examination held on 15.5.1991. The examination was conducted on 26.3.1991. Certain employees who were juniors to the plaintiffs were promoted on 23.5.1991. These persons had passed the departmental examination on 19.11.1990. A

3. The suit was dismissed by the trial Court. In appeal, the First Appellate Court observed that the plaintiffs were entitled for promotion from the date their juniors were promoted as Assistant Engineer (Electrical) vide order dated 23.5.1991 with all consequential benefits. The Board questioned correctness of the decision by filing the Second Appeal which has been dismissed by the impugned order holding that when the promotion order was passed with regard to the private defendants, the plaintiffs were eligible for promotion and since the private defendants were juniors, the plaintiffs had acquired a right for consideration for promotion from the date their juniors were promoted. B C D

4. In support of the appeal, learned counsel for the appellant-Board submitted that the effect of the Circular No.4/18/81-IPP/5594 dated 27.4.1982 issued by the Chief Secretary to the Government of Punjab to all Heads of Departments etc. was not considered. The Circular contained instructions regarding determination of eligibility for promotion to higher posts from the date of occurrence of the vacancy. E

5. Learned counsel for the appellant further pointed out that the date of occurrence of vacancy has to be taken as the relevant date for determining eligibility of promotion to higher posts. Admittedly, the vacancy arose in November, 1989. When the private defendants fulfilled the eligibility criteria the vacancies still existed and their eligibility was to be reckoned from November 1989, i.e. occurrence of vacancies or in any event from November 1990 when they fulfilled the eligibility criteria. F G

6. Learned counsel for the respondents submitted that the Circular will have no relevance because the defendants qualified on 19.11.1990 and though their eligibility was to be reck- H

- A oned from that date in view of the vacancy of the posts, yet the respondents were not required to take any examination. Strong reliance was placed on certain amendments to the Regulations vide Office Order No.615/Reg.293 (Circular No.46/87) dated 15.10.87 and Office Order No.674/Reg.-25/A/Vol.IV dated 5.10.89 (Circular No.35/89). It is conceded by learned counsel for the parties that the effect of Circulars and the amendments to the Regulations have not been considered by the High Court.

7. Keeping in view the aforesaid aspects, we set aside the impugned order of the High Court and remit the matter to it for consideration on merits. Needless to say the relevant Circulars and regulations including the amendments applicable to the facts of the case have to be duly considered. Since the matter is pending since long, we request the High Court to dispose of the appeal in accordance with law as early as practicable preferably within six months from the date of receipt of this order.

8. The appeal is disposed of with no order as to costs.

K.K.T.

Appeal disposed of