

The Indian Law Reports

Before Hon'ble G. R. Majithia, J.

THE STATE OF PUNJAB,—*Petitioner.*

versus

S. I. SARUP SINGH,—*Respondent.*

Regular Second Appeal No. 454 of 1979.

November 26, 1991.

Code of Civil Procedure (5 of 1908) Section 9—Jurisdiction of Civil Court—Issuance of mandatory injunction—Power of Court.

Held, that the Civil Court could not assume the powers of competent authority and order that the plaintiff would be deemed to have been appointed to the post of Sub Inspector from a particular date. Assuming that the plaintiff was entitled to be promoted as Sub Inspector with effect from May 11, 1971, as recorded by the first appellate Court, a direction could only be issued to the competent authority to consider the case of the plaintiff for promotion from the date he is found eligible for promotion.

(Para 7)

Further held, the competent authority has to consider the overall record of service of the plaintiff before ordering promotion. Promotion is not granted as a matter of course nor can be claimed as a matter of right.

(Para 7)

Parminder Singh, AAG Punjab, for the Appellant.

Nemo, for the Respondent.

JUDGMENT

G. R. Majithia, J.

(1) This regular second appeal is directed against the judgment and decree of the first appellate Court affirming on appeal those of the trial Judge, whereby the suit of the plaintiff-respondent was decreed and it was held that he was entitled to the difference of pay and allowances from May 11, 1971 to the date he was promoted as Sub Inspector of Police and direction was given to the defendant-appellant to treat the plaintiff-respondent senior to Lajpal Singh and that the plaintiff-respondent was entitled to all rights, benefits and privileges attached to the post of Sub Inspector with effect from May 11, 1971.

(2) Plaintiff-respondent (hereinafter the plaintiff) filed a suit for recovery of Rs. 3,350 as difference of pay drawn by him and that of Sarwan Singh, who was junior to him, with effect from April 13, 1969 to April 13, 1970. He also sought a mandatory injunction directing the defendant-appellant (hereinafter the defendant) to consider him senior to Sarwan Singh, Sub Inspector for all intents and purposes and that he was entitled to all rights, benefits and privileges attached to the post of Sub Inspector from the date he passed the Upper Class Training Course.

The facts :—

The plaintiff passed F.A. examination from the Panjab University in the year 1944; that he was selected as Assistant Sub Inspector on March 15, 1945 and was confirmed as such on September 15, 1948; that his name was brought on list 'E',—*vide* order dated December 14, 1962 and was selected to undergo upper class training course at Police Training School, Phillaur; that the order dated December 14, 1962 was cancelled on December 15, 1962. It was pleaded in the plaint that the order of cancellation was illegal and against the principles of natural justice; that the persons who were selected for training along with the plaintiff were sent for training on January 1, 1963, but he was dropped; that the order of removal of plaintiff's name from list 'E' was never communicated to him; that the order of cancellation affected civil rights of the plaintiff and could not be passed without complying with the principles of natural justice; that he was not treated and considered above Sarwan Singh, Sub Inspector on the ground that he was not on promotion list 'E' nor he could qualify the Upper Class Training Course by that time; that Sarwan Singh Sub Inspector was much junior to the plaintiff, but the former was promoted prior to the plaintiff since the plaintiff's name had been illegally removed from list 'E'; that the plaintiff was sent for upper class training course under the orders of the High Court dated September 30, 1970; that in the meantime, five Sub Inspectors junior to the plaintiff had been selected,—*vide* order No. 11467/72/ASIM, dated September 21, 1970; that the plaintiff passed the upper class training course on February 25, 1971 but was not considered for promotion although the persons junior to him were promoted,—*vide* orders dated May 11, 1971 and August 24, 1971; and that the plaintiff was entitled to be promoted as Sub Inspector before Shri Lajpal Singh, who was promoted on May 11, 1971.

(3) The suit was contested by the defendant. In the written statement it was admitted that the plaintiff's name was brought on

kacha list 'E' with effect from December 14, 1962, and not on regular list, but the same was cancelled on the following day; that the removal order was communicated to all concerned; that Sarwan Singh was already on promotion list 'E' and he was promoted as officiating Sub Inspector on merit; that the plaintiff could not be considered for promotion because his name did not exist on promotion list 'E' since he had not qualified upper class training course by that time; that the plaintiff passed the said course in February, 1971 but he was not considered eligible for promotion upto August 24, 1971; that the persons junior to the plaintiff whose names were brought on promotion list 'E' were considered for promotion on merits and were promoted to the rank of Sub Inspector; that the claim of the plaintiff for promotion above S. I. Lajpal Singh was not justified and that the promotion was made strictly in accordance with the provisions of Rule 13.1 of the Rules.

(4) From the pleadings of the parties, following issues were framed by the trial Judge :—

1. Whether the order of the D.I.G. dated 15th December, 1962 is void and ineffective; if so, its effect ? OPP.
2. Whether the plaintiff is entitled to the amount as claimed by him ?
3. Whether the plaintiff is senior to Sarwan Singh Sub Inspector; if so, its effect ?
4. Whether the suit of the plaintiff is within limitation ?
5. Whether the matter in dispute is not justiciable ? OPD.
6. Whether the order of removal from 'E' list was communicated to the plaintiff ?
7. Relief.

(5) Issues No. 1, 3, 4 and 6 were decided by the trial Judge in favour of the plaintiff; issue No. 5 was not pressed by the defendant. under issue No. 2 it was held that the plaintiff was entitled to be considered as promotee to the rank of Sub Inspector with effect from May 11, 1971 when his junior Shri Lajpal Singh was promoted and, consequently, the plaintiff was entitled to difference of pay and allowances drawn by him and S.I. Lajpal Singh from May 11, 1971.

(6) As observed earlier, the first appellate Court dittoed the finding recorded by the trial Judge and held that the plaintiff was entitled to be promoted as Sub Inspector prior to Shri Lajpal Singh, Sub Inspector and directed the defendant to treat the plaintiff as having been promoted prior to Shri Lajpal Singh, Sub Inspector and give him all the benefits attaching to the post of Sub Inspector from that date.

(7) The first appellate Court is in error in holding that it could give direction that the plaintiff will be deemed to have been promoted to the post of Sub Inspector prior to the promotion of Shri Lajpal Singh. The Civil Court could not assume the powers of competent authority and order that the plaintiff would be deemed to have been appointed to the post of Sub Inspector from a particular date. Assuming that the plaintiff was entitled to be promoted as Sub Inspector with effect from May 11, 1971, as recorded by the first appellate Court, a direction could only be issued to the competent authority to consider the case of the plaintiff for promotion from the date he is found eligible for promotion. The competent authority has to consider the overall record of service of the plaintiff before ordering promotion. Promotion is not granted as a matter of course nor can be claimed as a matter of right. It is to be granted after making overall assessment of service record of the public servant. Merely qualifying in the upper class training course will not automatically make the plaintiff eligible for promotion. He can only be eligible for consideration for promotion. The Courts below have not correctly understood the scope of their own jurisdiction. The direction issued for treating the plaintiff to have been promoted to the rank of Sub Inspector with effect from May 11, 1971 is not only unjustified and unwarranted but illegal too. The findings recorded by the Courts below are reversed and it is held that the plaintiff will be entitled for consideration for promotion to the post of Sub Inspector of Police with effect from May 11, 1971. If the competent authority, on consideration of the overall service record of the plaintiff, finds that the plaintiff is entitled to promotion, he will grant him promotion from the date he is found eligible. Eligibility is for the competent authority to determine. In the light of the observations made above, if, on consideration of the service record, the plaintiff is not found eligible for promotion, the competent authority by passing a speaking order will hold that on consideration of the service record the plaintiff has not been found fit for promotion. Plaintiff will only be entitled for the consequential relief like payment of salary and other perks if he is found fit for promotion and not otherwise.

(8) For the reasons aforesaid, the appeal is allowed, the judgment and decree of the first appellate Court is modified to the extent that the plaintiff's claim for promotion to the post of Sub Inspector of Police will be considered with effect from May 11, 1971, in the light of the observations made in the earlier part of this judgment. In all other respects, the judgment and decree of the first appellate Court are reversed, but with no order as to costs.

S.C.K.

Before Hon'ble J. L. Gupta, J.

MRS. NIRMAL MITTAL,—Petitioner.

versus

THE STATE OF HARYANA AND ANOTHER,—Respondents.

Civil Writ Petition No. 9344 of 1989.

January 19, 1993.

Constitution of India, 1950—Art. 226/227—Grant of special increment for employees undergoing sterilisation—Fixation of cut off date for making grant admissible is irrational—Haryana Government notification dated July 20, 1981—Classification on the basis of date of surgery is artificial and unconstitutional and petitioner entitled to grant of special increment—However, petition being belated benefit restricted to 38 months preceding the date of the petition.

Held, that the object of issue of letter dated August 31, 1976 was to ensure that the Government employees who have two or three surviving children must undergo the sterilisation operation and those who do so will be given a special increment. For achieving this object, it is really not material as to when an employee has actually undergone the said surgery. All persons falling within the mischief of the Rule promulgated in the year 1976 are bound to undergo the operation. Once they do so, there is no basis for classifying them on the basis of the date of the issue of letter of July 20, 1981. The measure adopted by the Government is illustrative of the policy of Rod and Carrot. Those who have undergone the surgery prior to July 20, 1981 are sought to be dealt with by a rod while others who have undergone the surgery on or after July 20, 1981 become entitled to the benefit of special increment. Since every Government employee is governed by a uniform rule that he or his spouse has to undergo the surgery, all employees who have already undergone or are going to undergo the surgery in future, constitute one homogenous class. The date of surgery is of no material consequence. It really does not have any relation with