

(2009) 04 P&H CK 0152

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Haryana Power
Generation Corporation
Ltd. and Others

APPELLANT

Vs

Mai Chand

RESPONDENT

Date of Decision: April 18, 2009

Citation: (2009) 156 PLR 107

Hon'ble Judges: Mahesh Grover, J

Bench: Single Bench

Judgement

Mahesh Grover, J.

The plaintiff-respondent after his retirement from services of the appellants filed a suit claiming that he was entitled to be promoted to the higher post which post was lying vacant for more than 2 years prior to his retirement and which promotion was not awarded to him despite the fact that he was entitled to it and that he be granted the deemed promotion from the date he became entitled to it and he be granted all consequential benefits thereof.

2. It was the pleaded case of the appellants that the plaintiff-respondent had joined their services as a Meter Reader in the Punjab Electricity Board and after getting due promotions and after completing 35 years of successful service he retired on 31.10.2004. The posts of Head Circle as well as Circle Superintendent were lying vacant w.e.f. 2001 but the appellants do not promote him, even though there was intra departmental request for filling up the posts of Circle Assistant and Circle Superintendent and Head Clerk. It was pleaded that on 31.7.2002 two posts of Head Clerk were lying vacant and on 31.10.2003 two posts of Circle Superintendent were also lying vacant.

Plaintiff-respondent was qualified and eligible for promotion which was denied to him. Subsequently after his retirement, his junior Sh. Jagdish Chander was promoted as Head Clerk on 7.12.2004. It was further pleaded that despite the fact that he had made representations on 8.5.2002, 21.5.2002, 16.8.2002, 25.4.2003, 16.6.2003 and 18.5.2004

urging the appellants to fill the vacant posts by way of promotion, the same has not been done. Therefore, his rights have been seriously prejudiced.

3. The appellants contested the suit and admitted that the plaintiff respondent was appointed Meter Reader in February, 1965 and it was further pleaded that he was selected as LDC in the Punjab Electricity Board in the year 1966 and after creation of State of Haryana he served as employee of Haryana State Electricity Board and was then promoted as Upper Division Clerk and then promoted to the post of Circle Assistant in April 1994. Later on, plaintiff-respondent services were shifted to Haryana Power Generation Corporation (arrayed as defendant No. 1) where he served as Circle Assistant and he retired as such on 31.10.2004. The vacancy of Head Clerk as well as Superintendents were admitted to be lying vacant but it was denied that the promotion was denied to the plaintiff-respondent on account of any mala fides. His eligibility for the said post was questioned and it was further pleaded that in any eventuality merely because posts were lying vacant does not make any right in favour of the incumbent even though eligible. It was further pleaded that the plaintiff-respondent has since retired and he could not make any claim for his promotion thereafter.

4. Following issues were framed before the learned Trial Court:

1. Whether the plaintiff is entitled to be promoted as Head Clerk w.e.f. 2001-2002 and again be promoted as Circle Superintendent w.e.f. 2003? OPP

2. In case issue No. 1 is decided in favour of the plaintiff, then whether the plaintiff is also entitled to relief of injunction as prayed for? QPP

3. Whether the suit filed by the plaintiff is not maintainable in the present form? OPD

4. Whether the plaintiff has not approached the court with clean hands? OPD

5. Relief.

5. Learned Trial Court dismissed the suit.

6. In appeal, the findings of the learned Trial Court were upset which has resulted in - the filing of the present appeal.

7. It is contended by the learned Counsel for the appellants that the plaintiff-respondent could not make any grievance of his not being promoted in the absence of any junior being promoted during his tenure of service. It was pleaded that since there was no discrimination merely because the post was lying vacant, the plaintiff-respondent has no right to claim promotion as mere pendency of vacant post does not make any right on the incumbent.

8. On the other hand, learned Counsel for the respondent contended that he was certainly entitled to be promoted as according to the rules, he was eligible and being senior he was eligible for promotion when the posts are lying vacant.

9. I have heard learned Counsel for the parties and have perused the impugned judgments.

10. It is a settled principle of law that a person does not has any right to be promoted, at best he has a right to be considered. Merely because the posts are lying vacant would not confer any enforceable right to him in the absence of any discrimination having been shown by him. It is not the case of the respondent that his juniors were promoted in preference to him rather it was his case that he was not promoted and after his retirement his juniors were promoted. The plaintiff-respondent did not make any attempt to invoke this grievance of his regarding promotion during his tenure of service and for die same reason he cannot invoke it after his retirement.

11. The question of law that arises for the determination of this Court is as under:

1. Whether an incumbent has a right to be promoted merely because vacancy is, existing?

2. Whether in the absence of any discrimination having been shown during the tenure of service, a person can still make a grievance that his junior is promoted after his retirement?

12. For the reasons stated above, this Court is of the opinion that an employee does not have any vested right to be promoted. At best, he has a right to be considered and merely because posts are lying vacant did not give him right to be promoted unless he shows that he has been discriminated against and denial of promotion to him while promoting some juniors is an act driven by mala fide of an employer. Besides, juniors were promoted after his retirement and at that point of time the ground of discrimination would not be available to such a retiree.

13. In the above terms, I have answered the aforementioned questions and I am of the considered opinion that the appeal deserves to succeed and the impugned order is accordingly set aside.