

(2010) 05 P&H CK 0284

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Gurcharan Singh

APPELLANT

Vs

Punjab State and Others

RESPONDENT

Date of Decision: May 24, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 80

Citation: (2010) 159 PLR 508

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ranjit Singh, J.

The appellant joined the service at Punjab Civil Secretariat as Daftri in the year 1954. He was confirmed on this post in the year 1956. During May 1960, he was promoted as Restorer and confirmed on his post in the year 1966. The minimum qualification for the post of Restorer was Matriculation. It appears that this qualification was relaxed by the competent authority to promote the appellant and some similarly situated persons as Restorer. Subsequently, some under matriculate Restorers including the appellant were promoted as Clerks on 05.05.1967 by relaxing the educational qualification of matriculation. This arrangement was on experimental basis for a period of 3 months. The appellant claims to have worked hard and earned good reports. When the appellant and some other persons continued to work as Clerk for a period of one year, they had approached the department for their regularisation as Clerks. Instead of allowing the prayer, the appellant was reverted to the post of Restorer on 12.03.1969. This was without affording any opportunity of hearing. The appellant, accordingly, represented against the same and he was again promoted on 22.05.1974. Subsequently, the appellant passed matriculation in December 1981 and was regularized as Clerk. The scale of Clerk was accordingly allowed to the appellant on 17.07.1982. The appellant, however, prayed

for grant of scale from the date he was made to work as Clerk. After serving a notice u/s 80 CPC, he filed the present suit.

2. The suit was resisted by the respondent. In a joint written statement filed, the plea of estoppel was taken. Fact that the appellant was initially appointed as Daftri and promoted and confirmed as Restorer was admitted. The qualification of matriculation was relaxed while promoting the appellant from Daftri to Restorer but it was stated that he could not be promoted as Clerk against the rules and this qualification was never relaxed for the purpose of his promotion. Plea was that the appellant was simply adjusted against the post of Clerk on purely temporary basis for a period of six months, which was also on a clear undertaking given by him (the appellant) that he would not be allowed anything more than the pay and allowances already drawn by him as Restorer. It was accordingly stated that the posting alone would not entitle him for seniority or additional remuneration.

3. On the basis of the pleadings, following issues were framed:

i) Whether the plaintiff is entitled to the pay scale, seniority and other benefits as clerk with effect from 24-5-1967? OPP

ii) Whether the suit is within time? OPP

iii) Whether the plaintiff is estopped by his act and conduct from filing the present suit? OPD

iv) Whether the suit is not justiciable? OPD

v) Whether the notice served by the plaintiff u/s 80 C.P.C. is not valid? OPD.

vi) Relief.

4. The suit was dismissed. The appeal filed against the same was also dismissed. The appellant has thus filed the present Regular Second Appeal.

5. Mr. D.S. Brar, appearing for the appellant has made two fold submissions before me. The Counsel contends that though there may be undertaking given by the appellant that he will not claim any pay and allowances for the post of Clerk when he was initially posted as Clerk in the year 1967 but there was no such undertaking given by him when he was made to work as Clerk on 22.05.1974. As per the Counsel, thereafter the appellant had continued to work as Clerk. He was regularised on 17.07.1982 after passing his matriculation examination. The Counsel accordingly contends that the appellant would be entitled to pay and allowances payable to the post of Clerk atleast on the principle of "Equal Pay for Equal Work" as he concededly had worked on the post of Clerk from 22.05.1974 till 16.07.1982 when he was given this regular pay scale w.e.f. 17.07.1982.

6. On the other hand, the State Counsel would contest the claim. The submission is that there was no promotion granted to the appellant and it was only the posting

which was done. Since the appellant was not fulfilling the qualification requisite for being promoted to the post, he has neither promoted nor could claim Equal Pay for Equal Work, the qualification being different.

7. In support of his contention, Mr. Brar has referred to Kulbir Singh and Ors. v. The State of Punjab and Anr. (1998-3) 120 P.L.R. 718 : 1998(4) R.S.J. 137. This was a case where the petitioners were employed as Daily wager Octroi Clerks. They claimed for minimum pay scale available to the Octroi Clerks employed by the respondent therein. In this background, the directions were issued to pay the minimum pay scale to the petitioners as was available to the regular Octroi Clerks with permissible allowances on that basis. The ratio of law laid down in this case apparently would not be attracted to the facts in this case. The appellant was working as Restorer and was posted to work as Clerk.

8. Reference is also made to Man Mohan Singh and Anr. v. State of Haryana and Anr. 2000 (2) R.S.J. 383. This is a case, where the petitioners therein were appointed as Computer Programme Officer on adhoc basis. The extension of the service was given after six months but instead of giving regular scale of pay, the appointment was made on the fixed salary on contract basis. This action on the part of the respondents therein was held unjust, unfair and exploitation. The petitioners therein were held entitled to draw the wages equal to the minimum pay scale which the regular employee was receiving.

9. Concededly, the appellant was not qualified to be promoted to the post of Clerk. Fact remains that initially the appellant was made to work as Clerk but with undertaking that he will not claim any benefit on this count. The plea for regularizing him on the post of Clerk by relaxing the educational qualification was not accepted and he was thereafter made to work as the Restorer. Subsequently again, the appellant and some of the employees were posted as Clerk. Whether the posting could mean promotion thus would be a issue. Merely asking the appellant to work on the post of Clerk would not entitle the appellant to claim seniority on that count and then to claim equal pay for the post of clerks on the principal of equal pay for equal work. The appellant may have worked as a Clerk but was receiving the salary of his post which was of Restorer. Since the appellant's promotion to the post of Clerk only was on fulfilling the educational qualification, the principle of equal pay also may not be attracted in this case as the appellant was certainly not qualified to be promoted to the post of Clerk. Moment the appellant had fulfilled the qualification he was promoted and given the appointment as Clerk.

10. The principle of Equal Pay for Equal Work would not strictly be attracted to the facts of this case. Neither the seniority can be given to the appellant for this period nor the pay as he was not qualified for the post of Clerk. It was a mere posting which would not entitle the appellant to grant any right of appointment. Prayer is accordingly declined. The Regular Second Appeal is, therefore, dismissed.