



RSA-4623-2000 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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RSA-4623-2000 (O&M)

Date of decision : 15.01.2025

C.C.S., HAU, Hisar

... Appellant

Versus

Radhey Shyam and another

.. Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate for the appellant.

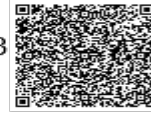
Mr. Vivek Lamba, Advocate for respondent No.1.

Mr. Kulwant Singh Dhanora, Advocate for respondent No.2.

Pankaj Jain, J. (Oral)

The defendant is in second appeal. For convenience, the parties hereinafter are referred to by their original position before the Court of first instance i.e. respondent No.1 as plaintiff and the appellant as defendant No.1.

2. The dispute relates to promotion to the post of Foremen Instrument from feeder cadre of Senior Mechanic/Instrument Mechanic. As per the admitted facts on file, prior to 24.03.1994, there were no promotional avenues for the employees holding post of Senior Mechanic/Instrument Mechanic. On 24.03.1994, the appellant took a policy decision. Cadre of Senior Mechanic/Instrument Mechanic was approved as feeder cadre and was recognized as source of recruitment to the promotional post of Foreman Instrument. The necessary amendment in the Rules was carried out.



3. Prior to 27.04.1994, qualification for the post of Foreman was only diploma in Electronic Engineering. However, vide memo dated 27.04.1994, the same was altered and along with Diploma in Electronic Engineering, ITI certificate in Electronic Engineering/Instruments Trade with ten years experience in repair was also prescribed as an alternate qualification to the post of Foreman Instrument. To clarify the position further, the proportion from each of the alternate qualified personnel was prescribed as 1:2 i.e. 33% quota was prescribed for ITI certificate-holders and 66% for the diploma-holders on 22.02.1996. After 22.02.1996, one post in the promotional cadre fell vacant. Proforma respondent, who was the diploma-holder and senior most amongst the diploma holders, was promoted.

4. The promotion of proforma respondent was challenged by the plaintiff vide instant suit. The Court of the first instance dismissed the suit. The Appellate Court reversed the findings holding that since plaintiff was senior by length of service, he was entitled to be promoted. While doing so, the lower Appellate Court failed to appreciate the quota prescribed for diploma-holders vis-a-vis ITI certificate-holders.

5. Learned Senior counsel appearing for the appellant has assailed the findings recorded by the lower Appellate Court submitting that since the quota was prescribed whereby 66% of the promotional post were reserved for the diploma-holders and only 33% was to be filled from amongst the ITI certificate-holders, the first post that fell vacant in the promotional cadre after prescription of quota was required to be filled from the diploma-holders. However, the lower Appellate Court has completely ignored the aforesaid important fact.



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6. Per contra, learned counsel for the respondent submits that the lower Appellate Court has rightly held that the promotion was to abide by the seniority amongst the feeder cadre.

7. I have heard learned counsel for the parties and have carefully gone through the record of the present case.

8. It is not disputed that the quota was prescribed for promotional cadre vide notification dated 22.02.1996. 66% of the promotional post were to be filled by the diploma-holders. It has also come on record that the plaintiff is not a diploma-holder but an ITI certificate holder. For ITI certificate holders, quota prescribed as per amendment is 33%. Resultantly, this Court finds that the Appellate Court erred in ignoring the notification dated 22.02.1996. After the said notification, the authority was required to fill the promotional post as per the quota prescribed. The first post was to be filled amongst the diploma-holders.

9. In view of the above, the judgment passed by the lower Appellate Court is ordered to be reversed that passed by the trial Court is restored. The appeal is allowed. Pending application, if any, shall stand disposed of accordingly.

(PANKAJ JAIN)
JUDGE

January 15, 2025
A.Kaundal

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No