



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

RSA-4853-2001(O&M)

RESERVED ON : 05.09.2025

PRONOUNCED ON : 19.09.2025

Subhash Chander Gupta

....Appellant

Versus

Haryana Agro Industries Corporation Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPINDER SINGH NALWA

Present: Mr. K.L. Arora, Advocate for the appellant/plaintiff.

Mr. Padamkant Dwivedi, Advocate,
Ms. Mansi, Advocate and
Ms. Ayushi, Advocate for the respondent.

DEEPINDER SINGH NALWA, J.

1. The present Regular Second Appeal has been directed against the judgment and decree dated 14.08.2001 passed by learned Additional District Judge, Chandigarh (hereinafter to be referred as 'Lower Appellate Court'), whereby the appeal filed by the respondent/defendant was allowed and the judgment and decree dated 24.12.1997 passed by learned Sub Judge IInd Class, Chandigarh (hereinafter to be referred as 'trial Court'), was reversed and the suit filed by the appellant/plaintiff was dismissed.

2. The brief facts of the case are that the appellant/plaintiff was appointed as Salesman-cum-Clerk in the pay-scale of Rs.110-225 in the respondent/Corporation vide appointment letter dated 11.07.1973 and he joined the abovesaid post on 14.07.1973. The service of the



appellant/plaintiff was terminated by the respondent/defendant vide order dated 22.12.1976. However, vide settlement dated 22.06.1977, the appellant/plaintiff was paid retrenchment compensation and was appointed afresh on the post of Clerk in the pay-scale of Rs.110-225. In pursuance to the abovesaid settlement, the appellant/plaintiff joined on the post of Clerk on 28.09.1977. One Sh. Subhash Chander son of Sh. Yog Raj was appointed as a Clerk by the respondent/defendant w.e.f. 13.04.1974. His services were also terminated vide order dated 02.12.1976. However, as per the settlement, he was also appointed afresh vide letter dated 20.06.1977 on the post of Clerk-cum-Typist and was further promoted to the post of Junior Assistant vide order dated 02.01.1979 in the pay-scale of Rs.160-400 by giving the benefit of service rendered by him w.e.f. 13.04.1974 for the purpose of seniority. One Sh. Bhagwan Dass Arora was also given the same benefit as granted to Sh. Subhash Chander son of Yog Raj. The appellant/plaintiff submitted a representation that as the previous service rendered by Sh. Subhash Chander son of Yog Raj and Sh. Bhagwan Dass Arora was taken into consideration for the purpose of fixation of seniority, the same benefit should also be given to the appellant/plaintiff. In other words, the case of the appellant/plaintiff was that the service w.e.f. 14.07.1973 should be taken into consideration for the purpose of fixation of seniority and he should be further promoted on the post of Junior Assistant w.e.f. 02.01.1979, when Subhash Chander son of Yog Raj was promoted to the abovesaid post. No decision was taken by the respondent/defendant. As a consequence of this, the appellant/plaintiff filed a suit for declaration to



the extent that service rendered by him before his termination i.e. w.e.f. 14.07.1973 should be taken into consideration for the purpose of seniority of Clerks and he should be promoted on the post of Junior Assistant w.e.f. 02.01.1979 in parity with Sh. Subhash Chander son of Sh. Yog Raj.

3. Upon notice, the respondent/defendant caused appearance and filed written statement. It was the case of respondent/defendant that in terms of settlement dated 22.06.1977, all the benefits which the appellant/plaintiff was entitled to, were granted accordingly. It was pleaded that as Sh. Subhash Chander son of Sh. Yog Raj was initially appointed on regular basis before his service was terminated, as such, there is no parity with Sh. Subhash Chander and therefore, services rendered by the appellant/plaintiff on adhoc basis before his termination cannot be taken into consideration for the purpose of fixation of seniority.

4. From the pleading of the parties, following issues were framed by the learned trial Court :-

1. Whether the plaintiff is entitled for declaration as prayed for? OPP
2. Whether plaintiff is also entitled for mandatory injunction as prayed for?OPP
3. Whether the suit is bad for non joinder of necessary parties?OPD
4. Whether the suit is not maintainable in the present form?OPD.
5. Whether the civil court has no jurisdiction to try and entertain the present suit?OPD
6. Relief.



5. The learned trial Court vide judgment and decree dated 24.12.1997, decreed the suit in favour of the appellant/plaintiff. As per the said judgment and decree passed by the learned trial Court, the appellant/plaintiff was entitled to be promoted on the post of Junior Assistant w.e.f. 02.01.1979 along with the benefit of pay-scale. It was also held that the appellant/plaintiff was entitled for seniority taking into consideration the date of his initial appointment as Salesman-cum-Clerk i.e. 14.07.1973.

6. Aggrieved against the judgment and decree dated 24.12.1997 passed by the learned trial Court, the respondent/defendant filed an appeal challenging the abovesaid judgment and decree. The aforesaid appeal came up for consideration before the learned Lower Appellate Court on 14.08.2001. The learned Lower Appellate Court was pleased to accept the appeal filed by the respondent/defendant and the impugned judgment and decree dated 24.12.1997 passed by the learned trial Court was reversed and suit filed by appellant/plaintiff was dismissed.

7. Aggrieved against the judgment and decree dated 14.08.2001 passed by the learned Lower Appellate Court, the appellant/plaintiff has filed the present Regular Second Appeal.

8. Learned counsel for the appellant/plaintiff submits that in the light of Ex.P32 to Ex.P34, the service rendered by the appellant/plaintiff as Salesman-cum-Clerk before his termination should be taken into consideration for the purpose of fixation of seniority as Clerk. He has placed reliance upon the judgment passed by Hon'ble the Supreme Court in *Gopi Chand Vishnoi Vs. State of U.P. and another, 2006 (9) SCC*



694. He has also placed reliance upon the judgment of Delhi High Court in *Kuldeep Chand Sharma and another Vs. Delhi Administration and another, 1978 (2) SLR 379* and judgment of the Co-ordinate Bench of this Court in *Dr. Surindra Kumar Mishra and others Vs. State of Haryana and another, 2011 (2) SLR 438*.

9. On the other hand, the learned counsel for the respondent/defendant submits that the services rendered by the appellant/plaintiff before he was retrenched from service on adhoc basis cannot be taken into consideration for the purpose of fixation of seniority as Clerk. It is contended by learned counsel that there is no similarity between the appellant/plaintiff and Sh. Subhash Chander son of Sh. Yog Raj. It is the case of learned counsel for the respondent that in fact, Sh. Subhash Chander son of Sh. Yog Raj was appointed on regular basis. In other words, as initial appointment of Sh. Subhash Chander before his service was terminated was on regular basis; whereas, the appellant/plaintiff was appointed on adhoc basis, as such, the appellant/plaintiff cannot claim parity with Sh. Subhash Chander son of Sh. Yog Raj. He further submits that the respondent/defendant has rightly taken into consideration the regular service rendered by Subhash Chander son of Yog Raj before his services were terminated for the purpose of fixation of seniority as Clerk and, as such, no interference is called for in the judgment and decree dated 14.08.2001 passed by the learned Lower Appellate Court.

10. I have heard learned counsel for the parties at some length; perused the paper-book and have gone through the evidence led by the



parties. The issue involved in the present appeal is “as to whether the period of adhoc service rendered by the appellant/plaintiff as a Clerk, prior to his termination and subsequent reappointment, can be considered for the purpose of seniority as Clerk?”

11. A perusal of the facts of the case would show that the appellant/plaintiff was appointed as Salesman-cum-Clerk on adhoc basis vide appointment letter dated 11.07.1973. He joined on the post of Clerk on 14.07.1973. His service was terminated w.e.f. 22.12.1976 after paying retrenchment compensation. He was appointed afresh on 26.09.1977, as per the settlement dated 22.06.1977. In the case of Sh. Subhash Chander son of Sh. Yog Raj, he was initially appointed as Clerk (General) Apprentice under the Apprenticeship Act, 1961 on 12.04.1973 and was appointed on regular basis on the post of Clerk w.e.f. 13.04.1974. He was never appointed on adhoc basis.

12. A perusal of the abovesaid facts would show that there cannot be any parity of the appellant/plaintiff with Sh. Subhash Chander son of Sh. Yog Raj. In regard to reliance made by learned counsel for the appellant/plaintiff on Ex.P32 to P34 is concerned, a perusal of Ex.P32 would show that it was just a proposal whereby it was proposed that the appellant/plaintiff should rank senior to Sh. Subhash Chander son of Sh. Yog Raj. It was not a final decision and objections were called from the concerned officials. A perusal of the said proposal (Ex.P32) would also show that the fact Sh. Subhash Chander son of Sh. Yog Raj was appointed initially on regular basis, was also not taken into consideration by the authority. As far as Ex.P33 is concerned, a perusal thereof would



show that the employees who were initially appointed on adhoc basis and subsequently made regular in pursuance to the decision of Board of Directors, were entitled to fixation of seniority with their counterparts employed on regular basis with reference to the date of their joining service in the respondent/Corporation. In this regard, it is held that the abovesaid exhibit would not help the case of the appellant/plaintiff for the reason that his service was not regularized in terms of the decision of Board of Directors. In fact, the appellant/plaintiff was appointed afresh, as such, Ex.P33 is not applicable for the purpose of fixation of seniority in the case of appellant/plaintiff. As far as Ex.P34 is concerned, it refers to the case of Sh. M.P. Bhardwaj. The service of Sh. M.P. Bhardwaj was never terminated. In fact, he was appointed on adhoc basis which was followed by regular appointment. As such, Ex.P34 also does not support the case of the appellant/plaintiff.

13. Now coming to the judgments relied upon by learned counsel for the appellants. A perusal of the judgment passed by the Delhi High Court in ***Kuldeep Chand Sharma's*** case (supra) would show that the petitioners therein were only appointed on adhoc/temporary basis as Principals and were reverted to their substantive posts of Vice Principal on account of abolition of posts of Principal. The facts of the said case were totally different from the instant case, as such, the same would not be applicable in the case of the appellant/plaintiff. In ***Dr. Surindra Kumar Mishra and others'*** case (supra), the petitioners therein continued to work for six to ten years on the post on adhoc basis and thereafter, their services were regularized. In the present case, the service of the



appellant/plaintiff was never regularized. In fact, service of the appellant/plaintiff was terminated and he was appointed afresh as per the settlement. As such, the facts in *Dr. Surindra Kumar Mishra and others'* case (supra) were totally different and would not be applicable in the case of the appellant/plaintiff. In regard to the judgment of Hon'ble the Supreme Court in *Gopi Chand Vishnoi's* case (supra), the case was in regard to grant of promotion of an employee and there was no issue in regard to fixation of seniority. As such, the abovesaid judgment also does not support the case of the appellant/plaintiff.

14. A perusal of the facts of the present case and the evidence led by the parties would show that the appellant/plaintiff was appointed on adhoc basis in the year 1973. His service was terminated by the respondent/defendant vide order dated 22.12.1976 and he was appointed afresh on 28.09.1977 on the post of Clerk. The appellant/plaintiff cannot claim parity with Sh. Subhash Chander son of Sh. Yog Raj for the purpose of fixation of seniority, as Sh. Subhash Chander son of Sh. Yog Raj was appointed on regular basis on the post of Clerk (General) Apprentice and thereafter, on the post of Clerk w.e.f. 13.04.1974 vide order dated 22.04.1974. For the purpose of grant of seniority, regular service has to be taken into consideration; whereas period of adhoc service does not create any right to seniority. The previous service is relevant for the purpose of determining seniority after re-appointment when the employee is again appointed on regular basis. As Sh. Subhash Chander son of Sh. Yog Raj was appointed on regular basis before his service was terminated, the respondent/defendant has rightly taken into



consideration the service rendered by him from the date of his initial appointment for the purpose of fixation of seniority as Clerk. Even otherwise also, if the service of Sh. Subhash Chander son of Sh. Yog Raj was not terminated, he would have ranked senior to the appellant/plaintiff.

15. Consequently, this Court finds no infirmity or illegality in the judgment and decree dated 14.08.2001 passed by the learned Lower Appellate Court.

16. Accordingly, the present appeal is dismissed.

17. Pending application(s), if any, shall stand disposed of.

19.09.2025

d.gulati

**(DEEPINDER SINGH NALWA)
JUDGE**

Whether speaking / reasoned :

Yes

No

Whether Reportable :

Yes

No