

In the High Court for the States of Punjab and Haryana, at
Chandigarh

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LPA No. 1120 of 2015(O&M)

Date of decision: August 31, 2015

Municipal Corporation, Gurgaon

..Appellant

Versus

State of Haryana and others

..Respondents

Coram: **Hon'ble Mr.Justice Satish Kumar Mittal**
Hon'ble Mr. Justice Mahavir S. Chauhan

Present: Mr. D.S.Nalwa, Advocate
for the appellant.

- 1.Whether to be referred to Reporter?
- 2.Whether the judgment should be reported in the digest ?

Mahavir S.Chauhan, J.

Though, there is delay of 49 days in re-filing and 60 days in filing of the instant appeal and the appellant has filed applications (CM Nos.2358-LPA of 2015 and CM Nos.2359-LPA of 2015) for condoning the said delay, yet we have heard learned counsel for the appellant on merits and have gone through the impugned order passed by the learned Single Judge.

Rohtas, respondent No.4, herein, had been working as Sewadar-cum-Chowkidar with Gram Panchayat Badshahpur since the year 1989. Area comprised in Gram Panchayat

Badshahpur was merged with, and services of the fourth respondent were taken over by Municipal Corporation, Gurgaon (for short,"Corporation") in the month of March 2010. Respondent No.4 was then made to work at Community Centre of village Badshahpur for an honorarium of ₹1,500/- p.m. He approached the Authority under Payment of Wages Act, 1936 Gurgaon (for short,"Authority") claiming wages for the period from 1.04.2011 to 31.10.2011. In the written statement filed on behalf of the appellant, i.e., Municipal Corporation Gurgaon, a very specific plea was taken that respondent No.4 was not an employee of the Corporation. However, the Authority, after allowing an opportunity of leading evidence to both the sides, afforded an audience to them and appraised the evidence brought on record by the parties. On appreciation of evidence, the Authority came to the conclusion that respondent No.4 was an employee of the Corporation and was entitled to wages at the rate of ₹6,026/- p.m. for the period under reference at par with similarly situated other employees of the Corporation and, accordingly, vide order dated 22.4.2013 allowed the application and directed the appellant-Corporation to pay an amount of ₹42,182/- towards arrears of wages, ₹2500/- as compensation and directed the appellant-Corporation to make payment of the aforesaid amount within 60 days from the date of passing of the order, failing which the amount was to carry interest at the rate of 12% per annum from the date of the order, till the date of payment.

Appellant-Corporation challenged order dated 22.4.2013 before the Appellate Authority i.e., Additional District

Judge, Gurgaon. However, the Appellate Authority vide judgment dated 16.10.2013 affirmed the findings recorded by the Authority and dismissed the appeal brought by the appellant-Corporation. Appellant-Corporation then preferred Civil Writ Petition No. 671 of 2015 to challenge order dated 22.4.2013 passed by the Authority and judgment dated 16.10.2013 of the Appellate Authority. However, the learned Single Judge, vide order dated 16.1.2015 dismissed the writ petition.

Appellant-Corporation is now before this Court by way of the instant intra-court appeal under Clause X of the Letters Patent.

We have heard learned counsel for the appellant besides perusing the orders passed by the Authority, Appellate Authority and the learned Single Judge.

Though, it is argued on behalf of the appellant that the fourth respondent is not entitled to wages at the rate of Rs. 6026/- p.m. as he continues to be a Chowkidar and is working for the village panchayat of village Badshahpur but it comes out from the record that stand of the appellant-Corporation to this effect has been negated by the Authority, Appellate Authority and the learned Single Judge and it has remained undisputed that other employees of the appellant Corporation who are similarly situated as the fourth respondent are getting wages at the rate of ₹ 6026/- p.m. This fact coupled with the fact that services of the fourth respondent were taken over by the Municipal Corporation on account of merger of village panchayat Badshahpur with Municipal Corporation, Gurgaon and after such merger, village

panchayat Badshahpur has become a non-existent entity, the respondent No.4 has been rightly allowed wages at the aforestated rates.

Be that as it may, an intra court appeal under Clause X of the Letters Patent is not a regular appeal and as such it is not permissible to re-appreciate the evidence or to substitute our own findings for the findings recorded by the courts below after appreciation of evidence and affirmed by the learned Single Judge. No perversity or procedural irregularity or illegality in the orders passed by the courts below as also in the order of the learned Single Judge could be pointed out during the course of hearing.

Consequently, we regret our disinclination to interfere with the well reasoned order passed by the learned Single Judge. The appeal, therefore, fails and is dismissed.

(SATISH KUMAR MITTAL)
JUDGE

(MAHAVIR S.CHAUHAN)
JUDGE

August 31,2015
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