

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

Date of decision: 07.03.2017

RSA No.2149 of 1991

Pyara Lal ...Appellant

Vs.

Shiv Ram & others ...Respondents

RSA No.2272 of 1991

Municipal Committee, Rajpura ...Appellant

Vs.

Shiv Ram & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Arpana Singhal, Advocate, for
Mr. Avnish Mittal, Advocate, for the appellant
in RSA No.2149 of 1991.

None for the appellant
in RSA No.2272 of 1991.

None for the respondent(s).

RAJIV NARAIN RAINA, J. (ORAL)

These are two second appeals i.e. RSA No.2149 of 1991 by the affected non-official respondent – Pyara Lal and RSA No.2272 of 1991 by the Municipal Committee, Rajpura, assailing the same judgment and decree of the learned Additional District Judge, Patiala dated 01.06.1991.

The plaintiff – Shiv Ram claimed seniority over the appellant-defendant Pyara Lal in the cadre of Octroi Moharrirs, which post required for appointment the minimum essential qualification of Middle Class. The plaintiff was unable to prove that he had studied beyond 7th Class. Even though he was not qualified, the first Appellate Court took into consideration

long experience as a substitute for academic qualification and allowed the first appeal and declared the plaintiff senior to Pyara Lal by citing case law in support.

Though it appears well settled that a person who is not qualified to hold the post admitted to and borne in the cadre for want of educational qualification cannot become a member of the service and, therefore, the view of the learned lower Appellate Court is mostly erroneous and liable to be upset. But no useful purpose will be served in deciding these appeals on their common merits at this stage in a seniority dispute after the contesting parties have retired from service long ago. Even if the appellant is declared senior to Shiv Ram, it will serve no practical or useful purpose to give relief unless there were further promotions and rights were claimed thereto, which may result in increase of salary and, therefore, as a consequence re-fixation of pension. This appears not to be the case in hand.

There is another factual dispute faced by Pyara Lal difficult to overcome that it was incorrect on the part of the plaintiff to assert that he was senior by date of entry to service. The plaintiff had claimed that he was appointed as a Peon in the year 1963, but the records of the Municipal Committee, Rajpura maintain his entry to service for the first time in the year 1965 and, therefore, Pyara Lal was, in any case, senior to Shiv Ram.

Since the contesting parties have retired years and years ago, no life is left or can be breathed in these appeals to breathe aloud. Accordingly, without upsetting the decree of the learned first Appellate Court, the files are closed.

However, in case there are any grave financial implications resulting from this order and which have remained unresolved, the parties

are always free to make an application to bring the same to the notice of this Court, if required.

In view of the observations made above, Pyara Lal is at liberty to approach the Municipal Committee, Rajpura [appellant in RSA No.2149 of 1991] on the administrative side in the municipality for redressal of the grievances, if any, not foreseen today and as advised. After which occasion, the decision taken after affording an opportunity of hearing to aggrieved party and conveying to them speaking orders containing reasons for the decision taken, the appellant - Pyara Lal will be at liberty to challenge the result in separate proceedings.

The appeals are disposed of accordingly with costs as were incurred by the respective parties.

07.03.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*