

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

102

**CM No.12088-C-2017 in/and
RSA-4617-2011
Date of Decision : 24.10.2017**

Lakha Singh Zileadar

..... Appellant

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. S.K. Sharma, Advocate
for the appellant.

AJAY TEWARI, J. (Oral)

CM-12088-C-2017

For the reasons recorded, the application is allowed. The appeal is restored to its original number and the same is taken up for hearing today itself.

RSA-4617-2011

This appeal has been filed against the concurrent judgments of the courts below dismissing the suit of the appellant.

The appellant had filed a suit claiming that he was entitled to continue in service on account of the fact that in the erstwhile Pepsu State Class-IV employees were to retire at the age of 60 years. The appellant did not step into the witness box but only presented certain documents. At the time when he was sought to be retired he had been working as Zileadar for the last 24 years. Admittedly, the post of Zileadar is Class-III post. In view of these facts that the courts below dismissed his suit.

Counsel for the appellant has argued that mere omission of the appellant to appear as his own witness could not be fatal to his case and has relied upon the judgment of Supreme Court in the matter of ***Rattan Dev vs. Pasam Devi, 2002(4) R.C.R.(Civil) 510.***

No doubt, as an abstract point of law it cannot be held that the omission of party to appear as his own witness is always fatal. However, in the present case if the appellant had appeared, he could have been questioned about the fact that for almost a quarter century he had worked as a Zildar. In the circumstances, his absence cannot be taken to have no effect on the case.

Counsel for the appellant has further argued that DW1 Dharam Chand had deposed that the appellant was working in an officiating capacity and that he was otherwise a confirmed Patwari.

In my opinion, this statement by DW1 would not clinch the case. Consequently, I find no merit in the argument of the counsel for the appellant.

Appeal is dismissed. No costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

October 24, 2017
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No