

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.5818 of 2016 (O&M)
Date of Decision: 08.02.2017**

Mahesh Raghav

... Appellant

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: None for the appellant.

RAJIV NARAIN RAINA, J.

1. The plaintiff is a private person. He filed a suit against the 4th defendant to declare his appointment in the Forest Department in the year 1983 illegal on the allegation that the 4th defendant had wrongly claimed himself to be an Ex-Serviceman whereas he was not one and sought Court directions to dismiss him from service. The suit was filed in 2014. A finding has been returned that there is neither rule nor notification which could prove that in the year 1980, that is, at the time when the 4th defendant was discharged from military service, that service period of 5 years was required for declaration of service as an Ex-Serviceman to fall within the reserved category for civil service. Besides, the learned Civil Judge (Junior Division), Gurgaon in her judgment dated May 12, 2015 held that Zila Sainik Board, Gurgaon was a necessary party to the suit since it had declared the 4th defendant an Ex-Serviceman. If the Zila Sainik Board, Gurgaon was a necessary party, its non-joinder was fatal to the action. The suit was dismissed against which the plaintiff persisted in First Appeal.

2. The learned District Judge, Gurgaon has endorsed the view of

the first Court. The sole point for determination in the appeal was whether the 4th defendant was an Ex-Serviceman. On evidence, the Lower Appellate Court reached the conclusion that the Ex-Serviceman Identity Card Ex.DX issued by the Zila Sainik Board, Gurgaon could not be proved to be a fake or fictitious document. The plaintiff-appellant summoned PW-2 Subedar Bijender Singh from Zila Sainik Board (without impleading the Board as party) and PW-3 Lance Naik Tejvir Singh from Rajput Regiment, Fatehgarh. Document Ex.DX as his witnesses but he did not put to these witnesses in the box this document to elicit their responses on its validity. Neither did the plaintiff call any of the witnesses in rebuttal evidence to prove the sanctity of Ex.DX. The plaintiff admitted that he had filed a separate suit to prove the disputed document submitted by the 4th defendant as a fake and fictitious document at the time of getting a job in the Forest Department. The learned District Judge, Gurgaon has taken cognizance of this fact and has granted liberty to the appellant to take whatever pleas he wishes to take in his separate suit against the 4th defendant.

3. I have no reason to disagree with the work of the learned District Judge, Gurgaon in his short but well considered judgment to which I would add that the plaintiff being a private person did not have locus standi in a service matter to challenge the appointment of a public servant and that too after 30 years of service having been rendered by the time the suit was brought. The trial Court has rightly summed up the case as one which was instituted to settle a grudge with the 4th defendant. If the suit was in the nature of a Public Interest Litigation then action would not lie in view of Duryodhan Sahu (Dr.) and others v. Jitender Kumar Mishra and others,

(1998) 7 SCC 273, the Supreme Court holding that a PIL in service matter cannot be entertained.

4. Accordingly, I would dismiss this appeal *in limini* without learned counsel appearing to assist this Court or seeking a pass over. If counsel had not the grace to appear and assist the Court in *katcha peshi*, the Court will assist itself on the materials on record, especially in a second appeal where the issue has suffered two judgments returning proper findings of fact and law, concurrently.

(RAJIV NARAIN RAINA)
JUDGE

08.02.2017

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Whether speaking/reasoned *Yes*

Whether reportable *No*