

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**C.Ms. No.1404-05-C of 2017 in/and
RSA No.655 of 2017**

Date of decision: 2.02.2017

Secretary Public Health Department,
Panchkula & ors.

... Appellants

Versus

Jai Singh

... Respondent

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

Present: Mr. Saurabh Girdhar, AAG, Haryana,
for the appellants.

RAJIV NARAIN RAINA, J.(Oral)

The learned District Judge has struck at the heart of the matter in his well reasoned judgment of reversal when he records:-

“There is no denial that the plaintiff-appellant was appointed as Mali-cum-Chowkidar on daily wages on 09.01.1989 and in terms of regularisation policy, his services were regularized as such w.e.f. 01.02.1996. His claim is that throughout, he has been working as Water Pump Operator. To prove this, he failed to lead evidence in the lower court but now he has filed an application under Order 41 Rule 27 C.P.C. seeking permission to place on record, the attendance register. This application was allowed by my learned predecessor vide order dated 09.03.2016. Since the original record was not available with the plaintiff, it was placed on the file as Mark-A, Mark-B and Mark-C. Although no separate application for proving these documents by way of secondary evidence has been filed, to my mind, it was not required. Needless to say that if the requirements of secondary evidence are

satisfied, the same is to be admitted without formal application. As observed above, the original record is in possession of the defendants. They have not come forth with the same. In these circumstances, the photostat copies are admissible by way of secondary evidence. It is worth mention that the defendants-respondents were granted opportunity to lead evidence in rebuttal to the additional evidence but, they closed their evidence by tendering just two documents viz. pay bill of work charges establishment from 01.05.1990 to 31.05.1990 (Ex. DB) and the letter dated 09.11.1998 qua regularisation of mechanical staff on Group-C post w.e.f. 01.02.1996 (Ex. DC). They did not lead any evidence to refute the correctness of Mark-A and Mark-C which means that they admitted the correctness of the documents Mark-A, Mark-B and Mark-C. Mark-A is the list of Group-D employees working as Group-C. In this list, the name of the plaintiff appears at serial No.44. His actual designation is shown as Pump Attendant but, he is shown to have been working as Water Pump Operator. Mark-C is the Bleaching Log Book of the Water Works, Haripur Kamboj from 31.08.2002 onwards. This log book was maintained by the plaintiff. The inference is that he was actually working as Water Pump Operator. These documents corroborate the oral evidence led by the plaintiff and probablise his case that he has been working as Water Pump Operator if not from 01.02.1996 but definitely from 31.08.2002. Attention of the court has been invited to the office order Ex.P6, as per which, the services of one Siri Pal were engaged as work Munshi but, he was regularised as Pump Attendant w.e.f. 01.02.1996.

Since he worked as Bin Card Clerk which is Group-C post throughout, his request for being regularised as Bin Card Clerk in Group-C w.e.f. 01.02.1996, was accepted. In this very order, there is a reference to Jang Saran and Parveen Kumar whose designation was also changed in the similar manner. Since the case of the plaintiff-appellant is on the same footing, the Court fails to understand as to why he has been denied the same benefit. It appears that learned lower court was not entirely wrong in holding that there was nothing on file to suggest that the plaintiff had worked as Water Pump Operator. Now that we have evidence to this effect, the entire complexion of the case is changed.

9. Once, the plaintiff is proved to have worked as Water Pump Operator from 31.08.2002 if not since the date of his regularisation and he fulfills the qualifications, there is no reason to deny him the designation of Water Pump Operator and consequential benefits.”

He has explained wonderfully how a marked document coming from public office has to be dealt with. The legal reasoning is worth appreciation and states the correct position in law that the court should not remain blinded and discard such a document altogether on mode of proof without looking to the attending circumstances which have been well brought out in the extracted part of the judgment quoted above. Thereby, nothing remains for this Court to do. The findings of the District Judge, Yamuna Nagar are endorsed. Accordingly, the appeal by the State of Haryana is dismissed.

Leave aside the merits of the appeal there is delay of 88 days

in filing the appeal. There is no explanation for the delay worthy of acceptance. Not only is the appeal dismissed on merits, it is dismissed on grounds of limitation as well. The application is turned down by applying the law in Office of the Chief Post Master General v. Living Media India Ltd., (2012) 3 SCC 563.

(RAJIV NARAIN RAINA)
JUDGE

2.02.2017
monika

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>