

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

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Regular Second Appeal No.3787 of 2016
Date of Decision: April 10th, 2019

Municipal Corporation, Gurgaon

...Appellant

Versus

Parbhu Ram @ Prabhu

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. R.S. Longia, Advocate
for the appellant.

Mr. Sachin Mittal, Advocate
for the respondent.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 23.04.2014 passed by the Civil Judge (Junior Division), Gurgaon, whereby the suit of the respondent-plaintiff seeking decree for declaration to the effect that the respondent-plaintiff is legally entitled to the salary from March 2010 till the date of his superannuation along with interest at the rate of 18% per annum and other statutory benefits from Municipal Corporation, Gurgaon, has been allowed to the extent of granting the arrears of salary from March 2010 till the date of his reaching superannuation along with interest at the rate of 9% per annum with costs of the suit, which on challenge by the appellant-defendant in an appeal before the learned Additional District Judge, Gurgaon, stands dismissed vide judgment dated 30.01.2016.

2. It is the contention of learned counsel for the appellant that after the merger of the Gram Panchayat, Badshahpur in the Municipal Corporation, Gurgaon, the employees of the Gram Panchayat were absorbed in the service of the Municipal Corporation, Gurgaon.

The Notification is dated 20.03.2010 Exhibit D-5, which has been issued by the Government of Haryana. In pursuance to the said Notification, respondent-plaintiff is alleged to have visited the office of the Municipal Corporation, Gurgaon, but he was not allowed to work. Thereafter he served a legal notice dated 25.05.2010 (Exhibit P-1) and again a legal notice dated 15.01.2011 (Exhibit P-2) prior to filing the civil suit. He contends that as a matter of fact, respondent-plaintiff has never approached the office of the Municipal Corporation, Gurgaon, and has not performed his duties despite there being an opportunity for him of having approached the appellant. He, however, could not dispute the fact that the legal notice dated 15.01.2011 (Exhibit P-2) has been duly received in the office of the Municipal Corporation, which factum has been admitted by DW-1 Anil Kumar, who had appeared on behalf of the appellant-defendant. He, however, contends that the judgments and decree as passed by the Courts below cannot sustain and deserve to be set aside.

3. On the other hand, learned counsel for the respondent submits that respondent-plaintiff was working as a Sewadar with the Gram Panchayat, Badshahpur, and was appointed as such vide Resolution No.24 dated 23.06.1988 Exhibit PW-3/1 with effect from 01.06.1988. His salary was increased vide Resolution dated 08.08.2009 to ₹4,000/- per month, which salary he had drawn upto January and February 2010. With the coming into force of the Notification dated 20.03.2010 Exhibit D-5, respondent-plaintiff was not allowed to work in the office of the Municipal Corporation, Gurgaon, despite he having approached on various occasions. Even service of the legal notices upon the respondent did not result in any response. It is under these circumstances that the

respondent-plaintiff was forced to file a civil suit. There has been no delay on the part of the plaintiff in approaching the Civil Court, which shows that the respondent had all through been vigilant with regard to his rights and had been pursuing his request for working with the appellant-defendant but without any result. Counsel contends that the findings which have been returned by the Courts below are based upon proper appreciation of the pleadings and the evidence on record and, therefore, did not call for any interference.

4. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the impugned judgments and do not find any illegality in the judgments and decree passed by the Courts below as it is apparent not only from the pleadings but from the evidence which has been brought on record that the respondent-plaintiff was working on the post of Sewadar, Gram Panchayat, Badshahpur. He has also been able to prove the last salary which he has drawn in the month of February 2010. Notification dated 20.03.2010 has also been admitted and proved on record by the appellant-defendant themselves. The factum of he having received the salary for the month of January-February 2010 has also been proved on record with the proving of the cheque No.269119 dated 22.04.2010 Exhibit P-6 issued by the Block Development and Panchayat Officer, Sohna. This establishes the fact that the respondent-plaintiff was an employee with the Gram Panchayat, Badshahpur, as a Sewadar.

5. With the coming into force of the Notification dated 20.03.2010, area of Gram Panchayat, Badshahpur, merged within the limits of Municipal Corporation, Gurgaon, and it is also admitted that the

employees, who had been working with the Gram Panchayat, were taken over by the Municipal Corporation, Gurgaon.

6. The dispute is limited to the extent as to whether the respondent-plaintiff had approached the appellant for allowing him to the work as Sewadar or not, which factum stands established not only from the pleadings and the oral evidence of the respondent-plaintiff as well as the other witnesses but also the legal notices dated 25.05.2010 and 15.01.2011, which have been served upon the appellants which have been duly proved as Exhibits P-1 and P-2. The factum of having received the legal notices Exhibit P-2 at least can be positively said in the light of the admission made by DW-1 Anil Kumar, who stepped into the witness box and admitted the factum of having received the legal notice Exhibit P-2 and not responding thereto. This leads us to the conclusion that the respondent-plaintiff had all through been approaching and pursuing his claim for allowing him to work with the Municipal Corporation, Gurgaon, whereas the Municipal Corporation, Gurgaon, had not permitted him to do so.

7. The findings as recorded by the Courts below, therefore, cannot be faulted with. The judgments as passed by the Courts below being in consonance with the pleadings and the evidence on record, do not call for any interference by this Court in the present appeal, especially when there are concurrent findings recorded by the Courts below.

8. Finding no merit in the present appeal, the same stands dismissed.

April 10th, 2019

Puneet

AUGUSTINE GEORGE MASIH)

JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

No