

**C.M. NOS.15741-44 C OF 2019 &
R.S.A. NO.5533 OF 2019**

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

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**C.M. NOS.15741-44 C OF 2019 &
R.S.A. NO.5533 OF 2019**

DATE OF DECISION: DECEMBER 02, 2019

Balvir Singh

.....Appellant

VERSUS

**The Deon Cooperative Agricultural Service Society Limited, Village Deon,
District Bathinda and others**

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

**Present: Mr. Abhishek Jindal, Advocate,
for the appellant.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.15741 C of 2019

Prayer in the present application is for condonation of delay of
20 days in filing the appeal.

For the reasons mentioned in the application, which is duly
supported by an affidavit of the counsel, the same is allowed and delay of
20 days in filing the appeal stands condoned.

C.M. No.15742 C of 2019

Application is allowed.

Exemption is granted from filing the certified/typed copies of
the judgment and decree passed by the District Judge, Bathinda, grounds of
appeal and judgment and decree of Additional Civil Judge (Sr.Division),

Bathinda.

C.M. Nos.15743 & 15744 C of 2019 and R.S.A. No.5533 of 2019

Challenge in this appeal is to the judgment and decree passed by the District Judge, Bathinda, dated 03.08.2019 whereby the judgment and decree dated 21.09.2018 passed by the Additional Civil Judge (Senior Division) Bathinda, partly decreeing the suit of the appellant-plaintiff, which was for a mandatory injunction, seeking directions to the respondent-defendants to appoint the plaintiff as a Chowkidar in the Deon Co-operative Agricultural Service Society Limited, Village Deon, District Bathinda (hereinafter referred to as “the Society”) on the basis of first preference in view of the resolution dated 25.06.2003 passed by the Society-defendant No.1 and letter bearing reference No.127, dated 11.01.2008 issued by the Additional Registrar, Cooperative Societies, Bathinda, has been set-aside.

It is the contention of learned counsel for the appellant-plaintiff that the appellant was appointed as a Chowkidar with the Society on 13.06.1998 i.e. the initial date, when the Society came into existence. He continued as such till his services were arbitrarily and illegally terminated on 31.03.2001. He approached the higher authorities with the grievance but the same was not redressed. He raised an industrial dispute, which unfortunately was rejected by the Industrial Tribunal on 10.09.2013, Ex.DW1/B, followed by dismissal of the writ petition by this Court on 04.10.2016, Ex.DW1/D. Appellant again approached the official respondents on the basis of a resolution dated 25.06.2003 passed by the Society, asserting therein that the appellant-plaintiff would be given preferential consideration in case of a vacancy of Peon-cum-Sewadar being filled up. The said resolution, when considered by the Additional Registrar, Cooperative Societies, Bathinda, a letter dated 11.01.2008 was issued

directing the Society-defendant No.1 to consider the claim of the appellant-plaintiff as a first preference. It is thereafter that the appellant, on not being appointed, approached the Court by filing a suit on 29.07.2015, after waiting for a long time. The said suit was partly decreed by the Additional Civil Judge (Senior Division), Bathinda vide judgment and decree dated 21.09.2018 by issuing mandatory injunction in favour of the appellant-plaintiff, directing the Society to consider his case for appointment as a Chowkidar in the Society on the basis of first preference with a further injunction restraining respondent-defendant No.1 from appointing any other person as Chowkidar in the Society till his case is considered for appointment as Chowkidar. Appeal preferred against the said judgment and decree has been allowed by the learned District Judge, Bathinda vide judgment and decree dated 03.08.2019, setting-aside the judgment and decree of the trial Court.

Learned counsel for the appellant submits that the appellant-plaintiff has satisfactorily worked with the respondent-Society. He contends that the order of termination of services of the appellant was not sustainable. However, the remedy, which was availed of by the appellant-plaintiff, has not gone in his favour. That aspect probably could not be raised. He asserts that right has accrued to the appellant-plaintiff from the date of passing of the resolution dated 25.06.2003 for consideration for the post of Chowkidar by giving him first preference, which aspect has been accepted by the Additional Registrar, Cooperative Societies, Bathinda, vide his letter dated 11.01.2008 and, therefore, the judgment and decree, as passed by the trial Court, could not have been faulted with by the Appellate Court. He contends that the Appellate Court has proceeded on a totally difference

premise as if it was a service contract, which was being enforced by the appellant-plaintiff. He asserts that what was claimed by the appellant was merely a consideration for the post of Chowkidar and nothing else and, therefore, the judgment and decree passed by the trial Court was based upon the pleadings and evidence brought on record. He, therefore, asserts that the judgment and decree passed by the Appellate Court deserves to be set-aside and that of the trial Court restored.

I have considered the submissions made by learned counsel for the appellant and with his assistance have gone through the records of the case.

The facts with regard to the appellant having earlier been appointed in the Society and thereafter termination of his services are not in dispute. He has availed of his remedy before the Industrial Tribunal, Labour Court, which has dismissed his claim on 10.09.2013, finding no illegality in the order of termination. Even this Court dismissed the Civil Writ Petition No.7518 of 2014 (Balbir Singh Vs. The Deon Cooperative Society) as preferred by the appellant-plaintiff vide order dated 04.10.2016. The initial appointment and termination, therefore, has attained finality.

Having lost upto this Court, the appellant-plaintiff filed the present suit, seeking mandatory injunction. There is no doubt that the claim, which is being put forward by the appellant-plaintiff was a preferential consideration for appointment to the post of Chowkidar. As is evident from the pleadings and the evidence brought on record as also the findings recorded by the Courts below, the post of Chowkidar-cum-Sewadar has not been filled by the respondent-Society till date, meaning thereby that irrespective of the fact that whether there was a vacancy available or not, the

respondent-Society has chosen not to fill up the post of Chowkidar-cum-Sewadar.

If that be so, the right of consideration, which has been given to the appellant-plaintiff as a preference vide resolution dated 25.06.2003 by the society and letter bearing No.127 dated 11.01.2008 of the Additional Registrar, Cooperative Societies would not confer any right whatsoever in his favour. In case the post would have been filled up by the respondent Society by appointing some other person without considering the claim of the appellant or giving him preference on the said post, the appellant would have some grievance but the said position has not occurred and, therefore, the lower-appellate Court has rightly rejected the claim of the appellant-plaintiff on that aspect.

The question of legitimate expectation of appointment has also rightly been dealt with by the lower Appellate Court as there being no enforceable action or claim with regard to the entitlement of the appellant for appointment to the post of Chowkidar, the suit itself was not maintainable and in any case it being a service contract could not have been enforced by way of an injunction as has been so preferred by the appellant-plaintiff. The judgment and decree passed by the lower Appellate Court, therefore, cannot be faulted with on the question of findings as recorded as well as question of law.

The settled principles of law have rightly been given effect to while considering the claim of the appellant-plaintiff. No question of law is involved in the present appeal.

Therefore, finding no merit in the appeal, the same stands dismissed.

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Since the main appeal stands dismissed, no orders are required to be passed on Civil Misc. Application Nos.15743 & 15744 C of 2019.

December 02, 2019
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(AUGUSTINE GEORGE MASI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No