

RSA-907-1994 (O&M) -1-

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(219-1) RSA-907-1994 (O&M)
Date of decision:- 15.04.2024

Punjab State Civil Supplies Corporation, Chandigarh and another
... Appellants

Versus

Laju Ram and others ...Respondents

(219-2) RSA-908-1994 (O&M)
Punjab State Civil Supplies Corporation, Chandigarh and another
... Appellants

Versus

Sukhdev Raj and others ...Respondents

(219-3) RSA-909-1994 (O&M)
Punjab State Civil Supplies Corporation, Chandigarh and another
... Appellants

Versus

Ajit Raj and others ...Respondents

(219-4) RSA-910-1994 (O&M)
Punjab State Civil Supplies Corporation, Chandigarh and another
... Appellants

Versus

Buta Ram and others ...Respondents

(219-5) RSA-911-1994 (O&M)
Punjab State Civil Supplies Corporation, Chandigarh and another
... Appellants

Versus

Swarn Singh and others ...Respondents

RSA-907-1994 (O&M)

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CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. H.S.Randhawa, Advocate
for the appellants in all the cases.

None for the respondent(s).

SUVIR SEHGAL, J. (ORAL)

1. This order shall dispose of five cases bearing Nos. ***RSA-907-1994*** titled as "***Punjab State Civil Supplies Corporation, Chandigarh and another Versus Laju Ram and others***", ***RSA-908-1994*** titled as "***Punjab State Civil Supplies Corporation, Chandigarh and another Versus Sukhdev Raj and others***", ***RSA-909-1994*** titled as "***Punjab State Civil Supplies Corporation, Chandigarh and another Versus Ajit Raj and others***", ***RSA-910-1994*** titled as "***Punjab State Civil Supplies Corporation, Chandigarh and another Versus Buta Ram and others***" and ***RSA-911-1994*** titled as "***Punjab State Civil Supplies Corporation, Chandigarh and another Versus Swarn Singh and others***", as they involved, same question of law and facts.

2. For the sake of convenience, facts are being taken from RSA-907-1994.

3. Defendants-appellants are in second appeal before this Court challenging the concurrent finding of fact recorded by both the Courts below.

4. Pleaded case of the plaintiff-respondent No.1, Laju Ram, is that he was working as a Peon and was entitled to be promoted to the post of Clerk-cum-Typist. He claimed that defendants No. 4 to 7, who were similarly placed, were promoted ignoring the plaintiff. It has been averred

that although there is a requirement of passing a departmental test for promotion, but he could not appear in the test as the date of the test was communicated after the test had been conducted. Civil Suit for declaration was filed by him for promotion to the post of Clerk-cum-Typist w.e.f. 21.11.1990, when his juniors were promoted.

5. Upon notice, written statement was filed by the defendants contesting the suit on the ground that the plaintiff does not possess the necessary qualification and had not passed the requisite typing test. A replication was filed by the plaintiff re-asserting the claim. On the basis of the pleadings of the parties, issues were framed and by judgment on 12.01.1993, Trial Court decreed the suit. Defendants remained unsuccessful in the first appeal, which was rejected by judgment dated 04.01.1994, resulting in the institution of the instant second appeal.

6. Counsel for the appellants has argued that the lower Appellate Court has dismissed the appeal as not properly instituted on the ground that no separate resolution had been passed by the appellants in favour of the District Manager authorizing him to file the appeal. He submits that the judgment relied upon by the lower Appellate Court has been over-ruled.

7. I have heard counsel for the appellants and examined the record with his able assistance.

8. While dismissing the appeal, learned Additional District Judge, Gurdaspur has placed reliance upon a judgment of this Court in ***Garib Chand Versus Municipal Committee, Budhlada, 1979 PLR 527***. The correctness of law laid down in ***Garib Chand's*** case (supra) came up for consideration before this Court in ***Municipal Committee, Bhatinda Versus***

Sadhu Singh, 1986 (2) PLR 1, wherein this judgment has been specifically over-ruled. The Division Bench has held as under:-

- “9. It will thus be seen from a perusal of the aforementioned judgments that in none of them it has been laid down that besides passing a resolution deciding to file an appeal, the Municipal Committee must necessarily pass a separate resolution vesting authority in the Executive Officer to file the same. The ratio of all these judgments is that before filing an appeal a corporate body like the Municipal Committee must pass a resolution deciding to file the same. We have no quarrel with this proposition of law.
10. For the reasons discussed above, we are unable to subscribe to the view taken by the Single Bench in Garib Chand's case (supra) and resultantly overrule the same. We hold that once the Municipal Committee decides to file an appeal by passing a resolution, its Executive Officer is empowered to file the same by virtue of [Section 4](#) of the Act.”

9. As the judicial precedent on which reliance has been placed by the First Appellate Court had been over-ruled, the judgment passed by the learned Additional District Judge cannot be sustained and is hereby set aside.
10. The first appeal has not been decided on merits. Therefore, the matter is remitted to the learned District Judge, Gurdaspur to decide the appeal afresh after hearing the parties. Learned District Judge, Gurdaspur may adjudicate the matter himself or assign it to any other Court of competent jurisdiction.
11. Accordingly, all the five appeals are allowed.
12. Pending application(s), if any, stand disposed of.

15.04.2024

(SUVIR SEHGAL)
JUDGE

Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No