

**HIGH COURT OF JAMMU, KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 15.12.2023

Pronounced on: 30.12.2023

OWP No. 1346/2018

Ashwani Kumar Banotra

.....Petitioner(s)

Through:- Mr. Pawan K Kundal, Advocate

v/s

**Army Welfare Education Society and
others**

.....Respondent(s)

Through:- Mr. R. K. Jain, Sr. Advocate with
Mr. Pranav Jain, Advocate

Coram:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE
ORDER

1. Petitioner being aggrieved of the order dated 28.05.2018 passed by the learned 1st Addl. District Judge, Jammu, whereby his application seeking direction to the defendant/respondents to produce the documents in their possession relating to subject matter in issue has been dismissed.
2. The said application was filed by him under Order 11 Rule 12 CPC. In the application the petitioner sought production of the documents mentioned in the application on the ground that said documents are required for just disposal of the case. The aforesaid application has been filed by the petitioner after the issues were framed and matter was listed for evidence of

the plaintiff/petitioner. The documents which were sought to be produced by the defendants/respondents are as follows:-

“Result of all Sections of Class 8th for the year 2012-13, Class 9th for the session 2013-14; CBSE Secondary School examination result year 2012 of all sections of 10th class for the session 2007-08, 2008-09, 2009-10, 2010-11 and 2012-13; Teachers Attendance register from August 2009, 2010, 2011, 2012 and 2013; the salary statement of the staff from August 2009 to March 2013; original letters dated 12.02.2013 and 14.01.2013 addressed to Director Army Welfare Society; Time table for the year 2011, 2012 and 2013 along with TT record; letter dated 27.02.2012 addressed to the Chairman, Disciplinary Committee Army Public School, Ratnuchak; letters dated 06.09.2010, 17.02.2012, 18.02.2012, 20.02.2013, 27.04.2013 addressed to Principal Army Public School Ratnuchak letters written by the plaintiff dated 15.02.2011, 12.12.2011, 27.02.2011, 17.09.2012, 10.09.2012 addressed to the Chairman and reply to the show cause notice dated 26.04.2013; record of attendance and salary record of teachers Sarabjeet Singh for the period he served in the school till his termination/resignation.”

3. The trial Court while rejecting the prayer made in the application has held that such documents cannot be asked to be produced by the defendants/respondents. The reason given for the said refusal as given in the impugned order is that the plaintiff/petitioner has sought discovery of the letters which have been written by him to the authorities of the defendants/respondents on the dates mentioned in the application. He also seek discovery of the reply of the show cause notice dated 27.04.2013 submitted by him to the defendants/respondents and the same was placed on record which was not disputed by the defendants/respondents.

4. The petitioner has challenged the order precisely on the ground that the documents were required for the just decision of the issues framed and these documents are required to be produced as the same are in possession of the defendants/respondents and could not be produced by him, therefore, the aforesaid documents are required to be produced by the defendants/respondents before the trial Court. Since vide impugned order dated 28.05.2018 the trial Court has refused to pass such direction, therefore the petitioner under Article 227 of the Constitution.

Order XI Rule 12 C.P.C. which provides for discovery of documents read as under:

“12. Application for discovery of documents.- Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion be thought fit: Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.”

5. A reading of Rule 12 transpires that it deals with power of the Court to give necessary directions, on the application of the party to the suit seeking directions against other party, to make discovery on oath of the documents which are or have been in his possession or power.

6. Having heard the learned counsel for the petitioner and carefully scrutinized the relevant material on record including the impugned order, it is noticed that in the application plaintiff/petitioner had sought a direction that the defendants/respondents be directed to produce the original record of the documents mentioned in the application. The stand taken by the respondents was that the documents sought to be produced by the defendants/respondents are neither material nor relevant for the purpose of determining the issues involved in the suit and prayed for dismissal of the application. The plaintiff/petitioner has sought discovery of the letters which have been written by him to the authorities of the defendants/respondents on the dates mentioned in the application. He also seek discovery of the reply of the show cause notice dated 27.04.2013 which was been submitted by him to the defendants/respondents and the same was placed on record which was not disputed by the defendants/respondents. As such, the trial Court has rightly held that result of different classes of different years is not relevant and so far as discovery of the letters of different dates are concerned, the same have been written by the plaintiff himself, so he knows the contents of the said letters.

7. Jurisdiction under Article 227 of the Constitution cannot be invoked to upset the pure findings of fact. Under Article 227 of the Constitution, this Court is expected and required to exercise extraordinary jurisdiction only in a case where the impugned order is found to be totally perverse, contrary to material on record or it results in manifesting injustice. In the instant case,

the impugned order passed by the learned trial Court is found to be just and apt, which does not warrant any intervention.

8. In view of the above, the writ petition fails and the same being bereft of any merit stands dismissed.

(VINOD CHATTERJI KOUL)
JUDGE

Jammu
30.12.2023
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