

IN THE HIGH COURT OF TRIPURA
AGARTALA

RSA NO.48 OF 2010

Numan Miah,
son of Md. Oli Miah,
resident of Vill. Kubjar,
P.O. & P.S. Kailashahar, District North Tripura

.....Appellant

- Vs -

- 1. The Inspector of Schools,
Govt. of Tripura,
P.O. & P.S. Kailashahar,
District North Tripura
- 2. The Deputy Inspector of School Education,
Govt. of Tripura,
P.O. & P.S. Kailashahar,
District North Tripura
- 3. The State of Tripura,
represented by the Secretary-cum-Commissioner,
Education Department, Govt. of Tripura, Agartala
- 4. The Director of School Education,
represented by the Secretary-cum-Commissioner,
Education Department, Govt. of Tripura, Agartala

..... Respondents

BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the appellant : Mr. D.C. Roy, Advocate

For the respondents : Mr. S. Chakraborty, Addl. G.A.

Date of hearing & order : 19.03.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. D.C. Roy, learned counsel, appearing for the appellant and Mr. S. Chakraborty, learned Addl. Govt. Advocate appearing for the respondents.

2. This is an appeal under Section 100 of the CPC against the judgment dated 15.09.2010 delivered in Money Appeal No.1/2008 by the District Judge, North Tripura, Kailashahar.

3. By the order dated 13.12.2011, this appeal has been admitted on the following substantial questions of law :

(i) Whether the finding of the trial court is perverse? and

(ii) Whether the pleadings of the defendants were taken into consideration without any evidence?

The appellant was also given leave to raise any other substantial question of law at the time of hearing.

4. Mr. D.C. Roy, learned counsel appearing for the appellant has not raised any other substantial question of law. His submission is confined to the substantial questions of law as already formulated.

5. The undisputed fact is that the plaintiff, the appellant herein, has been working as the general teacher in the Kubjar

Maktab and he was getting wages under the modernization scheme sponsored and financed by the Govt. of India. This is also not in dispute that the plaintiff was discharging his duties as such from 01.04.1996 and for some time the appellant was also Ex-Officio Secretary of the Managing Committee. A suit, being Title Suit No.11/2000 was filed at the instance of the petitioner, but that suit was dismissed. Even the first appeal and the second appeal of the suit, as Mr. Roy, learned counsel has pointed out, did not bring any fruitful result for the plaintiff.

6. The grievance of the plaintiff-appellant as reflected in the suit is that, though he continued to work under the said invalid Managing Committee, he did not get his salary @₹2,200. For recovery of the arrear salary/wages to the extent of ₹1,70,400 he instituted the money suit.

7. Mr. Roy, learned counsel appearing for the appellant, has submitted that initially the suit was dismissed by the judgment dated 16.01.2008 delivered in Money Suit No.01/2007 by the Civil Judge, Sr. Division, North Tripura, Kailashahar, holding that the suit is not maintainable as the suit is barred by limitation. It has been also held that for pendency of the appeal under Section 100 of the CPC emanating from Title Suit No.11/2000, the said suit was not maintainable. Against the judgment, dismissing the suit, the first appeal had been preferred.

8. The first appellate court held that the suit is maintainable as the relief sought in the previous suit or the issues involved therein are not identical in nature. But, on the question of entitlement to recovery, the first appellate court has decided against the plaintiff, holding that the plaintiff was terminated by the Secretary for unauthorized absence from 01.12.1998. By the judgment dated 15.09.2010, the first appellate court has observed as under :

“Admittedly, for the aforesaid period, i.e., up till July, 1998 the plaintiff-appellant got his salary. The scheme was formulated by the Central Govt. and accordingly, fund was placed for the modernization of the Maktab by the Memorandum dated 6th January, 2000. Deputy Director, School Education, Govt. of Tripura, North Tripura, Kailashahar informed the Inspector of Schools about the fund of Rs.11,35,200/- for payment of salary @Rs.2200/- per month for 43 nos. of teachers under the Centrally sponsored Scheme for modernization of the Madrassa Education, Inspector of Schools, Kailashahar was the DDO and the Secretary of the concerned Managing Committee. Privately managed Madrassa received the fund from the office of the Deputy Director and disbursed the same to the teachers engaged under the scheme on monthly basis @ Rs.2200/-. The Managing Committee is required to submit the resolution of engagement of the teachers along with original certificate/mark sheet in support of educational qualification of the teachers so engaged. The Managing Committee is also required to submit working report of the teachers of every month by 25th of each month to the Inspector of Schools and the salary of the privately managed Madrassa will submit the same to the office of the Dy. Director of Education, North Dist. Zone, Kailashahar under Grant In Aid Scheme. The tenure for engagement of the teachers will be for one year only. From this Memorandum it is clear the tenure of appointment is only one year. The plaintiff-appellant admitted that he was appointed in the year 1996. So, as per the Memorandum he is supposed to work up to 1997. Further continuation

is to be approved by the Dy. Director and other appropriate authority. Working report of Numan Miah, the plaintiff-appellant for the year 2000 vide Ext.2 series submitted for the year 1999-2000, 2000-2001, 2001-2002 and up to 2003. But, how he was authorized to perform his work and submitted the working report is not clear at all. Ext.5 is the sanction letter issued by Shri S.B. Suklabaidya, Joint Secretary, School Education, Govt. of Tripura. In that Memo direction is given to the Director of School Education to disburse the amount to the respective Madrasa through the concerned Inspector of Schools for payment of salary of the teachers working under the centrally sponsored scheme for modernization programme. Before disbursement of the amount working report should be obtained from the In charge of the Madrasa. So, these working reports were not obtained by the Inspector of Schools and it is only signed by one Secretary and the plaintiff-appellant himself signed as Secretary in those working reports. One certified copy of the appointment letter was produced, which was earlier exhibited in T.S.No.11/2000. In that case plaintiff-appellant was appointed by the Secretary of Kubarj Maktab as a general teacher for teaching English, Bengali, Mathematics and Science. Appointment is to take effect from 1st April, 1996. Abdul Batin was the Secretary. This appointment letter as per the Memorandum of the Dy. Director has validity for the period of one year only and thereafter no other appointment letter was issued in favour of the plaintiff-appellant. The constitution and functions of the Managing Committee (Pre-Secondary Schools), Rules 1981 was published by the Govt. of Tripura and that rules are applicable in the matter of functions of the Managing Committee. Under the provisions of that rules the tenure of the elected body is 3(three) years only. Our Hon'ble High Court in RSA No.28/2006 held that the finding of the learned Addl. District Judge, North Tripura, Kailashahar relating to non-holding of any valid meeting can be disturbed in second appeal in the absence of any contention relating to the perversity of such recorded. Admittedly, the term of the elected body is only 3(three) years. Election was held in the year 1999 and their tenure came to an end in the year 2002.

The plaintiff-appellant produced no evidence to substantiate his claim that any such election was held after 1999 to justify his appointment as teacher to be valid. Numan Miah, the plaintiff-

appellant stated that he has been discharging his duties in the said post within the knowledge of the defendants. There was elected Managing Committee of the Maktab. PW.2 Md. Jamiruddin stated that he also sent demand letter on 8-9-2005 and that was received by the Dy. Director, School Education, Govt. of Tripura, Kailashahar, North Tripura. In cross-examination he stated that Numan Miah got his pay so long he was in his service. After termination from his job he has been getting nothing. So, after termination his working reports were not given by the authorized person. So, the plaintiff-appellant cannot claim remuneration. His working period existed only for one year and even then the defendants arranged his salary for two years. Unless and until his appointment is validated by elected committee, the plaintiff-appellant's claim for remuneration is baseless."

9. Mr. Roy, learned counsel has strenuously argued that the said observation of the first appellate court is not based on any evidence, as no such memorandum has been brought on record by the defendants and as such, such observation is absolutely without any evidentiary basis.

10. From the other side, Mr. S. Chakraborty, learned Addl. Govt. Advocate appearing for the respondents, has submitted that the plaintiff has failed to produce any tangible document to show that he worked lawfully as the general teacher in the said Maktab and he was not paid. Apart that, he has drawn the attention of this court to Ext.2 series, containing 35 sheets, and submitted that the modalities of the payment could be gathered therefrom. However, he has fairly submitted that the petitioner was initially engaged as the general teacher, but thereafter he was discontinued as there was no valid appointment in his favour.

Mr. Chakraborty, learned Addl. Got. Advocate, has also drawn attention of this court to the statement made by PW.2, namely Md. Jamir Uddin. PW.2 in his cross-examination, has stated as under :

“Noman Miah got pay so long he was in service in the Moktab. After termination of his job he is getting nothing. At the time of creation of the Moktab there was no assurance from the Government that the Govt. will give financial assistance for its management.”

But, PW.2 was not even re-examined.

11. The claim of the plaintiff is supported by adequate evidence to satisfy the standard of preponderance of probabilities. For this purpose, this court has read the statement made by the plaintiff in the court, both in examination-in-chief (by means of the affidavit and the cross-examination). He has referred to the order of restraint dated 10.09.2003, delivered in Misc.A.No.3/2000, arising from T.S.No.11/2000, whereby the respondents were restrained from holding further election to form any Managing Committee for management of the said Kubjar Muktab and also were restrained from creating any hindrance to the plaintiff's working and functioning in the committee or as the component of the committee till disposal of the original suit. It is not intelligible how such order can facilitate or stand as the proof of his working in the said Muktab. Even there is no document filed to show that the plaintiff worked for the period for which he has claimed the arrear salaries. The only whisper that is available is

the notice issued by the Advocate prior to institution of the suit. From Ext.2 series, the forwarding letter dated 26.09.2003, it reveals shows that some working reports for the years 1999-2000, 2000-2001, 2001-2002 and 2002-2003, were prepared, but from perusal of the said working reports as annexed, it appears that those photo-copies were signed by the appellant himself as the Secretary of the Managing Committee and counter-signed by PW.2. It is an admitted position that, that committee was never recognised by the respondents and even the court did not interfere as the suit filed by the plaintiff in the capacity of the self-styled Secretary of the Committee was dismissed.

12. Having confronted with this fact, it is incumbent on this court to hold that there is no document to show that he had been validly continuing in his engagement. Unless that is shown, this court cannot declare his entitlement as prayed for. Thus, this court does not find any merit in this appeal and accordingly it stands dismissed.

LCRs be send down after preparation of the decree.

JUDGE

ROY