

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.3132 of 2014
Date of decision: 01.09.2015

Anita Kumari

... Petitioner

Versus

Programme Officer and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Ashish Gupta, Advocate, for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

Vide order dated 07.06.2012 (Annexure P6), rendered by Civil Judge (Jr. Divn.), Gurgaon, the application moved by the petitioner-plaintiff, under Order 39 Rules 1 & 2 of the Civil Procedure Code was allowed and consequently, respondent-defendant No.3 was restrained from carrying out her duties as Anganwari Worker. Appeal preferred by defendant No.3 against the said order was accepted and vide order dated 09.10.2012, the order passed by the trial court was set aside. Consequently, the application for temporary injunction moved by the plaintiff was dismissed. That is how, plaintiff is before this court.

In a suit filed by the petitioner-plaintiff, she sought a declaration that appointment of Smt. Manju-defendant No.3

as Anganwari Worker was illegal and void and vide application for temporary injunction, she had prayed that defendants No.1 & 2 be enjoined from allowing defendant No.3 to perform her duties. It was maintained that the plaintiff too had competed for the said post along with defendant No.3 and she was not only eligible for the said post but was even better qualified than defendant No.3. Further, defendant No.3 did not fall in the prescribed ambit of criteria laid down for the post of Anganwari Worker.

In response, it was pleaded, inter alia, by the official defendants that there was no illegality or infirmity in the appointment of defendant No.3. Both plaintiff as also defendant No.3 had secured equal marks i.e. 20, in terms of their qualifications. Whereas, in the interview, plaintiff had obtained 3 marks and defendant No.3 had obtained 4 marks. This is how, defendant No.3 was selected and appointed.

Likewise, in a separate written statement filed by defendant No.3, she denied the claim of the plaintiff and maintained that her selection was in sync with the rules and regulations of the department.

On a consideration of the matter in issue, learned trial court arrived at a conclusion that as plaintiff was better qualified than defendant No.3, i.e. plaintiff was Class 7th pass whereas defendant No.3 was Class 5th pass, thus, both of them could not be granted the same marks i.e. 20. Further, it

was not explained as to how one extra mark was granted to defendant No.3 in the interview. Accordingly, defendant No.3 was enjoined from performing her duties.

Learned appellate court reviewed the matter in issue and on an analysis thereof concluded that parties to the lis were yet to adduce their respective evidence and only thereafter, it could be determined whether the selection and consequent appointment of defendant No.3 was indeed illegal. And, as appointment of defendant No.3 was in issue, it could not be maintained either that in the absence of ad interim injunction, the plaintiff shall suffer an irreparable loss or injury. That being so, it was observed that there was no balance of convenience in favour of the plaintiff. Particularly, when defendant No.3 had already been appointed and was continuing in service. On the contrary, if plaintiff succeeds in the suit, appointment of defendant No.3 shall in any case be declared void. That being so, the order passed by the trial court was set aside and application for injunction was dismissed.

I have heard learned counsel for the petitioner and perused the paper book.

Learned counsel for the petitioner simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. All what he urged is that plaintiff being better

qualified/educated than defendant No.3, selection and consequent appointment of defendant No.3 was unsustainable.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the petition is devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Concededly, in a suit filed by the petitioner, she has sought a declaration that the selection and consequent appointment of defendant No.3, as Anganwari Worker, is illegal and void. The stand set out by the official defendants in their written statement is that defendant No.3 was fully competent/eligible for the post in question and her selection was in sync with the rules and regulations of the department. Further, defendant No.3 had obtained higher marks than the plaintiff. Indisputably, plaintiff is yet to lead her evidence and prove that the selection of defendant No.3 was indeed erroneous or contrary to the criterion for selection. On the contrary, defendant No.3 has already been appointed and is working pursuant to her selection since long. At this stage, if she is enjoined to perform her duties, rather she would suffer an irreparable loss and injury. Ex facie, no balance of convenience lies in favour of the plaintiff. Rather, if the injunction prayed for is granted it would virtually amount to decreeing the suit at this stage.

That being so, no interference is warranted in the discretion exercised by the appellate court. Petition being devoid of merit is accordingly dismissed.

September 1, 2015
Rajan

(Arun Palli)
Judge