

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

**Regular Second Appeal No.763 of 1991 (O&M)
Date of decision: 13.07.2015**

State of Haryana and others

.....Appellants

Versus

Brij Lal

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Samarveer Singh, DAG, Haryana,
for the appellants.

Mr. Ashish Gupta, Advocate,
for the respondent.

Ritu Bahri, J.

Defendants-appellant have come up in regular second appeal against the judgments of concurrent findings of facts dated 24.01.1990 and 15.11.1990 passed by the Additional Senior Sub Judge, Jind and the Additional District Judge, Jind respectively, whereby suit filed by the plaintiff-respondent for declaration, has been decreed.

Brij Lal-plaintiff (respondent herein) had joined as untrained JBT teacher on 28.01.1956 in Government Primary School, Sanoli, District Karnal. Subsequently, he was considered as JBT trained teacher w.e.f. 01.11.1958 and was granted special certificate. He continued in service in Karnal District up to 26.07.1967 i.e. for about 11½ years. After formation of State of Haryana in 1966, District Jind was formed with two Tehsils i.e. Narwana and Jind, out of District Sangrur. The plaintiff-respondent opted for being transferred to Jind District with the condition that he would retain his provincialised cadre and would not loose his seniority lien and the provincialised cadre. His request was considered and allowed by the

Director, Public Instructions, Haryana. He was transferred to District Jind on 26.07.1967 and was shown at serial No.7 in the seniority list of that cadre. Six persons in that cadre were senior to him. He was granted selection grade of Rs.250-300 w.e.f. 01.11.1976 after completion of 18 years. Thereafter, a show cause notice was served upon him by the District Education officer, Jind, on 10.02.1987, asking him to explain, 'why selection grade granted to him vide order dated 28.01.1977 w.e.f. 01.11.1976, be not withdrawn and excess payment be not recovered. Ultimately, after hearing the plaintiff, the District Education officer passed an order dated 25.06.1987 withdrawing the selection grade of the plaintiff and re-fixing him in the time scale. The excess payments were also ordered to be recovered from the plaintiff. The plaintiff challenged the aforesaid order by filing the present suit.

Upon notice, the defendants-appellants filed written statement and controverted the allegations levelled by the plaintiff-respondent. It was stated that before transfer to Jind, the plaintiff was a provincialised teacher, but since he was transferred to his district on his own request, so he lost his seniority and benefit of the services rendered by him in District Karnal. As per Punjab Educational Services (Provincialised Cadre), Class III Rules 3 (2) of 1961, the plaintiff was to be placed at the bottom in the seniority list of State Cadre JBT Teacher also. It was further stated that the selection grade was granted to him w.e.f. 01.11.1976 with the condition that he would be liable to refund the amount in case he was found not entitled to it.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the impugned order dated 25.06.1987 is illegal, null and void and is liable to be set aside as such? OPP
2. Whether the plaintiff had been transferred on his own request

from Karnal to Jind with the condition that he would loose seniority in provincialised cadre? OPD

3. Relief.

Trial Court, after going through the evidence led by the parties, decreed the suit with costs. The lower appellate Court affirmed the finding of the trial Court and dismissed the appeal. Hence, this appeal.

Before the trial Court, the defendants-appellants did not place on record the option given by the plaintiff-respondent for being transferred to District Jind. Many opportunities were taken by the defendants to place on record the said option, but failed to do so. No explanation was given to the Court for withholding this letter. Accordingly, the lower Court drew adverse inference. As per para No.2 of the written statement, the plaintiff had given his option requesting to retain his provincialised cadre, but the said request was not considered. Once the defendants-appellants had transferred him to Jind after he had exercised his option, they were required to place on record an order rejecting the condition, which he had imposed for being transferred to District Jind. In the absence of any such order, both the Courts below had presumed that the conditional option given by the plaintiff had been accepted and was never rejected. As per transfer order dated 17.07.1967 (Ex.P1) passed by the Circle Education Officer, Ambala Circle, Ambala Cantt, the name of the plaintiff-respondent was figured at serial No.95. Under Note 2, appended to that list of transfers, it was mentioned that the transfers were subject to the condition that the official concerned should loose their seniority in the parentage district and would be placed at the seniority list of such teachers in the new district. It was further made clear that a JBT teacher of provincialised Cadre, on transfer from one

teachers already existed in the transferee district. At the time of transfer of the plaintiff-respondent to Jind District, there were 6/7 teachers already in the list of provincialised cadre. The plaintiff-respondent was made junior to them. The selection grade was given not on the basis of seniority, but on completion of 18 years of service. The transfer letter dated 17.07.1967 (Ex.P1) did not show that on transfer from one District to another, the plaintiff-respondent would lose the benefit of his past service in toto. The plaintiff-respondent, after completing 18 years of service as JBT teacher (Provincialised Cadre) on 01.11.1976, was rightly given the selection grade. After giving him the selection grade, the defendant-department proceeded to withdraw the same in the year 1985.

After going through the impugned judgments passed by both the Courts below, this Court is of the view that suit of the plaintiff-respondent has been rightly decreed after appreciation of evidence in the right perspective. No illegality, much less perversity, has been found in the impugned judgments, warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

13.07.2015

ajp

(RITU BAHRI)
JUDGE