

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Regular Second Appeal No.2473 of 2008(O&M)
Date of Decision: November 16, 2015

Management, Vivek High School, Chandigarh and another
.....Appellants

versus

Geeta DayRespondent

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

Present: None for the appellants.

Mr.Dinesh Kumar, Advocate, for the respondent.

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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?

Surya Kant, J. (Oral)

This regular second appeal is directed against the judgment and decree dated 26.10.2005 passed by the learned Civil Judge (Junior Division) Chandigarh as well as the judgment and decree dated 03.09.2007 of the learned District Judge, Chandigarh, whereby first appeal preferred by the appellants against the judgment and decree of trial Court, was dismissed.

[2] Since I propose to dispose of this appeal as having been rendered infructuous, it is not necessary to notice the facts in detail. Suffice it would be to mention that the appellants are the Management and Principal of Vivek High School, Sector-38, Chandigarh which is a privately managed recognized School. The respondent was appointed as P.T. Instructor by the appellants on 30.03.1998. While serving in that capacity, she proceeded on maternity leave from 22.07.2002 to 13.09.2002 though her leave application was not sanctioned by the Management. Consequently, the services of

the respondent were dispensed with. She challenged the action of School-Management by way of a suit for mandatory injunction which was decreed by the learned Trial Court in part vide judgment and decree dated 26.10.2005 to the extent that the respondent was directed to be taken back on duty and pay the benefit of maternity leave.

[3] Both the parties felt aggrieved and preferred their respective first appeals before the learned District Judge, Chandigarh. While the respondent sought the relief qua consequential arrears of pay, the appellants-Management assailed the trial Court decree to the extent it directed the reinstatement of respondent alongwith benefit of maternity leave.

[4] The First Appellate Court vide the impugned judgment and decree dated 03.09.2007 allowed the respondent-plaintiff's appeal No.81 of 2005 and ordered the payment of all arrears of pay for the period preceding the date of joining duty. The appeal No.27 of 2006 filed by the appellants was dismissed.

[5] Both the above-mentioned judgment and decrees passed by the Courts below are under challenge in the instant appeal.

[6] No sooner the appeal was taken up for final hearing, learned counsel for the respondent has drawn my attention to para No.16 of the Grounds of Appeal taken by the appellants which reads as under:-

“16. That it is relevant to submit that in terms of the judgment passed by the learned trial Court, the respondent had been allowed to join back on 14.12.2005 and had also been given the

maternity benefit as directed by the learned Trial Court. However, thereafter the respondent again submitted a leave application for 3 days from 21.12.2005 to 23.12.2005 which was not sanctioned and duly conveyed to her. However, she still opted to avail the unsanctioned leave and did not report for duty after 23.12.2005 despite repeated reminder....”

[7] Learned counsel for the respondent further submits that services of the respondent were again terminated on 12.11.2005 retrospectively w.e.f. 19.03.2005 and since she did not challenge that order of termination of her services, the same has attained finality. As regard to the benefits granted by the trial Court, he points out and rightly so that the appellants themselves have conceded that the respondent was allowed to join back on duty on 14.12.2005 and arrears of maternity leave were also paid to her. In view of the subsequent termination of services of the respondent coupled with the fact that the judgment and decree passed by the learned first Appellate Court in favour of the respondent is separately under challenge in Regular Second Appeal No.4451 of 2014, I am of the considered view that the instant appeal has been rendered infructuous and the same is disposed of accordingly.

Ordered accordingly.

November 16, 2015

mohinder

[SURYA KANT]
JUDGE

302 CM Nos.8871-C of 2008, 2887 & 2888-C of 2010
and CM Nos.5126 to 5128-C of 2010 in
RSA No.2473 of 2008

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Management, Vivek High School and another
versus

Geeta Day

Present : None for the applicant/appellants.
Mr.Dinesh Kumar, Advocate,
for the respondent.

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CM No.8871-C of 2008.
CM Nos.2887-C and 2888-C of 2010

As the main appeal is decided on merits, these
applications have become infructuous and are disposed of
accordingly.

CM No.5126-C and 5127-C of 2010

The applications are allowed as prayed for.

CM No.5128-C of 2010

Since the main appeal is decided on merits, no
separate order is required to be passed on this application.

Disposed of.

November 16, 2015

mohinder

**(SURYA KANT)
JUDGE**