

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

**RSA No.3968 of 2008 (O&M)
Date of decision: 02.09.2015**

Aruna Saini

...Appellant

Vs.

Municipal Council, Nangal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Vinod K. Sharma, Advocate
for the appellant.

Mr. Jaspreet Singh, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

Challenge in the present appeal is to the impugned judgment and decree passed by the lower Appellate Court, whereby, the judgment and decree dated 12.10.2007 of the trial Court has been modified, whereby, the trial Court had decreed the suit and issued mandatory injunction against Municipal Committee to reinstate the plaintiff on the post of Social Studies Teacher, on which she, prior to the termination was discharging the duties.

The aforementioned judgment and decree had been challenged by the Municipal Committee by filing an application under

Section 96 of the CPC and the lower Appellate Court has modified the same by holding that the appellant-plaintiff had only right of consideration.

Mr. Vinod K.Sharma, learned counsel appearing on behalf of the appellant-plaintiff submits that appellant was appointed as Social Studies Teacher on adhoc basis in the pay scale of Rs.1640-2952 plus usual allowances vide order dated 20.07.1994, Ex.PW1/1 against the leave vacancy. Subsequently, vide resolution No.3, dated 15.11.1994, Ex.PW1/9, the plaintiff was appointed as a Social Studies Teacher, on permanent basis, against the post, which fell vacant on account of termination of services of the Social Studies Teacher-Mrs. Raj Verma, on the condition, that the petitioner would not claim any right, if the incumbent files a case and returns, after decision of the Court in her favour. He further submits that during this period, the appellant had been given annual increments on completion of each year service, she was also contributing towards Provident Fund and her service book was also maintained. The appellant-plaintiff was issued a notice/order dated 14.07.2003, Ex.PW1/3, whereby, her services were sought to be terminated on account of the fact that Smt. Raj Verma, Social Studies Teacher had obtained the order from the Court. The appellant represented against the said notice and the said representation was decided without passing any speaking order. It is in these circumstances, the aforementioned suit was filed. He further submits that many

vacancies had occurred on the superannuation of other teachers, i.e., on 28.01.2004 and 15.09.2004 but even then the respondent-defendants have not implemented the judgment and decree of the lower Appellate Court by considering and passing a speaking order therein. Learned counsel for the appellant further submits that in view of the aforementioned facts, following substantial questions of law arise for determination by this Court:-

- i) Whether the unilateral, arbitrary, unreasonable, unfair clause/condition contrary to rules can be added in the appointment order/letter of an employee appointed on permanent basis against a permanent post in a regular pay scale and governed by the Punjab Civil Services Rules that she shall have no claim in case the incumbent, whose services have been terminated files a case and returns on decision of the Court case in her favour that, too, without specifying any time limit?*
- ii) Whether such a condition in the appointment order is void under Section 23 of the Contract Act as being opposed to public policy?*
- iii) Whether the services of an employee appointed on permanent basis against a permanent post in regular pay scale and treated as regular employee governed by the Punjab Civil Services Rules can be terminated at any time without complying with the procedure prescribed by*

the Service Rules and the principles of natural justice in the garb of an arbitrary, unreasonable, unfair, unjust clause/condition in the appointment order/letter?

iv Whether the services of an employee appointed on permanent basis against a permanent post in regular pay scale and treated as regular employee can be terminated when there existed another permanent vacancy?

v) Whether the impugned Notice/Order, Exhibit PW1/3 on the face of it is factually and legally incorrect and misconceived vis-a-vis Appointment Order, Exhibit PW1/1, and Decision/Resolution Ex.PW1/9?"

Mr. Jaspreet Singh, learned counsel appearing on behalf of respondent No.1 submits that there is no illegality and perversity in the impugned judgment and decree of the lower Appellate Court, whereby, the judgment and decree of the trial Court has been modified. The appellant has only right of consideration.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below.

It is a matter of record that the appellant had worked for a period of 09 years as noticed above and had been granted annual increments, much less, had been contributing towards Provident Fund and her service book was also maintained vide Ex.PW1/10. Though the condition imposed in the resolution dated 15.11.1994, Ex.PW1/9, was there but the fact remains that the appellant had

worked for a period of 09 years. The respondent-department ought to have adjusted the appellant either by transfer or by some other means but should not have terminated or adopted the procedure, as has been done, by issuing show cause notice. The trial Court on the basis of the oral and documentary evidence found that appellant is entitled to be reinstated. In my view, finding rendered by the lower Appellate Court is erroneous, for the reason that right of consideration would again give rise to multiplication of litigation, for the reason that in case, after complying with the judgment and decree of the Appellate Court, department decided not to retain the appellant in service, she had to again undergo rigor of another litigation. The appellant has served the department as Social Studies Teacher for 09 years without any adverse entry, much less, as submitted by Mr. Sharma had un-impeccable record.

Before parting with the judgment, this Court had put a question to Mr. Sharma, whether the appellant has attained the age of superannuation or not, the reply was that she still has two years more. The appellant has suffered a lot of harassment on account of her services being terminated being left in lurch.

In view of what has been observed above, once the appellant had been appointed on permanent basis, the manner and mode in which service has been terminated is not only erroneous, but capricious and fallacious. Accordingly, the substantial questions of law are answered in favour of the appellant and against the

respondent-Municipal Council.

Impugned judgment and decree of the lower Appellate Court is set aside and that of trial Court is restored.

Accordingly, the appeal is allowed.

(AMIT RAWAL)
JUDGE

September 02, 2015
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