

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

**Regular Second Appeal No.3797 of 2011 (O&M)
Date of decision: 13.07.2015**

Smt. I. Gandhi

.....Appellant

Versus

Director Public Instructions (D), Punjab and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashok Giri, Advocate,
for the appellant.

Mr. Vaibhav Sharma, DAG, Punjab,
for respondent No.1.

Mr. Rakesh Gupta, Advocate,
for respondent Nos. 2 to 5.

Ritu Bahri, J.

Plaintiff-appellant has come up in regular second appeal against the judgment of reversal dated 09.06.2011 passed by the Additional District Judge, Jalandhar, whereby appeal filed by the defendants-respondents against the judgment and decree dated 07.02.2008 passed by the Civil Judge (Senior Division), Jalandhar, has been accepted and suit of the plaintiff has been dismissed.

Smt. I. Gandhi-plaintiff (appellant herein) filed a suit for declaration and mandatory injunction claiming that United Christian Girls High School, Suranussi, Jalandhar was a privately managed recognized school and was getting 95% grant from the Punjab Government. The service conditions of the employees working in the said school were

(Security of Service) Act , 1979. The plaintiff-appellant was appointed as regular Craft Teacher in the said school on 07.06.1964. Thereafter, she was confirmed on such post w.e.f. 01.07.1966 on the basis of good service record. On 28.01.1966, an agreement was made entered into between the school and the plaintiff and thereafter, she earned yearly increments. She was declared fully trained Art & Craft Teacher w.e.f. 01.12.1967 vide order dated 18.07.1968. As per plaintiff-appellant, she was entitled to receive full pay as per pay scales revised from time to time at Rs.1960/- per month. 10% of her basic pay was deducted towards provident fund (PF). Grievance of the plaintiff-appellant arose from 01.02.1993, when the school management had stopped paying salary to her. Initially, she was being marked present but thereafter, since 03.01.1994, defendant No.5 was not allowing her to mark presence in the attendance register. Therefore, she filed the present suit seeking full salary from the school management w.e.f. 01.02.1993 along with interest.

Upon notice, defendants-respondents filed separate written statements and controverted the allegations levelled by the plaintiff-appellant.

Trial Court, after going through the evidence led by the parties, observed that in her cross-examination, Mrs. Elieser, Manager, United Christian Girls High School, Suranussi (DW-1), had admitted that Mrs. I. Gandhi-plaintiff was confirmed as permanent teacher on 01.07.1965 prior to grant in aid. She further admitted that as per Rule 5 of Grant in Aid Rules, Punjab Art and Craft Teacher, who had diploma or certificate or two years Provincial Industrial School and Central Government Institutions would be treated as trained teacher and earned increments. She had further admitted

and even her G.P. Fund used to be deducted. The plaintiff was granted 10 months' salary as full time teacher. She also admitted that plaintiff had done diploma of two years and in the year 1964, she was in the scale of 80-4-100/5-125. This grade was payable to regular teachers before grant in aid. In view of the admissions made by Mrs. Elieser-defendant No.4 (DW-1), the plaintiff-appellant could not be treated as a part time employee. On the basis of above findings, the trial Court decreed the suit and defendant Nos.2 to 5 were directed to calculate the amount of increments to be paid to the plaintiff and fix her salary as permanent regular employee. They were directed to make entire payment along with interest at the rate of 12% per annum within a period of three months.

Against this judgment, the Managing Committee of the defendant-school went in appeal by taking the pleas that earlier also the plaintiff had filed a civil suit on 07.06.1986 on the same cause of action, which had been dismissed as withdrawn without getting any permission to file fresh suit.

The plaintiff-appellant had filed Civil Writ Petition No.14061 of 1995 before this Court, which was disposed of vide order dated 15.10.1996 by holding that the disputed questions of facts could not be gone into the writ petition. However, the petitioner (appellant herein) was relegated to the remedy of civil suit and it was made clear that the respondents will not take the plea of *res judicata*. The earlier suit filed by the plaintiff-appellant had been withdrawn as efforts of school management had prevailed upon her that she would be allowed to all benefits of a confirmed teacher w.e.f. 01.12.1967. Thereafter, she was paid Rs.50,000/- as part payment of arrears calculated by the management in the year 1993 vide cheque No.982242 while Rs.2,55,000/- were yet to be paid. The plaintiff-appellant was not

The present suit has been filed on 06.10.2000, which was beyond the period of limitation of three years. The trial Court while decreeing the suit did not give any direction for payment of Rs.2,50,000/- as per compromise effected in the year suit when it was withdrawn by the plaintiff-appellant. For seeking specific relief, the present suit has been filed after about 4 years, which was beyond the period of limitation. The suit was partly decreed by the trial Court. However, no appeal was filed by the plaintiff-appellant for non grant of arrears of Rs.2,50,000/-. Hence, to the limited extent. Ultimately, the lower appellate Court accepted the appeal and dismissed the suit of the plaintiff, as the same was barred by limitation.

The case of the plaintiff-appellant is that no salary had been paid to her since 01.02.1993. Although she was doing full work and was being marked present, but defendant No.5 had not allowed her to mark her presence in the attendance register since 03.01.1994. In the earlier suit, she had given her claim of Rs.2,50,000/-, as per compromise when she had withdrawn her suit from the Court. Hence, the only relief, which has been granted by the trial Court is with respect to fixation of pay as regular employee. This was the only benefit which the defendants-respondents had not paid to her when she filed the writ petition (CWP No.14601 of 1995) before this Court. For all intents and purposes, a conclusion can be drawn that after 01.02.1993, she stopped working with the management and hence, it was not a recurring cause of action to claim regular salary for the said period once her attendance was not being marked in the school. After the aforesaid writ petition was disposed of on 15.10.1996, a suit for claiming salary should have been filed within three years as it was not a recurring cause of action. However, the present suit was filed on 06.10.2000.

plaintiff-appellant as had she been working in the school after 01.02.1993, it would amount to recurring cause of action. Once, she admitted that she was not working, her relationship with the defendant-school was in dispute and her suit has been rightly dismissed by the lower appellate Court being time barred. The judgments relied upon by the plaintiff-appellant in cases **M.R. Gupta Vs. Union of India and others**, 1995 (5) SLR 221, **Saroj Kumari Vs. State of Punjab**, 1998 (3) SCT 665, **Mohinder Singh and another Vs. Union of India and others**, 2014 (3) SCT 326 and **Roshan Lal Vs. State of Punjab and others**, 2003 (2) SLR 216, are not applicable to the facts of the present case, as in the present case after 01.02.1993, her presence in the school had not been marked and she has been shown absent and her suit is for claiming salary for the said period, which is not a recurring loss every month. Since the main relief is held to be barred by time, the consequential benefits would follow the same fate.

After going through the impugned judgment, this Court is of the view that suit of the plaintiff has been rightly dismissed by the lower appellate Court being time barred. No illegality, much less perversity has been found in the impugned judgment, warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

13.07.2015

ajp

(RITU BAHRI)
JUDGE