

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 1915 of 2012

Date of decision : April 27, 2015

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Kanta Nanda

.....Appellant

Versus

The Punjab State through District Collector, Amritsar
and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. S.K Mahajan, Advocate for the appellant.

Mr. Vaibhav Sharma, DAG, Punjab.

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1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

Present regular second appeal has been filed against the judgment dated 1.5.2007 passed by the Civil Judge (Junior Division), Amritsar, whereby the suit of the appellant-plaintiff (hereinafter referred to as 'the plaintiff') for declaration and mandatory injunction was dismissed and the judgment dated 11.11.2011 passed by the Additional District Judge, Amritsar, whereby an appeal against the judgment of the trial Court was dismissed.

Plaintiff Kanta Nanda had filed present suit against the Punjab State through District Collector and others for declaration to the effect that plaintiff is entitled to pay protection/higher pay than her

Junior namely Smt. Kamlesh Sharma who retired on 31.12.2001 and for mandatory injunction directing the defendants to make the payment of the arrears (higher pay) etc. to the plaintiff.

Brief facts of the case are that plaintiff joined the service as Staff Nurse on 24.10.1968 at Civil Hospital, Nangal and thereafter on 17.9.1971 she was transferred to Shri Teg Bahadur Hospital, Amritsar and was further promoted as Nursing Sister on 12.6.1995 and has retired on 31.1.2002 from SGTB hospital, Amritsar. The basic pay fixed by defendants was not as per the relevant rules of pay fixation. As per settled rules of Government vide circular dated 21.6.1990, staff who was drawing lesser pay as compared to the drawings of staff junior to him, the drawings of senior had to be equalized with the junior staff drawing salary more than concerned Senior staff, but it was not done in the case of plaintiff and against this arbitrary act of defendants plaintiff had approached this Court and this Court vide its order dated 1.7.2003 directed the defendants to revise the pay scale of plaintiff in accordance with rules. The defendants did not revise the basic pay and pension of plaintiff in accordance with rules despite directions of High Court as basic pay of plaintiff ought to have been fixed equalizing with her junior Kamlesh Sharma whose basic pay was fixed at Rs. 8375/- as on 1.1.2001, while it has been refixed at Rs. 8100/- which is equal of Smt. Manjit Bhatia, while it should have been Rs. 8925/- at par with Kamlesh Sharma at the time of retirement of plaintiff. Plaintiff filed various representations before the defendants including

representation dated 21.10.2003 and reminder dated 10.11.2003 in this regard, but no action was taken. Hence this suit was filed.

On notice, defendants appeared and filed a joint written statement. On merits, it was submitted that in fact comparison of pay of plaintiff was given w.e.f 1.5.1990 with Smt. Manjit Bhatia as per Punjab Government Instructions dated 21.6.1990 and moreover as per direction of High Court, a detailed speaking order was passed by Competent authority in which it was mentioned that the pay of plaintiff had already been fixed equivalent to her Junior Manjit Bhatia as per rules and as such plaintiff is not entitled for refixation of her pay again equal to Kamlesh Sharma because as per Government Instruction such benefit can be given only one time. Rest of the allegations have specifically been denied in the written statement. It was further submitted by the defendants that as the plaintiff had not come to the Court with clean hands her suit was liable to be dismissed.

Defendants examined DW-1 Jaspal Singh, Section Officer who has tendered his affidavit Ex. DW1/A along with documents Ex. D1 to Ex. D4. In his affidavit, this witness submitted that plaintiff was retired as nursing Sister on 31.1.2002 and in comparison of pay of plaintiff with Smt. Manjit Bhatia she was given benefit w.e.f 1.5.1990 as per Punjab Government instructions Ex. D1. It is further submitted that plaintiff had joined as Staff Nurse on 24.10.1968 whereas Manjit Bhatia had joined as Staff Nurse on 22.9.1969 and she was junior to plaintiff and pay of plaintiff was raised equal to her junior Manjit Bhatia w.e.f 1.5.1990. It is further submitted that plaintiff

had filed writ petition in the High Court and as per directions of the High Court, speaking order dated 28.10.2003 was passed by the competent authority vide which pay of plaintiff was raised in accordance with pay of her junior Manjit Bhatia vide documents Ex. D2 and Ex. D3. It was also submitted that basic pay of plaintiff was previously fixed at Rs.8100/- w.e.f 1.1.2001, however, at the time of passing speaking order her pay was fixed at Rs. 8375/- w.e.f 12.6.2001.

This fact was not disputed by the plaintiff. In the earlier suit, she had not impleaded junior Kamlesh Sharma and since her pay had already been fixed pursuant to the direction of the High Court in an order passed in Civil writ petition No. 8952 of 2003 on 1.7.2003, the plaintiff was not entitled for any relief as the order dated 28.10.2003 has attained finality and was never challenged. The suit of the plaintiff has been dismissed by both the Courts as she had already availed of her remedy by filing a writ petition in this Court and after the disposal of that writ petition, the competent authority had passed an appropriate speaking order on her representation and fixed her pay at par with Manjit Bhatia. This order has attained finality as it was never challenged by the plaintiff. No fresh cause of action arises for consideration by filing the present suit.

In view of all that has been discussed above, the judgment of trial Court and appellate Court does not require any interference as there is no illegality and infirmity in them. No substantial question of law arises for consideration in this regular

second appeal. Hence the same is dismissed.

April 27, 2015
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(**RITU BAHRI**)
JUDGE