

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

**Regular Second Appeal No.2537 of 2013 (O&M)
Date of decision: 12.03.2015**

Dayanand

.....Appellant

Versus

Sanatan Dharam Educational Board and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Lokesh Sharma, Advocate,
for the appellant.

Ritu Bahri, J.

CM No.6792-C of 2013

For the reasons mentioned in the application, same is allowed and
delay of 29 days in filing the appeal is condoned.

RSA No.2537 of 2013

Plaintiff-appellant has come up in regular second appeal against
the judgments of concurrent findings of fact recorded by both the Courts
below i.e. Civil Judge (Senior Division), Narnaul and the Additional District
Judge, Narnaul, whereby his suit(s) had been dismissed.

Plaintiff-appellant had filed civil suit No.317 dated
07/11/2003/21.09.2005 for declaration that the order dated 16.04.2003
passed by defendant-respondent No.3, whereby his services were terminated,
was wrong, against the law and facts and was not binding upon him. The
plaintiff was appointed as a clerk against unsanctioned post. As per plaintiff,
he was on casual leave on 07.04.2003 and 08.04.2003. However, on

08.04.2003, he met with an accident and remained admitted in PGIMS, Rohtak upto 14.04.2003. Leave in that regard was sent to the concerned authority. However, on 16.04.2003 defendant No.3 passed the impugned order of termination.

Upon notice, defendant-respondents filed written statement, stating therein that the plaintiff was real brother of Madan Lal Sharma, Steno to SDO (Civil), Narnaul, who moved an application dated 23.07.1999 for his appointment, which was marked to the Administrator. Thereafter, the plaintiff was appointed against the unsanctioned post of clerk on the consolidated pay of Rs.2200/- per month purely on temporary basis. It was further stated that the senior secondary school was not getting any grant from the Government. Neither the services of the employees of A.S.D. Sr. Sec. School nor the services of the plaintiff were governed by Haryana Education Code or the Haryana School Education Act, 1995 or the Haryana Aided School Security of Service Rules. Salary of the plaintiff was paid out of the quota of management and the vacancy was never created by the Board of erstwhile Management. At the time of appointment, Mr. R.S. Verma was the Administrator of the institute. The plaintiff did not attend his duty since 07.04.2003 and on 16.04.2003, his services were terminated. On 09.05.2003, plaintiff-appellant came to the office, where the order of termination along with one cheque was given to him. It was denied that the defendants-respondents had any knowledge with regard to the accident of the plaintiff. There was one sanctioned post of clerk, on which, Mr. Narinder was working, who had retired from service w.e.f. 30.11.2002. A selection committee was constituted under intimation to the District Education Officer, Narnaul and after following due selection process, one Jitender

Kumar was appointed on the said post. The plaintiff-appellant did not participate in the selection process.

Plaintiff-appellant also filed another civil suit No.157 dated 16.04.2008/21.11.2008 for permanent injunction restraining the defendants-respondents from terminating his services with consequential relief of mandatory injunction directing the defendants to regularize his services. Both the suits were taken up together for disposal.

The trial Court, after going through the evidence led by the parties, dismissed both the suit filed by the plaintiff-appellant and his prayer for regularization was declined. The lower appellate Court affirmed the findings recorded by the trial Court and dismissed the appeal.

While dismissing the appeal the lower appellate Court perused the appointment letter dated 31.07.1999, Ex.D2, relevant extract of which reads as under:-

“On approval of the Administrator, A.S.D. Sr. Sec. School, Narnaul, Sh. Dayanand S/O Sh. Shriniwas is hereby appointed as clerk on unsanctioned post w.e.f. 31.07.1999 on purely temporary basis. He will get Rs.2200/- (Two thousand and two hundred) P.M. Consolidated during his service period.”

There was no condition in the appointment letter, Ex.D2, that the plaintiff-appellant would be adjusted against the sanctioned post as and when it falls vacant. The plaintiff-appellant was appointed on temporary post by the Manager of the school after seeking necessary approval of the Administrator. As per Article 15 (c) of the Constitution of Shri Sanatan Dharam Education Board, Narnaul, the Manager has the following powers:-

1. He shall have general control over the institution under him and carry on day to day administration.
2. He shall check and order payment of salary or other bills.

3. He shall have power to spend Rs.125/- subject to the approval of the board.
4. He can suspend any employee of the institution under him and restore him to his post. He should, however, report such case to the board.

Hence, while exercising powers under Section 15 (c) of the Constitution of Board, the services of the plaintiff-appellant were terminated. Furthermore, as per the termination order, no aspersion had been caused on the work and conduct of the plaintiff. Hence, no prior notice was required to be given to the plaintiff-appellant before terminating his services.

The plaintiff-appellant could take part in the selection process for regular post, which fell vacant on the retirement of one Narinder. But, he chose not to participate in that selection process, as a result of which, one Jitender Kumar was appointed. Moreover, the defendants-respondents were not bound to absorb the plaintiff against the regular/sanctioned post, which became available on the retirement of Narinder Singh. They had followed due process.

After going through the impugned judgments, it is clear that the plaintiff-appellant has been terminated as per the terms and conditions of the appointment letter dated 31.07.1999, Ex.D2. There is no dispute with regard to the concurrent findings of fact recorded by both the Courts below.

No substantial question of law arises for consideration.

Dismissed.

12.03.2015
ajp

(RITU BAHRI)
JUDGE