

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

**RSA No.2662 of 2013
Date of decision: 16.07.2015**

Naval Kumari

...Appellant

versus

The State of Punjab and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sanjeev Kumar Arora, Advocate,
for the appellant.

RITU BAHRI, J.

Plaintiff-appellant has come up in regular second appeal against the judgment dated 04.03.2013 passed by the Additional District Judge, Ferozepur, dismissing his appeal against the judgment and decree dated 20.12.2011 passed by the Additional Civil Judge (Senior Division), Ferozepur, whereby her suit for declaration that she was entitled to pay and allowances at par with Kamlesh Kumari who was junior to her, has been dismissed.

The plaintiff-appellant was appointed as JBT Teacher in the Education Department, Punjab. Initially she joined on 01.01.1977. The name of the plaintiff figured at Sr. No.627 in the seniority list and that of Kamlesh Kumari, JBT Teacher, figured at 638. However, she was drawing more pay than the plaintiff. During the pendency of the suit, an order dated 24.11.2006 was passed by the District Education Officer (Primary), Ferozepur-defendant No.2, vide which, the seniority of the plaintiff was

adversely affected qua the seniority of aforesaid Kamlesh Kumari. The plaintiff states that she was never given any opportunity of hearing or to make her representation to defend herself before adversely affecting her seniority qua Kamlesh Kumari.

It was further stated in the plaint that State of Punjab had revised the pay scale of its employees w.e.f. 01.01.1978. Plaintiff had made a request to grant her increment w.e.f. 02.01.1978, whereas the said benefit had been extended to her in November, 2004. She was claiming benefit of pay and allowances w.e.f. 02.01.1978 onwards along with interest. The revised pay scales were applicable w.e.f. 01.01.1986. The teachers were allowed to give their option for revised pay scales w.e.f. 01.01.1988. Plaintiff's grievance is that after the increment was granted to her w.e.f. 01.01.1978, she could exercise her option on the revised pay scale from time to time.

On notice, the defendant-respondents filed written statement and submitted that the plaintiff had been working on temporary basis from 01.01.1977 and her services were regularized w.e.f. 01.10.1980. It was further submitted that the appellant had been given seniority at Sr. No.627, whereas Kamlesh Kumari, who had been working on tempoarty basis w.e.f. 01.08.1975, had been regularized w.e.f. 01.10.1980, but her seniority number was wrongly given as 638. Kamlesh Kumari being senior to the plaintiff had no cause of action to file the suit. It was further stated that the benefit of increment w.e.f. 02.01.1978 was wrongly given to Kamlesh Kumari and the suit of the plaintiff was time barred.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to the declaration as prayed

for? OPP

2. Whether the plaintiff is also entitled to arrears of pay and allowances as prayed for? OPP
3. Whether the plaintiff is entitled to interest at the rate of 18% per annum as prayed for? OPP
4. Whether the suit of the plaintiff is time barred? OPD
5. Whether the seniority was wrongly allotted to Kamlesh Kumari as alleged? OPD
6. Whether the plaintiff has no cause of action as Kamlesh Kumari is senior to plaintiff, Naval Kiumari, as alleged? OPD
7. Relief.

Trial Court, after going through the evidence on record, dismissed the suit of the plaintiff-appellant. The lower appellate Court affirmed the findings returned by the trial Court and dismissed the appeal.

Before the trial Court, attested copy of the order passed by the District Education officer was placed on record, whereby it was stated that the services of the plaintiff (appellant) as well as Kamlesh Kumari had been regularized on 01.10.1980 and this seniority had been fixed as per the instructions contained in circular/letter dated 11.08.1978. Kamlesh Kumari being senior had to be given a seniority over and above the plaintiff-appellant. Date of birth of Kamlesh Kumari was 06.08.1947, whereas the date of birth of the plaintiff was 24.04.1956. On the basis of date of birth, the seniority of Kamlesh Kumari was fixed over and above the plaintiff-appellant. Keeping in view the above facts, the suit of the plaintiff was dismissed. Furthermore, the order dated 24.11.2006 had not been placed on record and the same was perused from the official file of the defendants-

respondents.

After going through the impugned judgments passed by the Courts below, no illegality, much less perversity has been found therein, warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

(RITU BAHRI)
JUDGE

16.07.2015
ajp