

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2838 of 2013 (O&M)
Date of Decision: May 25, 2015

Nachhatar Singh

...Appellant

Versus

The Managing Director and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Mukesh Kumar Bhatnagar, Advocate
 for the appellant.

INDERJIT SINGH, J.

Appellant-plaintiff Nachhatar Singh has filed this regular second appeal against the Managing Director and Principal, Sri Guru Teg Bahadur Public School respondents-defendants challenging the impugned judgment and decree dated 04.01.2012 passed by learned Civil Judge (Senior Division) Amritsar vide which the suit for declaration filed by the plaintiff was dismissed and also the judgment and decree dated 19.02.2013 passed by learned Addl. District Judge, Amritsar vide which the appeal filed by the appellant-plaintiff was also dismissed.

The brief facts of the case are that plaintiff-appellant Nachhatar Singh filed a suit against defendants-respondents The Managing Director and Principal, Sri Guru Teg Bahadur Public School for declaration to the effect that the plaintiff is still in service and

termination of services is illegal, null and void and against the law applicable to the institute with the consequential relief of mandatory injunction directing the defendants to reinstate the plaintiff and also to pay him the salary along with other benefits as per law.

It is mainly stated in the plaint that the plaintiff was enrolled by the order of the Chairman of the school as an Accountant with the defendants on 06.08.1998 and had been carrying out the given job to the satisfaction of his seniors. Retirement letter was given to him by the Principal of the School, which was clearly against the provisions of Article 309 and 311 of the Constitution of India and as such, the termination of the plaintiff was illegal, null and void. As per the Affiliation Bye Laws of the institution, the retirement age was 60 years for all categories of employees in the school but the plaintiff had been retired before attaining the age of 60 years and this retirement amounts to compulsory retirement and against the rules. It is further stated that legal notice was served upon the defendants on 19.01.2010. No reply or action was taken by the defendants. The cause of action arose to the plaintiff against the defendants on 16.09.2009 when the retirement letter was issued by the defendants to the plaintiff.

On other hand, the case of the defendants is that the appointment was not regular and plaintiff was not issued any appointment letter. He was asked to come and assist in the functioning of the school on 07.08.1998 as per verbal order of S.Joginder Singh Dhillon, the then Principal of the School. The

plaintiff never served in the school continuously for ten years. He resigned from the service on 11.08.2004 and till then, his share of provident fund was being deducted out of his salary and an equal amount was being contributed by the school. It is further the case of the defendants that after resignation, the plaintiff withdrew his provident fund. He also served with a letter to handover the charge to the concerned authority. However, he again joined the school on 01.12.2004 and worked till 30.09.2009, the date of his attaining the age of superannuation. Thereafter, plaintiff was re-employed for a year after his superannuation at his own request w.e.f 02.10.2009 and during the period of his re-employment, his work was not satisfactory and he stopped coming to the school and he never reported for duty w.e.f 15.01.2010. It is also stated that plaintiff retired on 30.09.2009 under the Rules which he accepted without any protest.

Learned Civil Judge (Senior Division) Amritsar, after appreciating the evidence, dismissed the suit of the plaintiff vide judgment and decree dated 04.01.2012. An appeal was filed by the plaintiff before learned District Judge, Amritsar and the appeal was also dismissed by learned Addl. District Judge, Amritsar vide judgment and decree dated 19.02.2013.

Aggrieved from the above-said judgments and decrees, present regular second appeal has been filed by the appellant-plaintiff.

At the time of arguments, learned counsel for the appellant argued that the appellant-plaintiff was retired against the rules and the suit of the appellant is liable to be decreed that he is still in service

and he is also entitled to arrears of salary etc.

I have heard learned counsel for the appellant and have gone through the record.

From the record, I find that the findings given by both the Courts below are concurrent, as per evidence and law. No substantial question of law arises in this regular second appeal. There is nothing on the record to show that any evidence has been misread by the Courts below. Learned Civil Judge (Senior Division) Amritsar discussed the evidence on record and gave findings that defendant school is affiliated to the Central Board of Secondary Education. Plaintiff has admitted of joining the defendant-school and submitted his resignation on 11.08.2004 vide Ex.D1. The plaintiff in cross-examination stated that he had resigned from his job on 11.08.2004 and also withdrawn the provident fund. When the plaintiff himself has resigned and has withdrawn his dues, he cannot be deemed to be in service of the defendant-school after resignation and especially when the services are contractual. The Court also relied upon the request of the plaintiff Ex.D6 for extension of the service. Learned Addl. District Judge, Amritsar, in the appeal also discussed the cross-examination of the plaintiff and reached to the conclusion that in cross-examination, plaintiff has admitted that no appointment letter was issued to him for service in the school. He joined the service on the verbal direction of Daljit Singh Pannu, the then M.D. on 07.08.1998. He admitted it to be correct that he resigned from his job on 11.08.2004 vide his resignation Ex.D1. He also admitted that after

resignation, he has withdrawn his provident fund. Plaintiff also admitted in cross-examination that he had sought extension for one year. He further stated that he has availed loan from the school.

In view of the evidence on record, specially the cross-examination of the plaintiff, it is clear that the plaintiff has not been appointed as per the Central Board of Secondary Education Affiliation By-laws. He was not selected by any committee. The post was neither advertised nor any test or interview was conducted. He was simply appointed on the verbal order. At the most, it can be held as a contractual appointment. It is clear from the evidence that he himself has resigned from the post and withdrawn his provident fund. He again rejoined the services after some months and then he was retired by the Institution. The plaintiff himself has filed the application for extension and he was given one year extension. As per the case of the defendant-school, the plaintiff was absent since 15.01.2010.

Keeping in view these facts of the present case and evidence on record, I find that the findings given by the Courts below are correct, as per law and do not require any interference from this Court and the same are upheld. Moreover, no substantial question of law arises in the present regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

May 25, 2015
Vgulati

(INDERJIT SINGH)
JUDGE