

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 4386 of 2014

Date of decision : April 27, 2015

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Seema Pushkar

.....Appellant

Versus

CCSHAU, Hisar through its Director, Extension
Education, Tehsil and Distt. Hisar

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. S.S Walia, Advocate for the appellant.

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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

The plaintiff-appellant (hereinafter referred to as 'the plaintiff') has come up in the present regular second appeal against the judgment dated 11.4.2013 passed by Civil Judge (Junior Division), Hisar and the judgment dated 15.4.2014 whereby an appeal filed against the judgment of the trial Court was dismissed. Vide the trial Court judgment the suit of the plaintiff for directing the defendant-University/respondent (hereinafter referred to as 'the defendant-University') to reinstate her as Mahila Sevika forthwith with all consequential benefits of back wages, increments, promotions and seniority was dismissed.

Plaintiff was appointed as Mahila Sevika by the defendant-University/respondent vide order No. 12497 dated 26.4.1988 under Scheduled Caste Category. On the basis of complaint filed by one person namely Som Dutt, the plaintiff was issued a charge sheet by the defendant-University vide letter No. 15242 dated 14.8.1997. The plaintiff was asked to submit the reply to the said charge sheet. She gave her reply and thereafter a regular enquiry was ordered to be conducted by the defendant-University against the plaintiff. The enquiry officer appointed by the defendant-University submitted his enquiry report and the defendant-University issued a show cause notice dated 25.6.1999 to the plaintiff, vide which, the plaintiff was proposed to be removed from the service. Thereafter, the office of the plaintiff was declared as vacant and she was removed from the service vide order No. 10691 dated 18.7.2000. In the suit she challenged the above said orders of the University.

The defendant-University had got lodged a criminal case bearing FIR No. 489 dated 28.8.1997 under Sections 420/467/468/470/471 of Indian Penal Code in Police Station, Civil Lines, Hisar against the plaintiff. The plaintiff was acquitted vide judgment dated 16.4.2010 passed by the then Judicial Magistrate Ist Class, Hisar. After securing the order of acquittal, the plaintiff submitted an application to the defendant-University on 31.5.2010 with a request to allow her to join her duties. She also sent a legal notice dated 14.7.2010 to the defendant-University for withdrawal of termination order against her. In response to the said legal notice

date 14.7.2010, the defendant University issued a memorandum to the plaintiff vide letter no. 13585 dated 30.8.2010, wherein the plaintiff was asked as to why the benefits of service along with back wages during the period her office remained vacant should not be refused while considering her to reinstate to the post of Mahila Sevika. The plaintiff submitted her reply to the impugned notice No. 13585 dated 30.8.2010 vide her letter dated 13.9.2010 and claimed that the plaintiff should be reinstated to her post of Mahila Sevika along with all service benefits including back wages and increments. Despite making the decision to consider the reinstatement of the plaintiff, the defendant-University backed out from this decision and had passed another order No. 18442-43 dated 15.12.2010, whereby the representation of the plaintiff to reinstate was rejected.

On notice, defendant appeared and filed a written statement. On merits, the previous appointment of the plaintiff on the post of Mahila Sevika was admitted and it was also admitted that plaintiff was charge sheeted on receiving a complaint from one Som Dutt and her office was declared as vacant and she was removed from the service vide order No. 10691 dated 18.7.2000. It was submitted that the office of the plaintiff was declared vacant after conducting due and proper enquiry and after following all the prescribed norms and rules. It was submitted that the plaintiff was duly informed about the inquiry proceedings through registered letter on his available address and a public notice was also got published by the Enquiry Officer in "Daily Mewat" newspaper in addition to the

service upon the plaintiff through registered letters. It was further submitted that the show cause notice was also sent to the plaintiff through registered post and the same was also got published in the national daily newspaper "Statesman" on 8.5.2000.

Trial Court framed the following issued vide order dated 19.8.2011:-

- 1. Whether the order No.10691 dated 18.07.2000 and order No. 13585 dated 13.08.2010 and order No. 18442-43 dated 15.12.2010 passed by Director, Extension Education of CCS HAU, Hisar is illegal, null and void, without jurisdiction and are liable to be sit aside?OPP*
- 2. Whether the plaintiff is entitled to relief of mandatory injunction directing the defendant to re-instate the plaintiff as Mahila Sevika forthwith and to give her all consequential benefit accruing to her during her service from time to time ?OPP*
- 3. Whether the suit of the plaintiff is not maintainable ?OPD*
- 4. Whether the plaintiff has no cause of action and locus -standi to file instant suit? OPD*
- 5. Whether the plaintiff is estopped by her own act and conduct to file instant suit? OPD*
- 6. Whether the suit of the plaintiff is bad for non-joinder and mis-joinder of necessary*

parties?OPD

The trial Court after going through the evidence led by the parties was of the view that the plaintiff had not participated in any of the departmental proceedings initiated against her. She was served a notice through National Daily newspaper "Statesman". Hence there was no occasion for the defendant-University to serve enquiry report along with the show cause notice while making publication in the national daily newspaper "Statesman". A perusal of the different orders of the enquiry officer showed that the defendant-University had taken all steps to effect service upon the plaintiff and to get her join in the departmental proceedings, but she did not participate in the enquiry proceedings. Enquiry Officer found the plaintiff guilty for submitting false matriculation certificate. A serious charge of misconduct was approved against her. The plaintiff had secured her job by availing the benefit of Scheduled Caste and was appointed against a seat of Scheduled Caste. The plaintiff belonged to a general category and she tried to avail the benefit of Scheduled Caste on the basis of her marriage with a person of Scheduled Caste. The benefit of Scheduled Caste was given to a person who was born to a Scheduled Caste and faced struggled in his/her upbringing due to the educational, social or economic backwardness of the said Scheduled Caste. The plaintiff was a General Category candidate and could not avail the benefit which was admissible to a Scheduled caste candidate by marrying a scheduled caste person. Her appointment was vitiated on this ground and she was held not

entitled for reinstatement on the basis of being a scheduled caste candidate. The suit of the plaintiff was dismissed on the following two grounds:

- (I) She did not participate in the enquiry proceedings
- (II) She was not a scheduled caste candidate.

This finding of fact was affirmed by the lower appellate Court in the appeal filed by the plaintiff. Lower Appellate Court further observed that from the reply given by the plaintiff Ex. P-9 it was evident that the plaintiff had knowledge of the entire proceedings but she intentionally did not associate herself. Number of notices including registered letters were issued by the Department to the plaintiff for attending enquiry proceedings. Notices were sent through registered letter and information was given to the plaintiff through publication in the daily newspaper dated 19.5.1998 but she did not appear. Ultimately, the enquiry officer proceeded ex parte. Before passing the impugned order, publication was made in English newspaper Statesman as is evident from Ex.D7. Further after the conclusion of the criminal proceedings vide trial Court judgment dated 16.04.2010, an option was given to the plaintiff to join her post by the competent authority vide order dated 30.8.2010 but without back wages and service benefits. Vide her reply she instead of joining back, claimed reinstatement with service benefits including backwages. Finally, the Director, Extension Education vide order dated 15.12.2010 withdrew the offer given to the plaintiff and her request was rejected.

After perusing the judgments of both the Courts in detail, the plaintiff cannot be extended any more benefit firstly by placing on record the false certificate and secondly by taking an appointment on a post made for scheduled caste candidate, whereas she was a candidate of general category. Finally even after acquittal from the criminal case, she refused to join in the department without back wages. Even if matriculation was not the essential qualification for appointment to the post of Mahila Sevika but the act of placing on record the false documents further showed her intention to play fraud with the Department. Moreover, she had made an attempt to to be appointed on the seat of Scheduled cast candidate when she was not a scheduled caste herself. On all the above grounds, no case for interference in the judgments passed by both the Courts is made out.

In view of all that has been discussed above, 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