

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 6252 of 2014 (O&M)

Date of decision : March 17, 2015

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State of Haryana and others

.....Appellants

Versus

Radhey Shyam Sharma

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. D.R Singla, DAG, Haryana.

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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

This regular second appeal has been filed against the judgment dated 23.1.2013 passed by the Civil Judge (Senior Division) Narnaul and the order dated 8.9.2014 passed by the District Judge, Narnaul. The plaintiff had filed a suit for declaration to challenge order No. Superintendent/2006/3056 dated 30.10.2006 (hereinafter referred to as 'the impugned order') passed by defendant no.3, which was decreed and the impugned order was set aside. Against the judgment of trial Court, an appeal was filed which was also dismissed by the appellate Court vide the judgment dated 8.9.2014.

The brief facts of the case of the plaintiff are that the

plaintiff had joined his services on post of KCC in Govt. Primary School, Tint on 4.1.1982 under the Government of Haryana. Thereafter, he was transferred to Palda Manethi, Govt. Primary School on the post of KCC in the year 1985-86. Then he was transferred on the post of peon in Govt. Primary School, Muldi, Tehsil Narnaul in the year 1988-89. Thereafter, he has been promoted on the post of Duplicating Machine Operator (hereinafter referred to as 'the DMO') by Sub Divisional Education Officer, Narnaul vide order dated 22.7.2005 from the post of Peon against vacant post in the pay scale of Rs. 3050/4590. In the year 2005, when he was working on the post of DMO, the office of Sub Divisional Education Officer, Narnaul was wound up and amalgamated in the office of District Education Office, Narnaul and he joined his services on the post of DMO on 22.11.2005. He was never demoted by Education Department, Haryana or District Education Officer, Narnaul from the post of DMO. The defendant no.3 District Education Officer, Narnaul passed impugned order and he was deputed on the post of Peon in the office of District Education Officer, Narnaul and Sh. Parmanand, Daftari who was working as a peon was deputed on the post of DMO. Post of DMO falls in Class-III category in pay scale of Rs.3050-4590 while Parmanand, Daftri was working in pay scale of Rs. 2600/- and his post was under Class-IV category. In this manner, defendant no.3 was taking work from the plaintiff on Class-IV category in place of post of DMO. The Director, School Education (Secondary) Department, Haryana Chandigarh vide his letter No. 22/142-06

HRME (5) dated, Chandigarh 5.12.2006 ordered to District Education Officer, Narnaul to get work from the plaintiff on the post of DMO and besides this, District Education Officer, Narnaul-defendant no.3 is taking work of Peon from the plaintiff.

On notice, joint written statement was filed by defendants no. 1 to 4 wherein they raised preliminary objections inter alia about maintainability and cause of action. On merits, they submitted that they have not received any record of the plaintiff for the post of DMO. In the office of defendant no.3, there is no sanctioned post of DMO in view of gazette notification and the plaintiff was never promoted on the post of DMO; therefore, question does not arise to demote him. In fact, plaintiff has not been working as Class-IV employee nor on the post of DMO as no post of DMO is sanctioned in the office of defendant no.3, work of the Class-IV was given to the plaintiff as per rules. No injustice was caused to the plaintiff. It was mentioned in the letter of Director, School Education Haryana Chandigarh vide No. 221142-06 HRME (5) dated 5.12.2005 that work of plaintiff should be taken as per his post.

Following issues were framed by the trial Court vide order dated 4.4.2008:

1. Whether the plaintiff is entitled for an increment of Rs.75/- along with all the benefits from the date of promotion along with interest @ 18% per annum as alleged in the plaint? OPP

2. Whether the orders No. 2006-3056 dated 30.10.2006 passed by defendant no. 3 are wrong, illegal null and void and liable to be set aside? OPP

3. Whether the suit of the plaintiff is not maintainable in the present form? OPP

4. Whether the plaintiff has no cause of action to file the present suit by his own act and conduct? OPD

5. Whether the present suit is bad for non-joinder of necessary party? OPD

After going through the evidence led by the parties, trial Court observed that DW-1, Chander Pal Dalal, Deputy District Education Officer Narnaul stated in his cross-examination that office order dated 22.7.2005 Ex. P-7 was issued by his office. The plaintiff was promoted to the post of DMO in the pay scale of 3050-4590/- + usual allowances as sanctioned from time to time. He was appointed on the post of DMO in sub Divisional Education Office, Narnaul. Office of Sub Divisional Education Officer Narnaul wound up. As per office order Ex. P-1 issued from the Commissioner and Director General, School Education Haryana, Chandigarh vide serial No.449, plaintiff was deputed on the post of DMO in the office of District Education Office, Narnaul. In this order, Parmanand is to be shown as Daftri at Serial No. 447. As per order dated 21.8.2009 Ex. P-9, plaintiff was absorbed on the post of DMO. District Education Officer,

Narnaul intentionally deputed Parmanand on the post of DMO and the plaintiff on the post of peon. The letter was not got noted to the plaintiff. Thereafter, plaintiff sent a letter to the Director School Education, Haryana Chandigarh for getting justice and it was ordered that District Education Officer, Narnaul would look into the matter vide letter dated 5.12.2006. The case of the plaintiff was admitted by DW-1 Chander Pal in its cross-examination. As per order dated 22.7.2005, plaintiff was promoted and adjusted in the office as DMO in the grade of Rs.3050/4590+usual allowances as sanctioned from time to time against the vacant post. Defendant no.3-District Education Officer, Narnaul had no right to demote the plaintiff from the post of DMO to Peon as plaintiff was promoted in the office of Sub Divisional Education Officer, Narnaul as DMO. Order dated 30.10.2006 was held to be wrong illegal and was set aside. His suit was decreed and the plaintiff was held entitled to work on the post of DMO from 30.10.2006 in view of order dated 3.5.2006 Ex. P1 passed by Director General School Education Haryana Chandigarh along with all the monetary benefits on the post of DMO along with interest @ 12% per annum.

The State of Haryana filed appeal against the judgment of trial Court which was dismissed while observing that order dated 21.8.2009 shows that District Education Officer, Narnaul has specifically ordered that plaintiff Radhey Shyam Sharma who was earlier working as DMO in the office of Sub Divisional Education Officer, Narnaul was adjusted on the same post in the office of

District Education Officer, Narnaul vide order dated 3.5.2006, Ex P-1 and it was specifically ordered that Radhey Shyam Sharma is working on the post of DMO and is in charge of Duplicating Machine received from the office of Sub Divisional Education Officer, Narnaul. The objection of the State of Haryana that there was no post of Duplicating Machine Operator in the office of District Education Officer, Narual was rejected.

After perusing in detail the judgments passed by both the Courts, the suit of the plaintiff has been rightly decreed. The plaintiff was appointed as DMO against the vacant post after the order dated 3.5.2006 passed by the Commissioner and Director, School Education Haryana at the time of amalgamation of Sub Divisional District Education Officer. The order dated 30.10.2006 (Ex. P-4) passed by the District Education Officer, Narnaul vide which plaintiff Radhey Shyam Sharma had been given the work of Class-IV was rightly held to be without jurisdiction. Judgments of both the Courts do not suffer from any illegality and infirmity and hence do not require any interference by this Court. No substantial question of law arises for consideration in this regular second appeal, hence the same is dismissed.

March 17, 2015
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(**RITU BAHRI**)
JUDGE