

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.440 OF 2015
WITH
CIVIL APPLICATION NO.959 OF 2015

Ashok S. Nalwar	...Appellant
V/s.	
The State of Maharashtra & Ors.	...Respondents

Mr.A.B. Tajane for the Appellant.

Mr.M.G. Patil, A.G.P. for the State – Respondent No.1.

Mr.A.S. Kulkarni for the Respondent No.2.

CORAM : R.D. DHANUKA, J.
DATE : 31ST AUGUST, 2016.

P.C. :-

1. By this appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellant has impugned the judgment dated 14th July, 2014, passed by the learned District Judge - 2, Solapur, dismissing the appeal filed by the appellant. In Regular Civil Appeal No.190 of 2013, the appellant had impugned the judgment and decree dated 21st February, 2013 passed by the Second Joint Civil Judge, Senior Division, Solapur dismissing the suit filed by the appellants (original plaintiffs) *inter-alia* praying for a mandatory

injunction and for a declaration that the plaintiffs were entitled for a pay scale of Rs.2000-60-2300-EB-75-3200-100-3500 and prayed for differential amount between the amount paid and the amount payable which he was allegedly entitled with interest.

2. The plaintiff nos.1 and 3 were working as Head Assistant, whereas the plaintiff no.2 was working as Chemist in the department of the defendant no.2 i.e. Solapur Municipal Council, Solapur. It was the case of the plaintiffs that they were entitled to the payment of salary in accordance with 4th and 5th pay commission report and also in accordance with the Government Resolution. It was the case of the plaintiffs that having completed the services for more than 12 years, they were entitled to get the pay scale of Rs.2000-60-2300-EB-75-3200-100-3500 instead of Rs.1640-60-2600-75-2900 and inspite of their request to the defendant nos.1 and 2 for revised pay, the plaintiffs were not paid any revised pay. The plaintiffs accordingly filed a suit for a declaration and for payment. The suit was resisted by both the defendants on various grounds.

3. The learned trial Court framed six issues for determination. The plaintiffs had led oral evidence. There is no oral evidence led by the defendants. The learned trial Judge passed a judgment and decree dated 21st February, 2013, and dismissed the said suit filed by the appellants.

4. Being aggrieved by the said judgment and decree passed by the learned trial Judge, the plaintiffs filed an appeal (Regular Civil Appeal No.190 of 2013) before the learned District Judge - 2, Solapur. By a judgment dated 14th July, 2014, the learned District Judge – 3, Solapur dismissed the said appeal filed by the appellants.

5. Mr.Tajane, learned counsel appearing for the appellants (original plaintiff no.2) invited my attention to some of the findings recorded by the learned trial Judge as well as by the appellate Court and submits that though the defendants had not led any evidence on record by examining any witness and did not argue the suit before the learned trial Judge, the learned trial Judge dismissed the suit filed by the plaintiffs. He submits that a copy of the agreement was produced by the plaintiffs before the learned trial Judge and inspite thereof, the learned trial Judge has rendered an erroneous finding that no such copy of the agreement was produced by the plaintiffs. He submits that since the plaintiffs have completed more than 12 years of service, the defendant no.2 was liable to pay higher salary as demanded by the plaintiffs.

6. Learned counsel for the defendants placed reliance on the findings rendered by the learned trial Judge as well as the lower appellate Court and would submit that the findings of fact are not perverse and thus cannot be interfered with by this Court under

section 100 of the Code of Civil Procedure, 1908.

7. A perusal of the record clearly indicates that no such copy of the agreement was produced by the plaintiffs before the learned trial Judge. No ground is raised in the appeal memo contending that though such agreement was produced by the plaintiffs before the learned trial Judge, the same is not considered.

8. A perusal of the order passed by the learned trial Judge indicates that the defendant no.2 council had not passed any resolution adopting the Government Resolution relied upon by the plaintiffs. The learned trial Judge accordingly held that since the said resolution was not applicable to the municipal council, the municipal council was not liable to make any additional payment to the plaintiffs. Insofar as the agreement between the union of municipal employees and the municipal council is concerned, it is rightly held by the learned trial Judge that the said agreement was directory in nature and not mandatory and cannot be interfered with by the Court of law.

9. A perusal of the order passed by the learned trial Judge indicates that the learned trial Judge has framed six issues for determination and after considering oral evidence relied upon by the plaintiffs has held that the plaintiffs had failed to prove that they were entitled for higher pay as demanded or difference of alleged arrears of pay. The findings of fact rendered by the learned trial Judge in my

view are rendered after considering oral as well as documentary evidence and are not perverse and thus cannot be interfered with by this Court under section 100 of the Code of Civil Procedure, 1908.

10. The lower appellate Court also has framed the points for determination and has independently considered the oral and documentary evidence led by the plaintiffs and has rendered a finding of fact that the plaintiffs were not entitled to receive the differential amount and also higher pay as demanded.

11. Insofar as the submission of the learned counsel for the plaintiff no.2 that though the oral evidence was not led by the defendants or that no oral argument was advanced by the defendants before the learned trial Judge, the learned trial Judge has dismissed the suit is concerned, a perusal of the issues framed by the learned trial Judge indicates that the onus was rightly placed on the plaintiffs to prove their entitlement in respect of higher pay and difference which they failed to prove. In my view, the defendants thus were not required to lead any oral evidence before the learned trial Judge. Since the plaintiffs could not prove their case before the learned trial Judge, absence of any oral evidence by the defendants would be of no significance.

12. The findings rendered by the Courts below are concurrent and cannot be interfered with by this Court under section 100 of the

Code of Civil Procedure, 1908 being not perverse. There is no substantial question of law having arisen in this appeal. The appeal is devoid of merits and is accordingly dismissed.

13. In view of dismissal of the second appeal, the civil application does not survive and is accordingly dismissed.

14. No order as to costs.

(R.D. DHANUKA, J.)