IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.2289 of 2012
Date of Decision: May 04, 2016

Bhagat Phool Singh Mahila Vishwavidalaya Khanpur Kalan, Sonepat

...Petitioner

Versus

Azad Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers 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?

Present: Mr.Tribhuvan Dahiya, Advocate,
for the petitioner.

Mr.D.K.Tuteja, Advocate,
for the respondent.

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AMIT RAWAL, J. (Oral)

Petitioner-defendant is aggrieved of the impugned order, whereby the application at the instance of the respondent-plaintiff to examine the following two witnesses in rebuttal, has been allowed:-

1) Clerk PNB Khanpur Kalan along with record regarding statement of opening of the account regarding canteen BPS Khanpur Kalan, vide account No.14024;

2) Incharge Coop.Canteen BPS University/Mahilla Khanpur Kalan alongwith record of opening of the canteen, appointment of the employees and particularly Coopan No.8506, 42698, 42697, 42696 and 85604.

Mr.Tribhuvan Dahiya, learned counsel appearing on behalf of

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2016.05.10 10:31
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the petitioner-defendant submits that prior to the aforementioned order, respondent-plaintiff had attempted to examine the witnesses, aforementioned in rebuttal. Realising the aforementioned fact, which is not permissible in law, an application was moved and the same was allowed vide order dated 28.8.2014 and the respondent-plaintiff was restrained from leading evidence in rebuttal. Thereafter, an application dated 16.9.2014 has been moved which is gross abuse of the process of Court, much less circumventing the order dated 28.8.2014. In support of his contentions, relies upon the three Division Benches judgments of this Court rendered in **Avtar Singh Versus Baldev Singh, 2015(1) PLR 230, Jagdev Singh & others Versus Darshan Singh & others, 2007(1) RCR Civil 794 and Surjit Singh Versus Jagtar Singh, 2007(1) RCR (Civil) 537**, much less judgment rendered by me in **Manjit Kaur Versus Surjit Singh and another, Civil Revision No.6129 of 2015, decided on 18.9.2015** to contend that in the absence of rebuttal issue, the party cannot be permitted to lead evidence under the camouflage of additional evidence and, thus, urges this Court for setting-aside of the impugned order.

Mr.D.K.Tuteja, learned counsel appearing on behalf of the respondent-plaintiff submits that no doubt there is no rebuttal issue, but the examination of the aforementioned witnesses has a direct bearing on the decision of the suit as it is a categoric stand of the petitioner-defendant in the written statement that no such canteen is running in the University. Earlier the services of the respondent-plaintiff were governed by Mahasabha Gurukul Vidyapeeth Haryana, Bhainswal Kalan and Kanya Gurukul, Khanpur Kalan. Thereafter, the petitioner-University has come into existence on 18.8.2006. He submits that on account of the termination of the

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services in the year 1999, FIR No.79 dated 24.4.2000 was registered, but the respondent-plaintiff has been acquitted in 2009 and thereafter cause of action accrued for seeking relief of reinstatement and, thus, urges this Court for exercising supervisory discretion in favour of the respondent-plaintiff.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is force and merit in the submission of the learned counsel for the petitioner-defendant, for, the issues framed in the aforementioned suit reveal that there is no rebuttal issue. For the sake of brevity, the issues framed in the aforementioned suit read thus:-

1) Whether the plaintiff is entitled to restoration/ reinstatement of the service as canteen incharge in BPSMV and order of termination of his service is liable to be declared illegal? OPP

2) Whether the present suit is not maintainable? OPD

3) Whether the plaintiff has no locus standi to file the present suit? OPD

4) Relief.

It is matter of record that earlier respondent-plaintiff had sought to examine the aforementioned witnesses in rebuttal and on an application moved at the instance of the petitioner-defendant, that permission was disallowed. Soon thereafter, application (Annexure P-7) has been filed, which has erroneously been allowed. The respondent-plaintiff is required to remain diligent to examine the witnesses as defendant had taken a categoric stand in the written statement. This fact was in his knowledge. Even otherwise, the application is lacking material aspect with regard to

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expression “despite exercise of due diligence”. No doubt, the provisions of Order 18 Rule 17-A CPC have been deleted, but the same can be resorted to by invoking the provisions of Section 151 CPC, but the principles governing the aforementioned provisions are to be seen by invoking the inherent power of the Court.

For the foregoing reasons, the impugned order is not sustainable. The same is hereby set-aside.

Revision petition stands allowed.

May 04, 2016 **(AMIT RAWAL)**
ramesh **JUDGE**

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