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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1154 of 2016 (O&M)

Date of decision: March 15, 2016

State of Haryana and others

.....Appellants

Versus

Smt. Krishna

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.K. Makkad, DAG Haryana.

SABINA, J

Respondent had filed suit for declaration challenging the order dated 20.12.2011 passed by defendant No.4, whereby, her services were dispensed with on her alleged completion of 60 years of age.

The case of the respondent-plaintiff, in brief, was that she was appointed as an Angwanwari helper on 12.06.1993 under the supervision of defendant No.4. Respondent-plaintiff was informed by defendant No.3 verbally that her services had been dispensed with effect from 01.11.2012. Respondent-plaintiff had also not been paid wages from January 2012 onwards. Respondent-plaintiff served a notice dated 31.12.2012 on the defendants and she was informed that defendant No.4 had passed an order on 27.01.2012 dispensing with the services of respondent-plaintiff on her attaining the age of 60 years.

Defendants in their written statement averred that the services of the respondent-plaintiff had been dispensed with as she had attained the age of 60 years. In this regard, medical examination was conducted by medical officer along with other committee members.

On the pleadings of the parties, following issues were framed by the trial Court:-

- “1. Whether the order bearing Endst. No. 615 dt. 20.12.2011, passed by defendant no.4 allegedly on dt. 27.01.2012, is wrong, against facts, against principles of natural justice and liable to be set-aside?...OPP
2. If issue no.1 is proved, whether the plaintiff is entitled for the relief of mandatory injunction as prayed for?...OPP
3. Whether the plaintiff has no cause of action or locus standi to file the present suit?...OPD
4. Whether the jurisdiction of civil Court is barred?...OPD
5. Relief.”

Parties led their evidence in support of their respective pleas.

Trial Court vide judgment/decreed dated 06.03.2014 decreed the suit filed by the plaintiff-respondent. Trial Court while decreeing the suit of the plaintiff-respondent held as under:-

“As a sequel to my findings arrived at while deciding issues no.1 and 2, the suit of the plaintiff is decreed, without any order as to costs, under Order 7 Rule 7 of CPC, granting a mandatory injunction in her favour, against the defendants to get conducted an ossification test or a radiological test, as applicable in the given circumstances, within a period of three months, from the even date for determining the approximate age of plaintiff and in case the age of plaintiff comes out to be below 60 years, the defendants are directed to take a fresh decision regarding her retirement. In case, after the age determination test, the age of plaintiff comes out to be below 60 years, the impugned Order-I shall stand automatically set-aside and the plaintiff shall be liable to be reinstated in her services as Anganwadi Helper, along with all available benefits

wrongly withdrawn in consequence of Order-I. Decree-sheet be drawn accordingly.”

Appeal filed by the defendants-appellants against the judgment/decree passed by the trial Court was dismissed by the First Appellate Court vide judgment/decree dated 05.02.2015. Hence, the present appeal by the defendants-appellants.

I have heard learned State counsel and have gone through the record available on the file carefully.

The Courts below after appreciating the evidence lead by the parties on record have held that there is no documentary proof qua the age of the respondent-plaintiff. Thus, the only option available with the appellants-defendants was to get the respondent-plaintiff medically examined for assessment of her age. The Courts below have held that there was no material on record to establish that the respondent-plaintiff had been examined by the medical board for relevant tests for assessment of her age. In these circumstances, the learned trial Court rightly directed the appellants-defendants to get the respondent-plaintiff medically examined for assessment of her age and thereafter, take a fresh decision regarding her retirement.

No substantial question of law arises in this case warranting interference by this Court.

Dismissed.

**(SABINA)
JUDGE**

March 15, 2016
mahavir