

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

R.S.A. No.1588 of 2016 (O&M)

Date of decision: 28.05.2016

Parveen

..Appellant

Versus

Sh. Janki Dass Kapoor Public School and another

..Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Deepak Balyan, Advocate
for the appellant.

Jitendra Chauhan, J.

CM No.4395-C of 2016

After hearing the learned counsel for the appellant and in view of the circumstances narrated in the application, which is duly supported by an affidavit, delay of 7 days in filing the appeal is condoned, subject to all just exceptions.

CM is allowed as prayed for.

Main Case

In this regular second appeal, the plaintiff-appellant has challenged the judgment and decree dated 05.10.2015, passed by the learned Additional District Judge, Sonapat, whereby the appeal filed by the appellant against the judgment and decree dated 18.09.2013 of

the Civil Judge (Sr. Divn.), Sonapat, dismissing the suit of the plaintiff-appellant, was dismissed.

It is contended that respondent No.1 with a malafide intention denied promotion to the appellant from Class XI to Class XII. The appellant was constrained to approach this Court by filing CWP No.6422 of 2008, however, this Court was pleased to dismiss the same. Aggrieved against the judgment dated 05.05.2008 passed by this Court, the appellant preferred SLP No.15500 of 2008 in Hon'ble the Supreme Court, wherein the direction was issued to respondent No.1 to admit the appellant in Class XII. It is asserted that due to unwarranted and illegal act actuated with a malafide intention, the appellant and his family had to incur huge expenses. Therefore, the appellant filed a suit for damages for Rs.3,00,000/- on account of expenses which he had to incur to engage the counsel and towards the mental pain and agony and loss of studies. In pursuant to the order passed by Hon'ble the Supreme Court, the appellant was re-admitted to school and subsequently, he passed out from same school. After completion of his schooling from the respondent-school the present suit for damages was filed on 18.09.2013. It is further asserted that respondent No.1 in violation of the bye-laws and policy formulated by respondent No.2 withheld the result of the appellant for the examination of Class XI, whereas the appellant

fulfilled the prescribed the criteria for promotion to Class XII.

I have heard the learned counsel for the appellant and perused the entire record on file.

It is the case of the appellant that he scored 39.53% in mathematics which amounts to 40% in rounding off system of calculation and fulfilled the criteria laid down by respondent No.2 to which the school in question is affiliated. However, as per Ex.P8 it emerges that in the school diary as well as in the report card of respondent No.1, promotion to the next higher class is granted to a student who gets minimum of 50% marks in aggregate in each subject along with minimum of 60% marks in total aggregate as per set criteria. The said criteria is duly laid down by the school management and noticed in the informations provided to the student at the time of admission. It is not in dispute that the appellant scored less than 40% marks. Thus, the appellant is far short of the criteria laid down for promoting a student to the higher class. The learned counsel failed to refer any instructions or rule indicating that the marks obtained by a candidate shall be computed on the system of rounding off. The appellant has clearly failed to achieve the criteria laid down by the school. It was specifically averred by respondent No.2 in the written statement that Board did not have absolute control in toto over the school affiliated to it. Meaning thereby, the

school affiliated to respondent No.2 could set up their own pass/retention criteria in order to maintain the academic standard. The appellant failed to refer any instance/circumstance that candidate with similar percentage had been admitted by respondent No.1. On the basis of the poor performance, which is clearly short of the criteria laid down by respondent No.1-School the candidature of the candidate was withheld, however, which was ultimately allowed by Hon'ble the Supreme Court. This Court and Hon'ble the Supreme Court did not make any specific order as to payment of costs. Keeping in view the marks obtained by the appellant and in view of the fact that the appellant has failed to refer to any circumstance that candidature was withheld due to the some malafide intention, this Court feels that the judgments and decrees passed by the learned Courts below do not suffer from any perversity or illegality. Rather, the suit filed by the appellant after passing out from the respondent-school appears to be illconceived.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

No question of law much less substantial involved in the present appeal.

For the foregoing reasons, the appeal filed by the appellant fails and is hereby dismissed in limine, with no order as to costs.

28.05.2016

ashok

(JITENDRA CHAUHAN)
JUDGE