

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

217

RSA No.4451 of 2014 (O&M)
Decided on : 27.07.2016

Management Vivek High School and another

... Petitioners

Versus

Geeta Day

.. Respondent

CORAM : HON'BLE MR.JUSTICE P.B. BAJANTHRI

Present : Mr.J.S.Sidhu, Advocate
for the petitioners.

Mr.Dinesh Kumar, Advocate for the respondent.

P.B. Bajanthri, J. (Oral)

In the present appeal, the appellant has challenged the appellate Court order dated 03.09.2007 passed in Civil Appeal No.81 of 06.12.2005 and Civil Appeal No.27 of 21.02.2006 with the following prayer:-

“It is therefore, respectfully prayed that the appeal may kindly be allowed and the impugned judgment and decree dated 03.09.2007 passed by Ld District Judge, Chandigarh in Civil Appeal No.81 of 06.12.2005 and the impugned judgment and decree dated 26.10.2005 passed by Ld. Civil Judge (Jr.Division), Chandigarh may kindly be set aside and the suit of the respondent may kindly be dismissed.

Respondent, Geeta Day was appointed as P.T. Instructor on 30.03.1998. She made an application for maternity leave for the period from 22.07.2002 to 13.09.2002. The same was rejected on 24.07.2002. The respondents compelled her to remain absent. On 13.09.2002, she reported for duty but she was told that she had abandoned her services. Therefore, she is not permitted to work in the appellant-management.

Aggrieved against the said termination, respondent filed a suit for declaration which was decided in her favour. It was ordered on 26.10.2005 that respondent is entitled for reinstatement and maternity benefits, insofar as the back wages is concerned, it was refused. Both the management and respondent preferred appeals against order of the decree by filing Civil Appeal No.81 of 2005 by the respondent, and Civil Appeal No.27 of 2006 by the management. Both appeals were decided by the appellate court on 03.09.2007 by allowing Civil Appeal No.81 of 2005 filed by the respondent-workman in part that she is entitled for all arrears of pay.

The appellate Court order portion reads as under:-

Appeal No.81/2005 filed by the plaintiff is partly allowed and it is ordered that all arrears of pay shall be paid to the plaintiff for the period preceding the joining of duty by her under the defendants as per mandate of the learned trial Court decree, for the period she remained unemployed. It shall be open to the defendants to plead and prove before the Executing Court the period, if any for which the plaintiff remained employed during the period, she was not allowed to join duty by the defendants and for this purpose, the Executing Court shall give opportunity of evidence and hearing to both the parties and if proved that the plaintiff remained employed elsewhere, the Executing Court shall deduct the amount of wages earned by the plaintiff during that period from elsewhere from the arrears of salary due from the defendants. In all other respects judgment and decree under appeal are confirmed. Costs of the appeal of the plaintiff shall be borne by the defendants. Copy of the judgment be placed on the file of appeal No.27/2006. Decree sheets be prepared separately in two appeals. Lower Court record be returned. Appeal files be consigned to the record room.

*Sd/-
(Sh.B.S.Mehandiratta)
District Judge,
Chandigarh*

*Pronounced:
September 03, 2007”*

Feeling aggrieved by the appellate Court order dated

03.09.2007, the management filed RSA No.2473 of 2008. In the said appeal, prayer of the management reads as under:-

“That viewed from any angle, the view taken by Ld.Courts below cannot be sustained and therefore, the impugned judgments and decree dated 26.10.2005 and 03.09.2007 deserves to be set aside by this Hon'ble Court and the suit of the respondent deserves to be dismissed.”

The said appeal bearing RSA No.2473 of 2008 was disposed on 16.11.2015. Relevant portion of the said order reads as under:-

“Learned counsel for the respondent further submits that services of the respondent were again terminated on 12.11.2005 retrospectively w.e.f. 19.03.2005 and since she did not challenge that order of termination of her services, the same has attained finality. As regard to the benefits granted by the trial Court, he points out and rightly so that the appellants themselves have conceded that the respondent was allowed to join back on duty on 14.12.2005 and arrears of maternity leave were also paid to her. In view of the subsequent termination of services of the respondent coupled with the fact that the judgment and decree passed by the learned first Appellate Court in favour of the respondent is separately under challenge in Regular Second Appeal No.4451 of 2014, I am of the considered view that the instant appeal has been rendered infructuous and the same is disposed of accordingly.

Ordered accordingly.

*November 16, 2015
mahinder*

*[Surya Kant]
Judge”*

The management filed the present appeal in which they are questioning there was order of the appellate Court dated 03.09.2007 as well as decree, in the prayer insofar decree is concerned, it is restricted to Civil Appeal No.81 of 2005.

Present appeal is not maintainable for the reason that RSA No.2473 of 2008 in which appellate Court order dated 03.09.2007 has been challenged in entirety, and it is not restricted to decision in respect of Civil

Appeal No.27 of 2008 so as to file independent RSA (present appeal). That apart, while presenting this petition, reason for condonation of delay of 2457 days is only regarding pendency of *RSA No.2473 of 2008*. The appellant-management has not shown sufficient cause for condoning the delay of 2457 days. Therefore, even on the ground of delay, the appeal stands dismissed.

[P.B. Bajanthri]
Judge

27.07.2016
sd

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No