

HON'BLE SRI JUSTICE G. SHYAM PRASAD

CIVIL REVISION PETITION No.167 OF 2006

ORDER:

1. This Civil Revision Petition is arising out of the judgment and decree, dated 05.08.2005, in Appeal Suit No.2 of 2004, on the file of the Senior Civil Judge at Narayanpet, Mahaboobnagar District (For short, 'the appellate Court').

2. The Revision Petitioner preferred the Appeal under Order XLI Rule 1 of C.P.C., challenging the decree and judgment, dated 28.06.2002, in Original Suit No.76 of 1997, passed by the Junior Civil Judge, Kondangal (for short, 'the trial Court').

3. Revision Petitioner Mr. Rev. M.I. Jashuva has filed O.S No.76 of 1997 for recovery of arrears of salary of Rs.18,500/- from February, 1993 to January, 1996. He claimed salary of Rs.535/- p.m. during the above period. The suit was decreed directing the defendants 1 to 4 to pay a sum of Rs.525/- p.m. from February, 1993 to January, 1996, and continue to pay the same salary from February, 1996 onwards.

4. Aggrieved by the judgment of the trial Court, the defendants preferred A.S No.2 of 2004 before the appellate Court. The appellate Court partly allowed the Appeal setting-aside the decree and judgment, dated 28.06.2002, in O.S No.76 of 1997, by modifying the decree and judgment directing the defendants to pay an amount of Rs.6,300/- towards the arrears of salary for 12 months i.e. from February, 1993 to January, 1994 at the rate of Rs.525/- p.m. and dismissed rest of the claim with costs.

5. Aggrieved by the impugned judgment, the petitioner-plaintiff preferred this Revision against the respondents-defendants.

6. Heard Mr. Ravi Kondaveeti, learned counsel for the petitioner-plaintiff. In spite of service of notice on respondents-defendants 1, 2 and 4, none entered appearance and there is no representation on their behalf. The claim against the respondent-defendant 3 was dismissed for default *vide* order of this Court on 14.08.2004.

7. The point for consideration is, whether the impugned judgment of the appellate Court, in A.S. No.2 of 2004, dated 05.08.2005, is illegal and perverse? If so, whether it is liable to be set-aside to the extent of not awarding the salary claimed by the petitioner-plaintiff?

8. POINT: Learned counsel for the petitioner submitted that the appellate Court failed to consider the evidence of P.Ws.1 to 3 and Exs.A-1 to A-11 and the evidence of D.Ws.1 and 2 and Exs.B-1 to B-8 in proper perspective and interfered with the judgment of the trial Court.

9. It is further submitted that there is no whisper in the evidence of defendants with regard to the date of actual retirement of the petitioner-plaintiff; as such petitioner-plaintiff is entitled for a salary from February, 1993 to January, 1996. It is further submitted that the petitioner has worked during the relevant period as pastor, therefore, sought for setting-aside part of the relief decreed by the appellate Court in A.S. No.2 of 2004.

10. It is further submitted that a reading of the judgment of the appellate Court clearly reveals that the pleadings of the plaintiff were silent about the voluntary retirement obtained by him under Ex.B-1, dated 28.01.1993; that it was also silent about receipt of an amount of Rs.52,065/- towards Provident Fund being the retirement benefits; the defendants had taken the above two pleadings in their common written statement very clearly, the petitioner-plaintiff did not choose to deny the same by way of filing a rejoinder. In the evidence adduced on either side, the petitioner-plaintiff clearly and categorically admitted the documents Exs.B-1, B-3 and B-8. While admitting Ex.B-1, the petitioner-plaintiff stated in his evidence that D.W.2 obtained his signatures on some blank papers, while he was ill, and that one Rev. K. Mark, a pastor, informed him that D.W.2 subsequently prepared Ex.B-1 by taking advantage of his signatures, obtained on blank papers. The said Rev. K. Mark, was not examined as witness for the plaintiff. It was also observed that P.W.1 himself admitted that Ex.B-8, written portion is also part of Ex.B-1 letter in his own handwriting. Ex.B-8 handwritten portion is, admittedly, hand written by P.W.1. It is also observed that there is a clear admission about receipt of an amount of Rs.52,065/- by P.W.1 under Ex.B-3, which shows that the petitioner-plaintiff was paid an amount of Rs.3,000/- towards advance salary and after deducting that amount from the total provident fund amount of Rs.52,065/-, an amount of Rs.49,065-24 p.s. was paid to P.W.1 under the receipt. It is appropriate to refer to the observations of the appellate Court made in Para 13 of the judgment, which is as under:

“13. First and foremost, it is significant to note that the pleadings of the plaintiff are conspicuously silent about the voluntary retirement opted by the plaintiff under Ex.B-1 letter dt.28.01.1993 and also about the receipt of an amount of Rs.52,065/- towards the provident fund being the retirement benefits. Even after the defendants made a clear pleading of these facts in the written statement, the plaintiff did not choose to deny the same by way of filing a rejoinder. When it actually comes to the evidence of both parties, the plaintiff clearly and categorically admitted Exs.B-1 to B-3 and Ex.B-8. However, while admitting Ex.B-1, the plaintiff added for the first time in his evidence that DW.2 obtained his signatures on some blank papers while the plaintiff was ill and that one Rev. K. Mark, a pastor, informed him that DW.2 subsequently prepared Ex.B-1 by taking advantage of the signatures of PW.1 obtained on blank papers. Significantly, the said Rev. K. Mark was not chosen to be examined as a witness for the plaintiff. Furthermore, it is very much pertinent to note at this stage that PW.1 himself unequivocally and unambiguously admitted that Ex.B-8 written portion which is also a part of Ex.B-1 letter is in his own handwriting. Ex.B-8 handwritten portion, admittedly in the handwriting of PW.1, clearly and vividly refers to his earlier application under Ex.B-1 and also contains the solicitation of once again requesting to consider his request for voluntary retirement made under Ex.B-1. In the light of the categorical admission of Ex.B-8, it is not open to the plaintiff to resile and retract from his own application under Ex.B-1 seeking voluntary retirement. Another important fact is that the clear admission of the receipt of an amount of Rs.52,065/- by PW.1 under Ex.B-3 shows that the plaintiff was paid an advance salary of Rs.3,000/- and after deducting that amount from the total provident fund amount of Rs.52,065/-, an amount of Rs.49,065-24 p.s. was paid to PW.1 under that receipt. PW.2 who is an important witness for the plaintiff and whose evidence has disclosed the fact that he worked as the District Superintendent prior to his reversion to the grade of a pastor following a charge of misappropriation against him by one Shaik Ahmed, categorically admitted in his cross-

examination that a pastor is entitled to get the provident fund only on retirement. If the evidence of PW.1 admitting the receipt of the provident fund under Ex.B-3 is read along with the above discussed statement of PW.2, a clear fact can be brought home that the provident fund under Ex.B-3 was paid to PW.1 after his retirement since PW.2 categorically stated that a pastor is entitled to the provident fund only after retirement. In the same context, it should not be lost sight of that the plaintiff admitted Ex.B-2 and filed Ex.A-9. In Ex.A-9, the first defendant mentioned that the plaintiff was a pensioner from January, 1994 and also further stated therein that as per his records the plaintiff was paid salary from January, 1993 to December, 1993 i.e., up to January, 1994. Ex.B-4 shows that the said letter dt.18.05.1994 expedited the process of payment of the retirement dues to the plaintiff on 28.06.1994 under Ex.B-3. Ex.B-5 letter dt.16.05.1994 also shows the fact that the plaintiff was paid an advance salary of Rs.3,000/- and that this letter also enabled the payment of the provident fund dues to the plaintiff under Ex.B-3. Ex.B-6 dt.21.02.1994 clearly brings home the fact that the plaintiff was duly communicated about the approval of his request for voluntary retirement and that the said approval was made in Hyderabad Regional Conference held from January 14th to 16th, 1994. Exs.B-4 and B-5 are the later correspondence to Ex.B-6, which finally facilitated the plaintiff to receive the amount paid under Ex.B-3. The lower Court failed to appreciate all these facts and simply concluded that the plaintiff continued as a pastor and that the defendants failed to prove that his retirement effected from January, 1994. The lower Court ought to have considered the categorical admissions made by the plaintiff in respect of Exs.B-1 to B-5 and B-8 and also the lack of corresponding pleading anywhere in the plaint filed by the plaintiff. Out of the documents filed by the plaintiff, there is absolutely no proof to establish the facts covered by Exs.A-5 to A-8 since the plaintiff did not take any endeavour to summon and examine the persons who issued Exs.A-5 to A-8 and seemed to have felt complacent with his oral evidence in that

regard. Even if the contention of the plaintiff that he fell sick during 1994 is accepted that adds further support to the defendants' case that the plaintiff himself opted for voluntary retirement on the ground of ill health, in fact, DW.2 admitted in his cross-examination that the plaintiff fell sick during 1994. The other documents filed by the plaintiff are only in the shape of legal notices and other correspondence between the parties and none of them showed any admission on the part of defendants that the plaintiff was continuing as a pastor and, on the other hand, some of the documents emphasized the assertion of the defendants that the plaintiff no more continued as a pastor after the acceptance of his request for voluntary retirement by the Regional Conference during its session from January 14th to 16th, 1994."

11. The conclusions reached by the appellate Court, in dismissing the evidence of the witnesses, referred in the extracted paragraph of the judgment, clearly indicate that the plaintiff has not continued as a pastor after acceptance of his request for voluntary retirement was approved in the Hyderabad Regional Conference held from January 14th to 16th, 1994.

12. The submission of learned counsel for the petitioner-plaintiff, that his signatures were obtained on blank papers and, subsequently, they are being fabricated, cannot be accepted for the reason that his advance salary of Rs.3,000/- was deducted from the provident fund. This fact clearly reveals that the petitioner has no grievance in receiving the provident fund only after final settlement of the matter. The submission of learned counsel for the petitioner-plaintiff that his signatures were obtained on blank papers, which were pressed into service subsequently, cannot be accepted in view of receipt of provident fund amount after

settlement of the matter. Therefore, there are no valid grounds for interfering with the impugned judgment of the appellate Court in directing the defendants to pay arrears of salary to the petitioner-plaintiff for 12 months *i.e.*, from February, 1993 to January, 1994 at the rate of 525/- p.m. for a total amount of Rs.6,300/-.

13. The appellate Court has thoroughly discussed the evidence on either side and arrived at a just conclusion, which does not require any interference by this Court. Therefore, there are no merits in the Revision Petition and the same is liable to be dismissed.

14. In the result, the Civil Revision Petition is dismissed.

15. As a sequel, pending miscellaneous petitions, if any, shall stand dismissed as infructuous. No order as to costs.

Date: 17.02.2017.
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G. SHYAM PRASAD, J

HON'BLE SRI JUSTICE G. SHYAM PRASAD

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Date.17. 02.2017

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