

Sr.No.102

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

**RSA NO. 3537 of 1997(O&M)
Decided on: 08.12.2017**

**The Managng Committee of V.K.M.High School, Rohtak
.....Appellant**

versus

**Partap Singh and others
.....Respondents**

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Arjun Vir Sharma, Advocate
for the appellant.

Mr. P.K.Mutneja, Advocate
for the respondents.

Rajbir Sehrawat, J.(Oral)

This is second appeal filed by the defendant in the suit, challenging the judgment and decree passed by the lower Appellate Court; whereby the judgment and decree passed by the Trial Court dismissing the suit of the plaintiff, was reversed and the suit filed by the plaintiff was partly decreed; to the effect that the plaintiff is entitled to basic pay of ₹730/- as on 01.04.981 in the revised pay scale of ₹525-1050 with consequential mandatory injunction to pay the arrears of difference of salary alongwith interest.

The brief facts of this case are that the plaintiff filed a suit claiming that he was appointed as a Master in V.K.M.High School; run by defendant No. 1; in the pay scale of ₹220-8-300/10-400 vide letter dated 09.07.1971. However, he was wrongly shown in record as S.V. Teacher till 25.12.1974; when he was shown as adjusted against a permanent post of Master. He claimed that as per the appointment letter he was appointed as

Master right from the day one, i.e., since 20.07.1971. It was claimed that this action of defendant had affected the seniority of the plaintiff qua defendant No. 6; who joined school on 05.08.1971, i.e., after the joining of the plaintiff. The second grievance by the plaintiff was that his basic pay in the pre-revised scale was at ₹292/- and his pay scale was revised w.e.f. 01.04.1981. His basic pay was required to be fixed at ₹730/- at par with defendant No. 6; who was also getting the same basic pay before pay scales revision, as the plaintiff was getting. It was claimed that although the basic pay of the defendant No. 6 was fixed at ₹730/-, however, the basic salary of the plaintiff was fixed at ₹700/-. Hence, it was claimed that plaintiff be brought at par with defendant No.6. Hence, it was prayed that the defendant be directed to fix the salary accordingly and to pay the arrears alongwith interest.

Upon notice defendants No. 1, 2 and 6 filed their joint written statement and controverted the averments made by the plaintiff. It was claimed that appointment of the plaintiff was against the post of S.V.Teacher, although the appointment letter given to him was for the post of Master. It was further claimed that subsequently when the post of Master fell vacant he was adjusted against the same w.e.f. 26.12.1974. On the basis of this, it was claimed, obviously, the defendant No. 6 was senior to the plaintiff, having been appointed on the post of Master prior to the plaintiff. So far as the claim regarding fixation of basic pay at ₹730/- is concerned it was not specifically denied. Only this much was pleaded that the basic pay of the plaintiff was fixed by the Auditors of the District Education Officer; as per his appointment as Master w.e.f. 26.12.1974.

Parties led their respective evidence.

After hearing the parties, the Trial Court dismissed the suit filed by the plaintiff. The Trial Court held that defendant No. 6 was appointed on the post of Master before the plaintiff, who was earlier working on the post of S.V.Teacher. Therefore, defendant No. 6 was senior as compared to the plaintiff. However, no finding was recorded by the Trial Court on the point of fixation of basic pay. But, the suit of the plaintiff was dismissed.

Aggrieved against the judgment and decree passed by the Trial Court, the plaintiff filed an appeal before the lower Appellate Court.

After hearing the parties and considering the record, the lower Appellate Court partly decreed the suit; as mentioned above. At the time of hearing, the plaintiff brought to the notice of the lower Appellate Court that the question of seniority qua defendant No. 6 had been rendered infructuous. Therefore, the lower Appellate Court was not called upon to decide the issue regarding seniority of the plaintiff and defendant No. 6. So far as the question of fixation of basic pay of the plaintiff was concerned, the Trial Court recorded that the plaintiff had examined PW-3, Sharat Chander Sharma who had proved the service book of the plaintiff and that of the defendant No. 6. Accordingly, the lower Appellate Court held the fact that this witness had admitted the service book of both the employees also show that the basic pay of the plaintiff and defendant No. 6, both, was ₹292/- as on 31.03.1981. Still further it was deposed by this witness that plaintiff's basic pay was ₹220/- as on 20.07.1971, the date of his appointment. The rate of annual increment was ₹8/-. Therefore, according to him, as per the routine increments his basic pay comes to ₹292/- as on 31.03.1981. The lower Appellate Court further recorded that even Ram

Rattan, Superintendent of respondent No. 1, appearing as witness, admitted on record that basic pay of both, defendant No. 6 and the plaintiff, as on 31.03.1981 was ₹292/-. Hence the lower Appellate Court recorded a finding that the evidence proved on file shows that basic salary to which plaintiff was entitled to be fixed as on 01.04.1981 was ₹730/- in the revised pay scale of ₹525-1050/-. It was further recorded by the lower Appellate Court that defendant No. 1 had claimed that the basic pay of the plaintiff as on 31.03.1981 was ₹268/- and therefore, his basic pay in the revised pay scale was rightly fixed at ₹700/-. However, no such evidence has been led by the defendant to prove this fact that the basic pay of plaintiff as on 31.03.1981 was ₹268/-. Hence it was recorded by the lower Appellate Court that the plea raised by the defendant is totally devoid of any merits. Accordingly the suit of the plaintiff was partly decreed.

Aggrieved against this judgment and decree, the present appeal has been filed.

Learned counsel for the appellant has submitted that the judgment and decree passed by the lower Appellate Court are perverse. His submission is that the salary of the plaintiff/respondent herein; was rightly fixed as on 01.04.1981.

On the other hand, learned counsel for the respondent has submitted that there is absolutely no evidence on file to support the plea raised by the defendants that the basic salary of the plaintiff, as on 31.03.1981 was ₹268/-. Therefore, according to learned counsel, the lower Appellate Court has rightly granted the relief of fixation of the basic salary of the plaintiff at ₹730/-, at par with defendant No. 6.

Having heard learned counsel for the parties and going through

the record with their able assistance, this Court is of the considered opinion that there is no illegality or perversity in the judgment and decree passed by the lower Appellate Court. The entire evidence led on the file shows that the basic salary of the plaintiff and defendant No.6, both, was ₹292/- as on 31.03.1981. Both were working on the same post as on this date. Hence, there would not have been any logic or rational for fixing these two employees at different level w.e.f. 01.04.1981. It is worth mentioning here that it is not even the case of the defendant that these employees were working in different pay scales as on 31.03.1981. Otherwise, also it has come on record that plaintiff was appointed much prior to defendant No. 6. Since he was working on the same post as on 31.03.1981 in the same pay scale, therefore, the plaintiff, by any means, cannot be fixed at the stage lower than the defendant No. 6.

No other arguments was raised by learned counsel for the parties.

In view of the above, the present appeal fails being devoid of any merits. Hence it is dismissed.

8th December, 2017

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes*

Whether Reportable *No*