

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

RSA No. 1520 of 2010 (O&M)
Date of decision : November 03, 2017

Ashok Ganda

..... Appellant

v.

The State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Sanjiv Gupta, Advocate
for the appellant.

Mr. Anil Mehta, DAG Haryana

Ajay Tewari, J (Oral)

This appeal has been filed against the concurrent judgments of the Courts below dismissing the suit of the appellant.

Brief facts are that the appellant was appointed as a Lecturer in Chemistry on adhoc basis by the State of Haryana on 22.1.1979 and his services were regularized w.e.f 31.12.1990. During the period of his adhoc service, he used to be relieved every year and re-appointed in the new Session. Many similarly situated persons had approached this Court and under the directions of this Court, as upheld by the Supreme Court, they were given salary for the summer vacations, and the entire period of those employees was considered for the grant of senior scale and other benefits.

The appellant had also filed a writ petition claiming the same benefit which

was disposed of with a direction to the respondents therein to consider the same. Pursuant to that, the respondents granted salary to the appellant for the summer vacations but did not grant him the benefit of other break periods and treated that period as extra ordinary leave. It was in these circumstances that the appellant filed the instant suit claiming that he should also be given the same benefit as was granted to the similarly situated persons with regard to the break periods. He did not claim salary for the break periods but only claimed that the break period should not be treated as extra ordinary leave.

Both the Courts below noticed and accepted the fact that the appellant had been discriminated against but declined relief to him on the ground that if he was seeking remedy against violation of a fundamental right, only the High Court could grant him the relief.

Counsel for the appellant has argued that this premise of the Courts below is entirely incorrect and it is not only the High Court or the Supreme Court which can interfere if discrimination is proven. Learned Deputy Advocate General has fairly accepted that the premise of the Courts below was incorrect.

In my opinion, argument of counsel for the appellant has to be accepted. Every Court has the jurisdiction to set aside any illegal action including those actions in which infraction of fundamental rights are complained of. The only difference is the procedure. The High Court can take the action in a writ petition but that does not mean that a Civil Court cannot take the action in a civil suit. Resultantly, I have no hesitation in holding that the premise of the Courts below rejecting the suit was flawed. Consequently, this appeal is allowed, the judgments of the Courts below are

set aside, and the civil suit is decreed. The respondents are directed to regularize the break periods of the appellant in the same terms as was granted to other similarly situated persons and to grant him the due benefits within a period of three months from the receipt of a certified copy of this order failing which the appellant would be entitled to claim the same with interest @ 8% pa from the date/s the amount/s fell due till the date of actual payment.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

November 03, 2017
'kk'

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No