IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4692 of 2016 (O&M)
Date of decision: 28.07.2017

Punjab School Education Board, SAS Nagar, Mohali

... Appellant

Vs.

Kuldip Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. S.S. Behl, Advocate
for the appellant.

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RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful defendant No.2 is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for recovery filed by the plaintiffs was partly decreed by the learned trial Court and two separate but identical first appeals filed by the defendants were dismissed by the learned first appellate Court.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that the plaintiff filed the suit for recovery of Rs.2,00,000/- along with interest by way of damages from the defendants. It had been submitted that the plaintiff was permanent resident of village Bajuman, Tehsil Batala, District Gurdaspur. Defendant No.1 was State of

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Punjab, Governing the Affairs of Educational Institutions, all over Punjab including Batala, District Gurdaspur and defendant No.2 was having its headquarter at Mohali, responsible for the conducting and declaring results after examination of matric of the regular and private students. The plaintiff was regular student of 10th class in Govt. Senior Secondary School, Shekhupura, Tehsil Batala and in March, 2003, he appeared in the final examination conducted by defendant No.2-Punjab School Education Board, Mohali (SAS Nagar) under Roll No.802339 from the center of Govt. Senior Secondary School, Bal Purian, District Gurdaspur under the supervision of respondents No.3 and 4. Defendant No.2 had declared the result of 10th class examination held in March, 2003, but against the name and roll number of the plaintiff, it was shown R.L.(Award) in the Gazette published by defendant No.2 with the approval of defendant No.1. The plaintiff requested defendant No.3, who wrote letter No.3863 dated 09.07.2003 to defendant No.2 for declaring the result of the plaintiff. In response to the letter of request of defendant No.3 vide dated 09.07.2003, defendant No.2 vide letter No.802339 (Pre) A 28 dated 25.08.2003 under the signature of Vijay Veer Singh, Superintendent Examination-I issued the above said letter stating that the answer sheet of the plaintiff's social study examination of 10th class was not traceable from the office of Punjab School Education Board, Mohali and it was offered by defendant No.2 for reappearance of plaintiff Kuldip Singh in Social Study subject on 17.09.2003 under the same roll number i. e. 802339 at center No.Batala-3 (DAV Senior Secondary School), Batala from 9AM to 12 Noon and also roll number was issued to the plaintiff and he appeared in the examination as a regular candidate

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as per the instructions of defendant No.2 mentioned in letter No.802339-PreA28 dated 25.08.2003, but surprisingly the result of the plaintiff under roll No.802339 was again not declared along with the result of students of matriculation appeared in September, 2003, nor his separate result was declared neither intimated to him till 01.09.2005 by defendants No. 2 to 4. The plaintiff along with his father visited the office of defendants No.2 to 4 and contacted concerned officers and also requested defendants No. 3 and 4 for declaration of result of the plaintiff, but all efforts made by the plaintiff were in vain and ultimately finding no other solution, a legal notice mentioning the abovesaid fact was issued to defendants No. 2 to 4 on 13.08.2005 through registered post No.233, 234 and 235. Defendant No.3 had replied the notice vide letter No.3054-55 dated 27.08.2005, admitting the case of the plaintiff and wrongly stated that the result card was sent to the student on 25.11.2003. It was to be mentioned that the plaintiff appeared as regular student and the result card of the regular student was always sent to the Principal of the Institution concerned, from where the student appears and no detail marks or certificate was sent to the student directly. Defendant No.2 did not declare the result of the plaintiff in the gazette published by it for the declaration of the result of 10th class candidates appeared in March, 2003 and September, 2003. Defendants No.2 to 4 were negligent for the loss of the answer sheet of the plaintiff for the paper of Social Study held in March, 2003 and thereafter in Noon, declaration of result of the same paper held in September, 2003 under the roll No.802339. The negligence on the part of the defendants had caused great loss to the plaintiff and had put him three years behind from the others, in all respect. The loss of

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precious three years had rendered him jobless and had caused him overage in joining in the Army and other forces like Punjab Police, BSF. The negligence on the part of the defendants had caused great loss to the plaintiff, which cannot be assessed in money, but Rs. 2,00,000/- along with 12% P. A. interest would be proper as damages/compensation to the plaintiff to be recoverable from the defendants. The plaintiff had issued the notice u/s 80 CPC to all the defendants through registered post receipt No.951 to 954 on 07.11.2005 and these had not been returned undelivered to the plaintiff's counsel. Defendant No.3 had given the reply, but the same was not satisfactory, however, defendant No.2 had admitted the claim of the plaintiff about his studentship of Govt. Senior Secondary School, Shekhupura, District Gurdaspur about his appearance in matric examination under roll No.802339 in March, 2003 and loss of answer sheet of plaintiff for Social Study paper. Defendant No.3 had also shifted his liability to defendant No.2 with regard to non-declaration of result of the plaintiff in September, 2003. In spite of notices, the defendants had not paid the amount of Rs.2.00 lac as damages.

Defendants were put to notice. They appeared and filed their separate written statements, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether plaintiff is entitled for recovery of Rs. 2,00,000/- from the defendants? OPP.
2. Whether plaintiff is entitled for the recovery of interests, if so, at what rate? OPP.

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3. Whether suit of the plaintiff is beyond limitation? OPD.

4. Whether plaintiff has estopped for his own act and conduct from filing the present suit? OPD.

5. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiff has proved his case. Although the plaintiff had filed a suit for recovery of Rs.2.00 lacs from the defendants on account of damages caused to the plaintiff because of the negligence on the part of the defendants, yet the learned trial Court partly decreed the suit for recovery of Rs.1.00 lac along with interest vide its impugned judgment and decree dated 14.02.2012. Feeling aggrieved, defendants filed their separate but identical appeals before the learned first appellate Court. Both these appeals came to be dismissed by learned Additional District Judge, vide impugned judgment and decree dated 31.03.2016. Hence this regular second appeal at the hands of unsuccessful defendant No.2.

Heard learned counsel for the appellant.

A bare combined reading of both the impugned judgments and decrees passed by the learned Courts below would make it crystal clear that it was because of the sheer negligence on the part of authorites of the defendants, including the present appellant-Board that the plaintiff had to suffer because of none of his fault. It has gone undisputed before this Court that answer sheet of the plaintiff was misplaced because of negligence on the part of concerned

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officials. Result of the plaintiff was withheld for this reason. Said withheld result of the plaintiff was not declared for the reasons best known to the defendants authorities.

On the other hand, treating the plaintiff as a failed candidate, he was permitted to re-appear in the supplementary examination of that particular subject of Social Study in the month of Septemder, 2003. Since the plaintiff was made to suffer because of the negligence and fault on the part of the officials of the Education Department as well as that of the appellant-Board, no fault can be found with either of the impugned judgments and decrees passed by the learned Courts below and the same deserve to be upheld.

It is not even the pleaded or argued case on behalf of the appellant-Board that the plaintiff had any role to play in getting his answer sheet misplaced. It was the bounden duty of the defendants, including the present appellant-Board to ensure that every caution and care ought to have been taken in collecting and keeping the answer sheets of the students in safe custody. They cannot be expected to play with the career of any student in the manner, they have done in the present case. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within the jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, the learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as evidence brought on record, in the correct perspective. The relevant and cogent findings recorded by learned Additional District Judge in

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para 15 of the impugned judgment, which deserve to be noticed here, read as under: -

> *"The learned counsel for the remaining defendants further contended that the plaintiff in his cross examination has categorically stated that there is no negligence on the part of defendants No.1, 3 and 4 as they had sent his answer sheet in intact condition to defendant No.2. In the present case it is an admitted fact that the examination conducted under the supervision of defendant No.4. Moreover, defendants have miserably failed to prove this fact that the examination was not conducted under their supervision. Simple denial on the part of defendants that there was no negligency on the part of their act and conduct and shifts the burden towards each other does not prove this fact that the plaintiff was not suffered in the hands of defendants in the present case. Further, no where defendants No.1, 3 and 4 categorically proved this fact on the record that the answer sheet of plaintiff for the examination conducted in March, 2003 was sent to defendant No.2 in intact/sealed parcel. Moreover, nowhere defendant No.2 has admitted this fact that he has received the parcel in intact/sealed parcel. Merely, the admission on the part of plaintiff that his answer sheet was sent in intact condition to defendant No.2 does not ipso facto proved this fact that there was no negligency on the part of remaining defendants i. e. defendants No.1, 3 and 4. Further, in the written statement filed by*

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the defendants No.1,3 and 4 it has been specifically averred that it is not in the knowledge of defendants that if plaintiff appeared in the center for reexamination on 17.09.2003 or not nor it is in the record of their office as their office was not concerned for the re-examination of private candidates. On the contrary defendant No.2 has alleged that they have already provided the opportunity to the plaintiff to appear in examination in September, 2003. But the result of the plaintiff published in the gazette of September, 2003 was not intimated to defendants No.1, 3 and 4 by PSEB i.e. defendant No.2 in the present case. Thus, it has been duly proved in the present case that defendants have two times negligent in performing their part of their duty and thus the loss bear by the plaintiff to prove the negligency on the part of defendants and caused the loss to plaintiff both physically and mentally and also spoil his career. The loss which has already been bear by the plaintiff due to the negligency on the part of defendants No.2 and 4 could not be assessed in terms of money. Thus this court does not find any type of illegality or irregularity in the judgment and decree passed by the learned lower court. Hence, both the appeals being without meritorious are liable to be dismissed."

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the concurrent findings recorded by both the learned Courts below. Further, learned counsel for the appellant could not refer to any question of law, much less substantial question

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of law, which is sine qua non for entertaining the regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No

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