

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.:214

Regular Second Appeal No.1437 of 2014 (O & M)
Date of Decision: July 26, 2017

Daya Nand

..... APPELLANT

VERSUS

Shri Jainendra Gurukul Senior Secondary School, Panchkula & another

..... RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

PRESENT: - Mr. Anirudh Kush, Advocate, for the appellant.

Mr. Adarsh Jain, Advocate, for the respondents.

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Jaspal Singh, J

1. Through the instant regular second appeal, Plaintiff – appellant Daya Nand has challenged the judgment & decree dated March 19, 2013 passed by the Civil Judge (Junior Division), Panchkula, whereby the suit filed by him for declaration to the effect that order dated September 30, 2008 vide which his services have been terminated is illegal, null, unjust, without giving any opportunity of hearing to the petitioner, liable to be set aside and for permanent injunction to allow the petitioner to join his duties, has been dismissed as well as judgment & decree dated August 19, 2013 passed by the Additional District Judge, Panchkula, vide which, appeal filed by the plaintiff – appellant against the aforesaid decision rendered by the trial court has been dismissed.

2. Brief facts of the instant case are that plaintiff – Daya Nand filed a suit for declaration & permanent injunction alleging that he had been working as Math Teacher with respondents since July 16, 1990. He was transferred to Mahavir Jain Public School, Kurukshetra vide order dated July 04, 2008 with a direction to join duty at the new station on or before July 10, 2008 whereas there was no provision for transfer of a teacher. Plaintiff preferred a civil suit restraining the defendants – respondents from relieving the plaintiff, which was dismissed as withdrawn on the statement of defendants that they will allow the plaintiff to join duty and withdraw the transfer/relieving order. Plaintiff alleged that he was not allowed to enter the school premises on August 09, 2008 and August 11, 2008, however, he finally joined the duties on August 27, 2008 but was not permitted to take up the classes. Defendants served a letter dated September 30, 2008 upon the plaintiff, vide which, his services were terminated on October 03, 2008.

3. Aggrieved against order dated September 30, 2008, plaintiff filed a civil suit to challenge the same which was contested by the defendants – respondents by filing written statement, taking preliminary objections regarding maintainability of the suit; jurisdiction of the civil court to try the suit; and locus standi of plaintiff to file the same etc. On merits, it was averred consequent upon his transfer, plaintiff approached the defendants to resign as he was working as Press Correspondent with Newspaper ‘Ajit Samachar’.

4. From the pleadings of parties, issues were framed by the trial court. Both the parties adduced evidence in support of their respective claims. After hearing learned counsel for the parties and perusing the record, the trial court vide judgment & decree dated March 19, 2013 dismissed the

5. Dis-satisfied by the aforesaid decision, plaintiff – appellant went up in appeal, but that too, was also dismissed vide judgment & decree dated August 19, 2013 passed by the lower appellate court.

6. Aggrieved against both the judgments passed by the courts below, plaintiff has filed the instant regular second appeal.

7. Heard.

8. While assailing the impugned judgments & decrees, learned counsel for the appellant has vehemently contended that the same are absolutely against the evidence available on record and settled canons of law. Misreading of facts & evidence has resulted into miscarriage of justice. The courts below have erred in not appreciating the correct legal proposition. The court has ignored the fact that appellant was appointed as Math Teacher by the respondents – defendants on June 16, 1990 and he served regularly till July 04, 2008. Appellant, earlier challenged his transfer in the civil court by filing a suit which was dismissed as withdrawn by him on the statement of defendants to the effect that they will withdraw the transfer order. But, he was not allowed to join duties and ultimately, terminated his services vide order dated September 30, 2008. The judgments & decrees passed by the courts below are liable to be set aside.

9. Per contra, learned counsel for the respondents has supported the judgments & decrees passed by the courts below submitting that the same are in consonance with the settled proposition of law. Each and every aspect of the case has been thoroughly gone through the courts below in the right perspective. The judgments & decrees are well reasoned and passed as per the evidence adduced by the parties and in accordance with law. Plaintiff – appellant was never appointed on regular basis, rather, his

as news correspondent for the newspaper 'Ajit Samachar'. Appellant was not devoting to his duties even during the examination days, particularly when career of the students was at stake.

10. This Court has given a deep thought to the rival submissions made by learned counsel for the parties and scanned the record available, but does not find any legal weight in the submissions of learned counsel for the appellant.

11. Though, it is the case of plaintiff – appellant that he was appointed as Math Teacher in Gurukul Public School, Panchkula (respondents – defendants) but no appointment letter was placed on record to establish this fact. There is no evidence to show the nature of his appointment, whether it was on adhoc basis, daily wages, regular or otherwise. Though, plaintiff – appellant has placed on record copies of attendance register showing that he was regularly taking the classes but as per Section 14 of the Specific Relief Act, 1963, a contract of personal service cannot be enforced. A contract of personal service comes to an end at the end of the contract. The contract services of any employee, who has been remove from services, cannot be deemed to be in service against the will and consent of the employer. Moreover, the fact that appellant was working as News Correspondent with newspaper 'Ajit Samachar' could not be denied by him. Plaintiff – appellant has failed to prove that he was a regular employee and could not be terminated from service without adopting due course of law. Both the courts below have touched and discussed each and every aspect of the matter and arrived at concurrent findings which in view of this Court are legally and factually justified. The same do not call for any interference by this Court.

12. In the light of what has been discussed above, this Court does not find any illegality or infirmity in the judgments & decrees passed by the courts below and the same are affirmed. Consequently, instant regular second appeal is dismissed with no order as to costs.

July 26, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No