IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2104 of 2017 (O&M)
Date of Decision: 11.05.2017

Punjab Technical University
and another ... Appellants

Versus

Mrs. Madhu Midha ... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Tribhawan Singla, Advocate,
for the appellants.

Mr. Anand Pandit, Advocate,
for the caveator.

RAJIV NARAIN RAINA, J.

CM No.5099-CII of 2017

1. For the reasons mentioned in the application, the delay of 12 days in filing the appeal is condoned.

Main Case

1. Heard Mr. Tribhawan Singla, learned counsel appearing for the appellants and Mr. Anand Pandit, learned counsel for the caveator. The appeal is by the Punjab Technical University, Jalandhar. The respondent is an employee of the University serving as an Assistant Librarian. She presented a suit in the Court of the Civil Judge (Junior Division), Jalandhar claiming the benefit of regular pay-scale w.e.f. May 08, 2001 with the further prayer that her salary be re-fixed after making proper calculations. She claimed the difference of pay along with interest as due to her and

wrongly withheld.

2. The University contested the suit by pleading various grounds some of which by way of objections as to time bar; plaintiff was estopped by her act and conduct from filing the suit. Plaintiff has no cause of action. The defendants' case was that plaintiff was initially appointed as an Assistant Librarian on ad hoc basis on a fixed salary of ₹6000/- per month for a period of six months. However, her services were extended from time to time. Defendant pleaded that plaintiff was not entitled to regular scale of ₹5480-8925 as claimed.

3. A replication was filed controverting the averments in the written statement and those of the plaint were reiterated.

4. For understanding the case, the most important document on file is the advertisement inviting *inter alia* qualified candidates for the post of Assistant Librarian with Science/Technology background for the office of the University at Jalandhar. The position offered was on temporary basis but likely to become regular. The selection mode was through walk-in-interview. Indisputably, the post was offered in the pay-scale of ₹5480-8925 which was a condition stipulated in the advertisement. The advertisement was on record at Ex.P-5. There was no mention in Ex.P-5 of appointment being ad hoc and the theory was planted in the pleadings in defence of the suit. No oral evidence could be introduced on the contents of the document Ex.P-5 which had to be read on its own strength and the stipulations contained therein. Indisputably the plaintiff was selected on merit. The lower appellate court has held that payment of consolidated salary of ₹6000/- per month instead of regular pay-scale as per Ex.P-5 was an

arbitrary action which was discriminatory in nature.

5. It was the case of the defendants in the suit that the first candidate namely, Ms. Preeti Beniwal did not join service and, therefore, the plaintiff being the second oe next candidate in merit was called in her place. Plaintiff replaced Ms. Beniwal. The lower appellate court applied the principles of 'equal pay for equal work' which were amply supported by the terms and conditions of the advertisement that were binding on the parties while adverting to the Supreme Court decision in a matter of minimum of the pay-scales in U.P. Land Reclamation Corporation Ltd. v. Mohd. Khursheed Anwar, (2010) 7 SCC 739 which was not off centered to the issues in hand.

6. In support of the proposition directly in issue in this case being breach of promise, the appellate court suitably applied the law in Bilal Ahamad Khan and others v. State of J&K and others, 2010 (1) JKL 107. This was a case before the Jammu & Kashmir High Court and the issue similar to this case when Government employee was placed in lesser pay-scale contrary to the pay-scale mentioned in the advertisement. The relief claimed was granted placing petitioner in the promised pay-scale.

7. In similar strain is the judgment in Dharmendera Rawat and others v. State of Uttarakhand and others, 2011 (2) UD 245. The view therein of the Uttarakhand High Court was identical to the one taken in *Bilal Ahamad* case The advertisement in this case had offered the post in a higher pay-scale than the one prescribed after the appointment and joining service. The High Court applied the principle of promissory estoppel relying on the statement of law in State of Punjab v. Nestle India Ltd. and another, (2004)

6 SCC 465 for the universal proposition involved herein, but not the subject matter.

8. Again, a similar situation fell for consideration before this Court in Kabul Singh v. State of Punjab, 2001 (1) SCT 1139. The Employer Sugar Mill advertised regular posts promising in the appointment letters to give regular pay-scale but were given lower pay grades. This action was faulted and relief granted including regularization from the dates of initial appointment. As though the three judgments were not enough, the appellate court took the pains and proliferated the principle with case law from the Gauhati High Court in Mita Bhattacharjee v. State of Tripura and others, 2011 (3) NEJ 680 where similar proposition of law fell for consideration and was answered in the affirmative. With this weight of case law the appeal in present case was accepted by the learned District Judge, Jalandhar and rightly so by setting aside the judgment of the trial court. The trial Court had erred in dismissing the suit as barred by time by wrongly applying Article 58 of the Limitation Act, 1963 which provision had no bearing on the case. These errors committed by a wrong perception of the law have been suitably creased out by the learned District Judge, Jalandhar and the suit decreed for good reason and sufficient cause.

9. In the present case there was an admission by the defendant themselves that a representation dated November 24, 2005 Ex.DA was submitted by the plaintiff for consideration. This representation was not decided and was kept in abeyance even though final orders should have been passed and conveyed, settling the grievance. The appellate court considered the claim as a recurring cause of action viz.-a-viz. a suit filed on

November 06, 2009 and aptly restricted the arrears of increased salary to three years from the date of Exb DA i.e November 24, 2005 to accrue w.e.f. November 24, 2002. I support the relief granted which has brought justice to the plaintiff. I would add that a "continuing wrong" is one which creates a continuing source of injury. These successive and continuing wrongs occur periodically and each wrong gives rise to a distinct and separate cause of action. A cause of action comprises a bundle of facts if proved would entitle a suitor to a decree. Thus, in cases regarding fixation of pay and pay-scale, if no Order has been passed specifically fixing or denying the pay-scale to an employee, it would be a "continuing wrong" as the salary for each successive month would give a fresh cause of action. Then, the prescriptions in the Limitation Act, 1963 would give way to the exemptions contained therein.

10. I must say that the well written and ably reasoned judgment of the learned District Judge, Jalandhar dated December 22, 2016 deserves commendation and I find myself in concurrence with the reasons assigned in setting aside the judgment and decree of the trial Court. The learned trial Court had fallen in serious error in thinking that the case was one of offer and acceptance introducing a contract law principle in a service law matter involving public employment and administrative law, a domain governed by service rules and the principles of equity, justice and good conscience.

11. Accordingly on the above discussion, I find no substance at all or any merit in this appeal and would dismiss it in limine. The points of law and fact have been dealt with thoroughly by the appellate court in his elaborate and sound judgment which calls for no interference in second

appeal or for that matter in any other jurisdiction.

12. The decree would be now implemented by the appellant as an order of this Court by calculating the money due and paying the sum determined within three months from availability of order in certified copy, without compelling the plaintiff to protracted execution proceedings. In case of default, the amount in default will carry interest at the rate of 8% till payment.

(RAJIV NARAIN RAINA)
JUDGE

11.05.2017
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Whether speaking/reasoned	*Yes*
Whether reportable	*No*