

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

Date of decision: 18.04.2017

RSA No.721 of 2017

Jawahar Lal

...Appellant

Vs.

DAV College Management Committee & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ravi Sharma, Advocate, for the appellant.

RAJIV NARAIN RAINA, J.

The plaintiff is in second appeal against the concurring judgments and decrees of the trial Court and the first Appellate Court dismissing the suit and upholding the impugned order dated 20.12.2007 relieving the plaintiff from service on the ground that his services were no longer required. By this order, he was asked to handover charge to Principal V.K.Sharma, DAV College, Amritsar.

The plaintiff-appellant served the defendant institution as a Principal retiring on 28.02.2007. On 23.01.2007, he was granted re-employment beyond the age of 60 years on a consolidated salary of ₹10,000/- per month for a period of three years w.e.f. 01.03.2007. On superannuation, the status of the plaintiff changed from regular to contractual service. There was documentary evidence brought by the defendants on the record of the trial Court by way of Exs.D-2 to D-6 showing that the plaintiff was unable to perform his contractual duty, as he failed to control the staff and students of the institution. It was the defence in

the suit. This defence has been accepted by the Civil Judge (Junior Division), Amritsar in his judgment and decree dated 24.01.2013 as legal valid. The judgment and decree dated 24.01.2013 has been upheld by the learned Additional District Judge, Amritsar vide judgment and decree dated 01.08.2016.

A breach of contract of personal service is not specifically enforceable and breach can only sound in damages. After retirement, service rights come to an end. The plaintiff did not file a suit for recovery by way of damages for the balance period of contract by affixing proper court fee on the amount of damages, if claimed against the defendants for alleged breach of contract and accordingly the learned Additional District Judge, Amritsar was perfectly right in holding that suit for mandatory injunction was not maintainable. There was no prayer in the suit for payment of damages since the plaintiff concentrated in getting the order relieving him from service during the currency of the contractual period nullified and the Courts were within jurisdiction in refusing to issue declaration upsetting the relieving order. The learned Additional District Judge correctly held that a contract of personal service cannot be specifically enforced against a private employer, which is not a Government body. The Court applied the law in S.S.Shetty Vs. Bharat Nidhi Ltd., AIR 1958 SC 12 and Ramesh Kumar Vs. Rohtak District Coop. Milk Products, 2010 (1) PLR 169 to which I would add to the legal proposition two basic and celebrated rulings of the Supreme Court in cases S.R. Tewari Vs. District Board Agra & another, AIR 1964 SC 1680 and Executive Committee of Vaish Degree College, Shamli Vs. Lakshmi Narain, AIR 1976 SC 888.

No question of law arises for consideration of this Court. There is no legal infirmity in the judgments and decrees of the Courts below. The same are upheld and the appeal dismissed.

18.04.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>