

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

1. RSA No.814 of 2017 (O&M)

Rashpinder Kaur ... Appellant

Versus

State of Punjab and others ... Respondent

2. RSA No.6894 of 2016 (O&M)

State of Punjab and others ... Appellants

Versus

Rashpinder Kaur ... Respondent

Date of Decision: 19.04.2017

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

Present: Mr. Rohit Kapoor, Advocate,
for the appellant in RSA No.814 of 2017
for the respondent in RSA No.6894 of 2016.

Mr. Rahul Verma, AAG, Punjab,
for the appellants in RSA No.6894 of 2016
for the respondents in RSA No.814 of 2017.

RAJIV NARAIN RAINA, J.(Oral)

CMA No.1790-C of 2017 in
RSA No.814 of 2017

1. For the reasons contained in the application under Section 5 of the Limitation Act, the same is allowed and the delay of 31 days in filing the appeal is condoned.

Main Case

1. This order will dispose of RSA No.814 of 2017 titled *Rashpinder Kaur v. State of Punjab and others* & RSA No.6894 of 2016 titled *State of Punjab and others v. Rashpinder Kaur*.

2. There was no criminal intention either of the plaintiff or the school management in the clerical mistake in the experience certificate Ex.D6, which certificate was furnished by the appellant at the time of seeking employment. That mere writing error was not a false declaration by the school from where the experience was earned, as the department thought and wrongly so, making a mountain out of a mole hill. The factual position has been explained by Mr Rohit Kapoor learned counsel for appellant in cross appeal RSA No.814 of 2017 and who represents the respondent in State's RSA No.6894 of 2016 in the following manner: when the appellant applied for the post of 'Teaching Fellow' in response to the advertisement of the Department of School Education Punjab in September 2007 she appended the suit corpus being the experience certificate dated 16.09.2007 (Exb D-6) prepared by the School Management of Sant Isher Singh Public School Ranwan, District Fatehgarh Sahib. In this certificate there was a minor clerical error to the effect that the period during which the appellant had first taught at the school as a S.S. Mistress, was erroneously written as January 01, 2002 to August 30, 2004, while the correct period was from January 01, 2002 to August 30, 2003.

3. Mr. Kapoor submits that in fact there was a mistake of just one digit. This error came to the notice of the appellant on 17.03.2008 at the time of the Interview and she herself requested the School management to issue another experience certificate (Exhibit D-8) after rectifying the error on the very next day, i.e., 18.03.2008, which was submitted before the respondent department. It is an uncontroverted fact that at the time of issuance of appointment letter dated 25.10.2008, the department was aware

of both the certificates, which were available on their record. The appellant joined her duties on 27.10.2008 and was working as a Teacher at Government Elementary School, Village Burj, District Fatehgarh Sahib, when her services were illegally terminated vide termination letter dated 22.10.2009 (Ex. D-10).

4. It is ironical that the services of the appellant were terminated on the ground that she submitted a 'bogus certificate' only because there was a minor clerical error of a single digit in the first certificate issued by the school management to her. While on the other hand there are repeated and glaring mistakes in the documents of the respondent department, namely, the name of the school was misspelt, the period in question have been wrongly mentioned in the report of the Enquiry Committee (Ex. D-1), in the Verification Report (Exhibit D-9) and in the termination letter (Ex. D-10).

5. The School Management had repeatedly submitted before the respondent authorities that there was an unintentional clerical error by them while issuing the first experience certificate and the appellant had nothing to do with the same. On the application made by the respondent authorities, the SSP Fatehgarh Sahib got an enquiry conducted wherein it was found that no criminal case was made out against the appellant and that there was just a clerical mistake in the certificate. The District Attorney also reiterated this in his opinion submitted to the prosecution wing.

6. After a few rounds of litigation before this Court wherein the department was directed to conduct an enquiry and consider the material on record, the appellant was constrained to approach the Civil Court for setting

aside her illegal termination and grant of all consequential service benefits. The learned civil court after thoroughly examining the evidence placed before it, which included the record of the School such as the teachers attendance registers, pay bill registers etc. came to the conclusion that the services of the appellant were illegally terminated. The Civil Court decreed the suit to the effect that the order of termination and consequential orders are illegal, null and void. It was also decreed that the appellant is entitled to restoration of services alongwith all previous service benefits which she was legally entitled to from the date of termination till date of judgment etc. The first appellate court affirmed all the findings of the lower court. However, it erroneously modified the judgment and decree of the first court to the extent that the appellant will not be entitled to any service benefits for not having worked during the period she remained out of service.

7. But both the Courts below have unanimously declared the termination order illegal and the impugned decision based on a false assumption arising from a single digit error that there was something culpable and remiss in the experience certificate produced by the plaintiff appellant at the time of seeking employment, a copy of which is found on the appeal file of RSA No.814 of 2017.

8. It is not within the scope of this Court in second appeal to re-appreciate the evidence only to reach a different conclusion on the same material departing from the view taken by the two Judges in the subordinate courts. To my mind there is no palpable error in the reasoning of the Courts below and which I fully support the findings, except that the lower appellate court erred in denying service benefits after striking down the termination

order when it should have. Declaration of illegality postulates that but for the order the appellant would have continued in service.

9. Apart from the termination order having been declared illegal, the question which arises in Mr. Kapoor's appeal is whether the lower appellate court was correct in declaring the termination illegal, ordering reinstatement but failing to grant arrears of salary. The first appellate Judge has applied the principle of 'no work no pay' without specifically saying so. The only error committed by the lower appellate court was in observing that since the plaintiff did not work after the termination she would not be entitled to service benefits. This reasoning was incorrect and requires remedial measures.

10. This argument if accepted would be arbitrary, oppressive and unconstitutional for deprivation of right to arrears which is a right to property when the fault was in the authority and not the plaintiff- appellant. The plaintiff did not withhold her labour because her services had been terminated by an illegal order and I wonder what else she could have done except to seek recourse to law for vindication of her legal rights. The nullification of the termination order by both the Courts finding concurrently that the order was unsustainable will bring in its wake all the service benefits as would naturally flow and which the plaintiff would have been entitled to had the termination order not been passed. This is the effect of an illegal termination consistently held by the Courts.

11. To that extent, the appeal is allowed and the decree is modified. That part of the decree in appeal which denies monetary benefits is set aside. The plaintiff is held entitled to all consequential service benefits from the

date of termination till reinstatement to service including her original seniority etc.

12. As a result of allowing this appeal it would follow as a natural consequence that the State's appeal must fail and the same is hereby dismissed.

(RAJIV NARAIN RAINA)
JUDGE

19.04.2017
manju/neeraj

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>