

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Regular Second Appeal No. 4651 of 2017 (O&M)

Reserved on: May 30, 2018

Pronounced on: 5th July, 2018

Commissioner and Director General School Education, Haryana and others

.. Appellants

versus

Renu Sharma

..Respondent

CORAM: Mr. Ravi Partap, Assistant Advocate General, Haryana
for the appellants.

Mr. Rajan Singh Dadwal, Advocate, for the respondent.

RAMENDRA JAIN, J.

1 The appellants have assailed the judgment and decree dated 18.4.2017 passed by Additional District Judge, Jind, dismissing their appeal, affirming judgment and decree dated 24.2.2016 of the trial court in Civil Suit No.328 of 2015 declaring order dated 30.8.2011 passed by appellant no.1 as illegal and not binding upon the rights of the respondent.

2. The factual matrix of the case are that the respondent, through a civil suit against the appellants sought declaration that the order dated 30.8.2011 of the Commissioner and Director General, School Education, Haryana, Shiksha Sadan, Panchkula (in short `appellant no.1'), requesting Haryana Staff Selection Commission, through its Secretary, Sector 2 Panchkula (in short “the Commission”) to withdraw recommendation pertaining to the selection of respondent to the post of Head Mistress was illegal, null, and void and was, therefore, not binding on her rights. Alternative relief of mandatory injunction was also sought directing the appellants to issue appointment letter to the respondent for the said post and pay all consequential benefits from the date of appointments of other

candidates. Lastly, prayer was made for restraining the appellants from withdrawing the recommendation of the selection of the respondent.

3. It was averred that the Commission published advertisement for the post of Head Master/Head Mistress (HES-II), Education Department, Haryana. Pursuant thereto, the respondent applied for the said post. She, vide letter dated 6.8.2007, was called for interview. On 4.9.2007, she along with all requisite original documents, appeared before the Selection Committee. The Commission, on finding the respondent eligible, fulfilling all requisite qualifications, recommended her name for selection to the post of Head Mistress, but she was not given appointment letter.

4. On a representation being made by her, appellant no.1, vide letter dated 08.09.2008, informed that as she did not have the requisite teaching experience of eight years to her credit, therefore, her recommendation for selection to the said post was withdrawn.

5. However, in reply thereto, the respondent clarified that she did possess requisite eight years' teaching experience, detailing that she worked as SS Mistress in Shri Haryana Bharamchari Shekhavati Ashram Sanskrit Mahavidhalya, Bhiwani, from 12.8.1997 to 27.3.1998; Shiv Lal Saraf Girls Middle School, Bhiwani, from 1.4.1998 to 17.4.1999; Ms. Sarasvati Senior Secondary School, Rohtak from 1.5.1999 to 31.3.2000; and Lord Shiva Model School, Jind from 1.4.2000 to 24.8.2007.

6. All testimonials and experience certificates of the respondent were got verified from District Education Officers, Jind (in short 'appellant no.3') and Rohtak, respectively, who submitted their reports in her favour, but despite that appellant no.1 illegally did not count her teaching experience of Shiv Lal Saraf Girls School, Bhiwani, in view of the fact that

the said school was granted recognition temporarily, ignoring the Haryana School Education Act, 1995 (hereinafter referred to as 'the 1995 Act'), according to which, the schools already affiliated with Boards, after obtaining 'NOC' from the Government, shall be deemed to have recognised and as such, the teaching experience of the respondent in the afore-referred school needed to be counted. The appellants also illegally did not take into consideration her teaching experience in Lord Shiva Model School, Jind, on the ground that it was given affiliation w.e.f. 1.4.2002, ignoring the fact that the above school had applied for 'No Objection Certificate' from the State Government to get affiliation from the CBSE much earlier in time, but it took more than two years. As per CBSE Bye-Laws, the school, which had applied for affiliation, must have a formal prior recognition of the State Government. Thus, the teaching experience, which the respondent got from the afore-mentioned school, was liable to be counted.

7. Feeling aggrieved by the demeanour of the appellants, the respondent filed Civil Writ Petition No. 83331 of 2011 before this court. During the pendency of the above writ petition, appellant no.1 requested the Commission to withdraw her recommendation for the selection to the post of Head Mistress. Therefore, finding no other option, she withdrew the writ petition. Subsequently, she filed another Civil Writ Petition no. 12 of 2012, which, on 8.9.2015, was also withdrawn with liberty to file a civil suit. Hence, the suit was filed.

8. Upon notice, appellants contested the suit by filing joint written statement submitting that the post of Head Mistress was governed under the Haryana State Education (School and Inspection Cadre) (Group-B) Service Rules, 1998 (hereinafter referred to "1998 Rules"). According to the Rules,

the eligibility criteria fixed for appointment to the post of Head Master, High School, by direct recruitment, was eight years' teaching experience as Master in Government recognised Senior Secondary/High/Middle School/Teachers Training Institution. Last date for submission of applications for the post of Head Master was 06.1.2007. Thus, from 11.9.1997 to 6.1.2007, the teaching experience certificates of the respondent from a recognised school were required to be counted. The experience certificates obtained by the respondent were got verified from District Education Officers, Jind, Rohtak and Bhiwani, respectively. During verification, it transpired that the respondent had possessed teaching experience of 06 years, 02 months and 23 days as Mistress/Trained Graduate Teacher to her credit. Therefore, vide Memo No.6/13-2011HRG-II (1) dated 30.8.2011, appellant no.1 was right in withdrawing the recommendation as to the selection of respondent as High School Head Mistress.

9. During pendency of Civil Writ Petition No.12 of 2012, Shri Jaivir Singh Dhanda, Deputy Director, in the office of appellant no.1, was appointed as Inquiry Officer to ascertain genuineness of the experience gained by the respondent in Shiv Lal Saraf Girls Middle School, Bhiwani and Lord Shiva Model School, Jind. During inquiry, the officials of the concerned departments as well as representatives/Head of both the Schools participated in the proceedings. On completion of the inquiry, the Inquiry Officer arrived at the conclusion that Shiv Lal, Saraf Girls Middle School, Bhiwani, was recognized w.e.f. 1.4.2001, while Lord Shiva Model School, Jind, was recognised w.e.f. 1.4.2002. Therefore, the experience of the respondent during the period between 1.4.1998 to 17.4.1999 and

01.04.2000 to 31.3.2002 cannot be taken into consideration. The experience of the respondent for the period from 07.1.2007 to 24.8.2007 was also not counted in view of the fact that last date for submission of the application form was 6.1.2007. Thus, a total teaching experience put in by the respondent to her credit, comes to 06 years, 02 months and 23 days and was, therefore, not eligible for appointment to the post of Head Mistress.

10. In the written statement submitted by the Haryana Staff Selection Commission, it has been specifically averred that on 8.11.2007, it made recommendation of the selected candidates, including the present respondent, to the Education Department, mentioning that they were not medically examined nor any special inquiry into their antecedents were made. Before the appointment letters were issued to the selected candidates, their documents were got verified in which the respondent was not found eligible, fulfilling the requisite teaching experience of eight years as on 06.01.2007.

11 From the pleadings of the parties, on 30.11.2015, the following issues were framed by the learned trial court.

1. “Whether the plaintiff is entitled for declaration on the grounds as taken in the plaint?OPP
2. Whether the plaintiff is entitled for permanent injunction as prayed for ? OPP
3. Whether the civil court has no jurisdiction to entertain and try the present suit? OPD
4. Whether the suit of the plaintiff is not maintainable in the present form? OPD
5. Whether the plaintiff has no cause of action and locus standi to

file the present suit?OPD

6. Relief.”

12. Upon appraisal of oral as well as documentary evidence produced on the record and hearing arguments addressed by both the learned counsel for the parties, the learned trial court, vide judgment and decree dated 24.2.2016, decided the suit in favour of the respondent. Appeal filed by the appellants against the above judgment and decree was also dismissed by the lower appellate court vide judgment and decree dated 18.4.2017.

13 Learned counsel for the appellants has assiduously argued that both the learned courts below have committed grave errors in not appreciating the evidence on record in its correct perspective, resulting in decretal of the suit in favour of the respondent. Both the learned courts below also ignored this important aspect of the matter that the respondent had not completed the mandatory requirement of fulfilling eight years' teaching experience for appointment to the post of Head Mistress as on 6.1.2007, viz., the last date for submission of the application form. The teaching experience certificates earned and annexed with the application form by the respondent, from such institutions, which were, actually, not affiliated to the State Government at the time of issuance thereof by its respective concerned authorities, were taken into consideration wrongly by both the learned courts below. The authenticity of the teaching experience certificates obtained by the respondent from different institutions was also over-looked by both the learned courts below, despite the fact that the Inquiry Officer, in his report, held that the period of service shown by the

concerned issuing authorities was incorrect.

14 Learned counsel for the respondent, refuting the submissions made by learned counsel for the appellants, vehemently contended that both the learned courts below have rightly decreed the suit of the respondent upon appraisal of evidence and other material brought on record by both the sides and prayed for dismissal of the appeal.

15 Having given thoughtful consideration to the submissions raised by both the learned counsel for the parties, this court is of the view that the appeal, bereft of any merit, deserves to be dismissed for the reasons to follow:-

16 The real controversy involved in the instant appeal, is with respect to the alleged recognition of three Educational Institutions, namely, Lord Shiva Model School, Jind; Shiv Lal, Saraf Girls Middle School, Bhiwani and Haryana Bharamchari Shekhavati Ashram Sanskrit Mahavidhalya, Bhiwani, where the respondents had worked at the relevant point of time, as also the competency of its concerned respective officers, issuing teaching experience certificates in favour of the respondent, irrespective of the fact that the above named institutions were, allegedly, not recognised at the relevant time, when teaching experience certificates were issued to her, thereby making her ineligible to satisfy the requisite criteria of eight years' teaching experience as on 06.01.2007, the date when the posts of Head Masters/Head Mistresses were advertised.

17. The question posed, referred to hereinabove, needs to be examined on the strength of documentary evidence produced on the record and also in view of the provisions enshrined in Rule 33 of the Haryana School Education Rules, 2003, (hereinafter referred to as “the 2003 Rules”),

which reads as follows:-

“33 (1) If any institution wants to seek affiliation to any Board/Council other than the Haryana Board of School Education it will seek recognition first. After this it may apply for the issuance of No Objection Certificate (NOC) for affiliation to the concerned Board/Council with a processing fee of Rs.1000/- for Primary School, Rs.2500/- for Middle School, Rs.5000/- for High School and Rs.10,000/- for Senior Secondary School in the form of Demand Draft in favour of Director. However, the provision of the Act and these rules shall continue to apply as before even on those schools which have been issued NOC for pursuing different courses of studies from Boards/Council other than the Haryana Education Department/Board of School Education, Bhiwani.

(2) Any school which is already affiliated to any Board other than Haryana School Education Board, Bhiwani, but has not been recognised, shall apply for the same within three months after the publication of these rules in the official gazette.

(3) The schools affiliated to different affiliating Boards shall not be run in the same premises.

(4) No Objection Certificate (NOC) granted to a school for affiliation with any Board shall be effective from the date decided upon by the appropriate authority and ordinarily NOC shall be granted from the commencement of next academic session. The NOC shall lapse if not utilised within two academic sessions. A fresh NOC is to be obtained by the school

from the appropriate authority. NOC shall be applicable only for the stage for which it was granted and in no case be accepted by Affiliating Board for any other stage.”

18 From a combined reading of the provisions, referred to above, it is abundantly clear that before seeking affiliation of any Board other than Haryana Board of School Education, an Institution was required to seek recognition first and then it may apply for 'no objection certificate. In the backdrop of this legal proposition, at the very out-set, the alleged recognitions of the schools/Institutions, referred to above, need to be examined meticulously.

19 The Enquiry Officer, while assessing the period of teaching experience of the respondent working as SS Mistress from 12.8.1997 to 27.3.1998, in Haryana Bharamchari Shekhavati Ashram Sanskrit Mahavidhalya, Bhiwani, on the basis of his report dated 7.2.2014, Ex.D2, did not count the entire period as such, in view of the fact that she passed B.Ed on 11.09.1997, thereby calculating 06 months and 17 days to her credit, excluding the period of only 01 month and 01 day. The teaching experience gained by the respondent, while working as S.S.Mistress in Shiv Lal Saraf Girls Middle School, Bhiwani for the period commencing between 1.4.1998 to 17.4.1999 was not countable for the reason that the school was recognized w.e.f. 01.04.2001. Likewise, the period spent by the respondent, while working as S.S.Mistress in Lord Shiva Model School, Jind for the period from 01.04.2000 to 24.8.2007 (07 years, 04 months and 24 days) was reduced to 04 years 09 months and 06 days, on account of the fact that the aforesaid school was recognized w.e.f. 01.04.2002 and that the experience certificate earned from Ms. Sarasvati Senior Secondary School

Rohtak, for the period from 01.05.1999 to 31.3.2000, comes to 11 months.

In this way, the appellants, on the basis of the report dated 7.2.2014, Ex.D2, submitted by the Inquiry Officer, calculated respondent's over-all total teaching experience as 06 years, 02 months and 23 days.

20 So far as the question of alleged recognition of the Lord Shiva Model School, Jind, is concerned, this court is of the view that this school, as is apparent from the record, obtained 'no objection certificate' from the office of District Education Officer, seeking affiliation from the CBSE, showing that said institution was already recognised. This fact is clearly evident from the deposition made by Shri Muni Ram, Assistant, District Education Officer, Jind, who, while appearing in the witness box as PW1 before the trial court, deposed that only such school can apply for 'NOC', which is already recognised. The fact that the 'NOC' was issued to Lord Shiva Model School, Jind, stands proved vide document Ex.P4, which was duly corroborated from the testimony of PW4 Ramesh Kumar, Deputy Superintendent, District Education Officer, Jind, who further proved the accompanied documents, viz., 'NOC' as ExP5 and Ex.P6. This witness further deposed that the application, seeking 'NOC', can only be moved by a school, which is already recognised. Thus, the testimony of these official witnesses, made on the basis of the record maintained in the educational institutions, cannot be held to be untrustworthy. Both the learned courts below, in the considered opinion of this court, have rightly and legally relied upon the statements of these official witnesses. The plea of the appellants that both the learned courts below erred in placing much reliance upon the testimony of these witnesses, does not find favour with this court and is, therefore, being without any basis, rejected outrightly. During the course of

arguments, learned counsel for the appellants could not be able to point out any glaring mistake in the statements of these official witnesses showing that they were not deposing in accordance with the record.

21 That apart, keeping in view the con-joint reading of the above referred rule 33 of the Rules, coupled with the oral as well as documentary evidence, as discussed above, it can easily be inferred that Lord Shiva Model School, Jind, was recognized w.e.f. 01.04.2000 and the appellants, under the mistaken belief, have taken the date of its affiliation as 01.04.2002. Therefore, the teaching experience, which the respondent gained by working as SS Mistress in Lord Shiva Model School, Jind, till the date of advertisement, i.e., 06.01.2007, comes to 06 years 09 months and 05 days. In the facts and circumstances narrated above, the contention of the appellants is, therefore, untenable, being contrary to the facts on record and settled proposition of rules and regulations, referred to above.

22 So far as the teaching experience of the respondent while working as SS Mistress in Shiv Lal Saraf Girls Middle School, Bhiwani is concerned, the document Ex.P3 clearly spells out that the above school was recognised since 1998 and was being run under Shree Vaish Mahavidhalya Trust, Bhiwani and was duly recognised by the Haryana Government, where the respondent had worked from 1.4.1998 to 17.4.1999 and gained experience of 01 year and 17 days. The letter Ex.P3 was duly countersigned by the Deputy and the District Education Officers, Bhiwani, respectively. It has come in the deposition of PW1 Muni Ram, Assistant, District Education Officer, Jind, that at the time when experience certificates were countersigned, record of the school was requisitioned. It was only after its verification that the District Education Officer countersigned them. The

appellants could not be able to rebut the testimony of PW1 Muni Ram, Assistant, District Education Office, Jind, despite conducting lengthy cross-examination.

23 Moreso, the Inquiry Officer, while submitting his report, Ex.D2, had placed reliance upon some alleged writing given by the District Education Officer, Bhiwani, that Shiv Lal Saraf Girls Middle School, Bhiwani, was granted recognition w.e.f. 01.04.2001, but surprisingly enough, neither such writing was placed on the record nor the appellants examined any District Education Officer, who had given such writing to the Inquiry Officer to controvert the genuineness of the certificates countersigned by him. Had there been any illegality in the certificate Ex.P3 issued in favour of the respondent, the appellants would have initiated disciplinary proceedings against such erring officials, but nothing sort of this, was brought on the record. Moreso, The best evidence available with the appellants was the record of the recognition of schools in their possession, which the appellants could have brought on record before the court, but the same was withheld for the reasons best known to the appellants. Both the learned courts below have also dealt with this point elaborately and giving sound reasoning therein, which, to my mind, cannot be said to be absurd and as such, the same are upheld.

24 Both the learned courts below have rightly drawn adverse inferences against the appellants observing that the plea raised by the them that the teaching experience certificates gained by the respondent from Shiv Lal Saraf Vaish Girls Middle School, Bhiwani and Lord Shiva Model School, Jind from 1.4.1998 to 17.4.1999 and 1.4.2000 to 31.3.2002, respectively, has not to be counted towards her teaching experience, does

not find favour with this court in view of the reasons referred to above and as such, is rejected outrightly.

25 The contention of the learned counsel for the appellants that the evidence on record was not properly appreciated by both the learned courts below in its correct perspective, cannot be countenanced, inasmuch as, the judgments and decrees passed by both the learned courts below cannot at all be said to be suffered from any vice of illegality and arbitrariness. Rather, they are well founded, based on cogent reasoning assigned by the learned courts below upon proper appreciation of evidence on the record. Therefore, this court is of the view that the learned trial court has rightly decreed the suit of the respondent declaring order dated 30.8.2011 passed by appellant no.1 as illegal and not binding upon the rights of the respondent, which was duly affirmed by the learned lower appellate court in its entirety.

26 No question, much less, substantial arises for consideration, nor was pointed out by either of the sides during the course of arguments.

27 In view of what has been recorded hereinabove, this court does not find any illegality or perversity in the concurrent findings recorded by by both the learned courts below. Consequently, this appeal, being without any merit, fails and is dismissed.

28 A direction is issued to the appellants to issue appointment letter to the respondent for the post of Head Mistress within a period of two months from the date of pronouncement of this judgment.

5th July, 2018

VK

1. Whether reasoned/speaking
2. Whether Reportable

(RAMENDRA JAIN)

JUDGE

- Yes/No
Yes/No