

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

Regular Second Appeal No.2125 of 2006 (O&M)
Date of Decision: July 8th, 2019

Rajinder Gill

...Appellant

Versus

Dev Samaj, registered Society, through its Governing Council, service through its Secretary, Dev Samaj, Head Office, Sector 36, Chandigarh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Suvir Sehgal, Advocate
for the appellant.

Mr. Abhilaksh Grover, Advocate
for the respondents.

AUGUSTINE GEORGE MASIH, J.

Appellant-plaintiff has preferred this Regular Second Appeal against the judgment and decree dated 03.10.2000 passed by the Civil Judge (Junior Division), Chandigarh, dismissing the suit of the appellant for declaration, mandatory injunction and recovery of ₹5,19,266/- as arrears of salary and allowances and ₹2,64,619/- as interest with future interest, appeal against which preferred by her has also been dismissed by the District Judge, Chandigarh, on 20.12.2005, which has also been challenged.

2. Briefly the facts which would be relevant for highlighting the controversy involved in the present appeal are that the appellant joined as Lecturer in Dev Samaj College of Education, Ferozepur, under the Dev Samaj, registered society-respondent No.1 in the year 1968. A new college of education in Chandigarh was opened in the year 1981 by respondent No.1, for which the post of Principal was advertised. Appellant

Dev Samaj College of Education, Chandigarh, on permanent basis. Benefit of the previous service rendered by her in Dev Samaj College of Education, Ferozepur, was granted to her, which finds mention in the appointment letter. She joined the college of education as Principal and since the college was affiliated to Panjab University and was also receiving 99% grant from the Government, her case was sent for approval of the Panjab University, which was granted and the communication was sent on 09.02.1982. In the light of the above, it was asserted by the appellant that the services of the teachers and principals of the colleges are governed by the provisions of The Punjab Affiliated Colleges (Security of Service of Teachers) Act, 1974 (hereinafter referred to as '1974 Act') and regulations contained in Chapter VIII (E) of the Panjab University Calendar Volume I regarding conditions of service and conduct of teachers in non-Government affiliated colleges. Apart from these, respondent No.1 has framed its own rules and regulations for management of the Dev Samaj Education Institutions. According to these rules and regulations, the competent authority pertaining to the Principal is the Dev Samaj Council and the powers for transfer from one institution to another as well as for removal is also conferred in it.

3. Appellant pleaded that during interview for the post of Principal, she was informed/called upon to submit two blank papers duly signed by her, which were to remain in possession of the Chairman of the Managing Committee, Dev Samaj College of Education-respondent No.2, as a condition precedent, failing which she would not be appointed to the said post. In these circumstances, she was forced to hand over two blank

papers, on which her signatures were appended and it is thereafter that she was issued the appointment letter. She is a strong believer in Sikhism but the Chairman of the Managing Committee of the College and his father-in-law Shri Iqbal Singh, who was also a member of the Managing Committee, started persuading her to adopt Dev Samaj way of life. Appellant refused to do so, on which it was openly declared by sister-in-law of the Chairman that the appellant would be maligned and expelled from the institute. Under great pressure, appellant handed over undated letter of resignation to Shri Nirmal Singh, Chairman of the Managing Committee in the month of April 1983, wherein the grounds of resignation mentioned was that she was not keeping good health and further requested for reversion from the post of Principal to the post of Lecturer. Chairman of the Managing Committee accepted the resignation of the appellant vide letter dated 23.04.1983. Soon thereafter, charge of the post of Principal was taken from the appellant but still she was apprehensive that the blank papers may be misused, therefore, she wrote a letter to the Chairman of the Managing Committee-respondent No.2 requesting return of the blank signed papers which are stated to have been prepared by the Chairman himself as it was sought to be projected as if the resignation submitted by the appellant was voluntary and the same was dated 26.04.1983. Signed blank papers were received by the appellant vide letter dated 10.05.1983 from the Chairman of the Managing Committee-respondent No.2.

4. After receipt of the blank papers, appellant preferred a petition to the Director Public Instructions (Colleges), U.T. Chandigarh, under Rule 5 of the 1974 Act, on 31.05.1983, which petition was allowed on

14.02.1984, where she alleged that the resignation letter of the appellant was not voluntary and she was forced to submit the same under threat of misuse of blank signed papers. It is during the pendency of the said petition that she came to know that her resignation from the post of Principal had been accepted by the management, however, her request for adjustment as a Lecturer in the same college, was not accepted and she was offered appointment as Lecturer in Dev Samaj College at Ferozepur City in the meeting held on 22.05.1983.

5. An appeal was preferred by the respondents-defendants, which was allowed by the Additional District Judge, Chandigarh, vide judgment dated 12.12.1984, which was challenged by the appellant by filing CWP No.99 of 1985 which was decided on 13.09.1990 holding therein that the Director Public Instructions (Colleges), U.T. Chandigarh, did not have the jurisdiction to entertain the petition and at the request of the counsel for the appellant, permitted her to approach the appropriate Court of law and delay in filing of the suit was also condoned. Special Leave Petition preferred by the appellant against the said order was dismissed vide order dated 13.09.1991 and the Review Application which was filed by the appellant was also not accepted by this Court and dismissed on 12.03.1991. Appellant then filed a suit for declaration to the effect that the resignation of the plaintiff and its acceptance by the respondents-defendants is illegal and arbitrary and for permanent injunction not to remove the appellant-plaintiff from services and for recovery of salary and allowance along with interest.

6. In the reply which has been filed to the suit, preliminary objections have been taken that suit is bad for non-joinder of necessary

parties and the suit is not maintainable also on the ground that the relationship between the appellant and the respondents was that of master and servant and thus, the relief by filing the suit for declaration would not be maintainable as the Civil Court would not have jurisdiction. Apart from other preliminary objections, plea of Dev Samaj being a religious minority and has complete control over its entire management and affairs on which no interference by the State could be made, had also been taken. On merits it has been denied that any coercion or influence was exerted upon the appellant to persuade her to change the religion. It was asserted that 24 educational institutions were being run by Dev Samaj, where heads of more than 50% of these institutions were non-Dev Samajis and 99% of the teachers/staff serving in these educational institutions were non-Dev Samajis. It was denied that the Chairman, his father-in-law or his sister-in-law had ever threatened the appellant that she would be maligned or expelled from the institute. It was asserted that she voluntarily tendered her resignation in her own handwriting and no pressure was put on her for the said purpose or for the change of religion. It was asserted that the reason for resignation i.e. medical ground is substantiated from the fact that prior thereto, she was on medical leave. Her request, however, for appointment as a Lecturer in the same college was rejected keeping in view the fact that she had remained Principal of this college and her continuance as a Lecturer would be embarrassing for her, however, keeping in view the totality of the matter, she was posted at Ferozepur and asked to join by 25.08.1983 but she chose not to join there on her own. The said post was only filled on 18.08.1989 and that too subject to the outcome of the civil suit, which she

had preferred. It has been asserted that she herself had written a letter dated 26.04.1983, whereas she relinquished the charge of the post with effect from 25.04.1983. She was advised by the Chairman to reconsider the matter of submission of the resignation but she insisted on the same and, therefore, her resignation was voluntary.

7. On the basis of the pleadings, following issues were framed:-

- “1. *Whether the plaintiff is entitled to recover a sum of Rs.5,19,266/- as arrears of salary and allowances? OPP.*
2. *Whether the plaintiff is entitled to recover interest, if so at what rate? OPP.*
3. *Whether the suit is bad for non-joinder of necessary parties as alleged? OPD.*
4. *Whether this Court has got no jurisdiction to try the present suit? OPD.*
5. *Whether the suit is barred by limitation? OPD.*
6. *Whether the plaintiff had waived her right to approach the civil court by earlier judgment of the Hon'ble High Court and Hon'ble Supreme Court of India? OPD.*
7. *Whether the suit is barred by principle of res judicata? OPD.*
8. *Whether the suit has been properly valued for the purpose of court fee? OPD.*
- 8-A. *Whether the plaintiff was pressurized/coerced to submit her resignation from the post of Principal, Dev Samaj College of Education as alleged? OPP.*
- 8-B. *Whether the defendant No.2 was not competent to accept the resignation of the plaintiff, if so to what effect? OPP.*
9. *Relief.”*

8. Issue Nos.1, 2, 8 (A) and 8 (B) were taken up together being inter-connected by the Courts below and all these issues were decided

against the appellant, whereas issue Nos.3, 4, 5, 7 and 8 were decided against the respondents-defendants, however, issue No.6 was decided in favour of the defendants by the trial Court.

9. It is the contention of learned counsel for the appellant-plaintiff that the undated resignation Exhibit PW-1/3 had not been submitted by the appellant voluntarily, rather she was forced to submit the same on the pretext of threat of misusing the two blank signed papers, which had been given in good faith to the Chairman of the Managing Committee of the college Shri Nirmal Singh prior to her appointment to the post of Principal for showing them to the Dev Samaj Council and was promised to return thereafter. It is asserted by him that the blank signed papers were returned to the appellant by the Chairman vide letter dated 10.05.1983 Exhibit PW-1/8 only after she put in her resignation. Another aspect which has been projected by the counsel as to why the resignation was not voluntary is that not only the Chairman of the Managing Committee Shri Nirmal Singh but his father-in-law Shri Iqbal Singh, who was also a member of the Managing Committee and Smt. Satinder Dhillon, who was sister-in-law of the Chairman, had, from the day she was appointed as the Principal, been forcing the appellant to change her religion from Sikhism to Dev Samaj. This was being done on the pretext of regulation 7, which provides that the head of the Dev Samaj institution shall always be a Dev Samaji, which she did not agree to and, therefore, she was forced to submit her resignation. He asserts that as per regulation 11.1 of regulations contained in Chapter 8 (E) of the Panjab University Calendar Volume I, three months' notice was mandatory, which period had not elapsed nor was it a three months' notice

or a request for waiver of the said period, therefore, her resignation cannot be said to have been accepted in accordance with law. Assertion has also been made by the counsel that the acceptance of resignation by Chairman of the Managing Committee would not fulfill the mandate of regulation 7, which governs the services of the employees of the Dev Samaj Educational Institutions as adopted and passed by Dev Samaj Partinidhi Sabha, which is binding, according to which the competent authority to appoint, transfer and remove a Principal is the Dev Samaj Council, where the matter has not been ever placed for consideration, what to say of acceptance/approval. Therefore, the acceptance of the resignation of the appellant is illegal and not sustainable. He, thus, contends that the judgments and decree as passed by the Courts below cannot sustain and deserve to be set aside as they are not based upon proper appreciation of the pleadings and the evidence on record, rather there is misreading of the evidence.

10. On the other hand, learned counsel for the defendants asserts that the suit in the present form is not maintainable as there are *mala fides* alleged against not only Shri Nirmal Singh, who was the Chairman of the Managing Committee of the college but his father-in-law Shri Iqbal Singh and his sister-in-law Satinder Dhillon but none of them is a party to the suit by name. Because of non-joinder of necessary parties, the present suit is not maintainable. That apart, he asserts that the suit for declaration would not be maintainable with injunction keeping in view the fact that the relationship between the appellant and the respondents would be that of master and servant and, therefore, the suit is not maintainable. That apart, he asserts that more than 50% of the heads of the institutions managed by the Dev Samaj

Council are non-Dev Samajis and similarly 99% of the staff is non-Dev Samaji and, therefore, there is no question of forcing the appellant for changing her religion. In any case, if such a ground as has been sought to be projected, had to be pressed into service, that should have been prior to the appointment of the appellant as Principal and once her appointment has been made which has been duly approved by the Panjab University, there was no question of forcing her for changing the religion. Referring to the documentary evidence placed on record, he asserts that the resignation which has been submitted by the appellant is in her own handwriting and the reason given therein is her ill health which stands substantiated from the fact that prior thereto, she was on medical leave. That apart, reference has also been made to a communication addressed by the Chairman of the Managing Committee calling upon her to reconsider her resignation. He, thus, contends that the assertion of the appellant that the resignation submitted by her was not voluntary, cannot be accepted. As regards the contention of learned counsel for the appellant that the resignation of the appellant had not been put to the Dev Samaj Council nor has it been approved, he refers to the Division Bench judgment of this Court, whereby CWP No.99 of 1985 preferred by the appellant was decided on 13.09.1990, where it has been held that the appellant has accepted the factum of her submitting resignation which was put up before the Dev Samaj Council Society, which has approved the same. In the light of this admission on the part of the appellant and the findings given by the Division Bench of this Court, the stand of the counsel for the appellant cannot be accepted.

He asserts that no evidence has come on record that the appellant was

forced or coerced into submission of her resignation. He asserts that the blank papers which have been submitted by the appellant signed by her were in possession of the Chairman all through but the same have never been misused, which fact stands admitted by the appellant in her cross-examination. As regards the contention of the counsel for the appellant that the provisions of regulation 11.1 of Chapter 8 (E) of the Panjab University Calendar Volume-I have not been fulfilled, reference has again been made to the Division Bench judgment of this Court in RA No.264 of 1990 Exhibit PW1/11 which was preferred by the appellant in the writ petition which was decided by the Court, where on 12.03.1991, the Division Bench clarified that the said regulation is directory in nature and not mandatory and that the objection with regard to non-compliance of the provisions of regulation 11.1 of the Panjab University Calendar Volume-I can only be raised by the management in case the appellant has not given resignation along with three months' notice. He accordingly prays for dismissal of the present appeal.

11. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the pleadings, evidence on record as also the impugned judgments.

12. The basic question which requires to be considered and decided in the present appeal is “whether the resignation which has been submitted by the appellant was under coercion and not voluntary?”

13. The grounds which have been projected by the appellant for highlighting this aspect of resignation being not voluntary are as follows:-

(i) That the appellant was being forced into converting her religion

from Sikhism to Dev Samaj mode of life keeping in view the rules and regulations framed by the Dev Samaj Paritinidhi Sabha for the management of Dev Samaj Educational Institutos particularly regulation 7, where it is mentioned that the head of the Dev Samaj Institution shall be member of the Dev Samaj.

(ii) Under coercion of misuse of the two blank signed papers of the appellant in possession of Shri Nirmal Singh, Chairman of the Managing Committee of the college submitted by her prior to her appointment as Principal of the Dev Samaj College.

14. As regards ground (i) is concerned, no evidence has come on record except for the bald statement of the appellant that she was being forced into changing her religion from Sikhism to the Dev Samaj way of life. In the absence of any corroborative evidence, this plea cannot be accepted as these allegations have been specifically denied by the respondents. That apart, as per the stand of the respondents, which has not been controverted that more than 50% of the heads of the 24 institutes run and managed by the respondent society are non-Dev Samajis and more than 99% of the lecturers/staff are non-Dev Samajis. Further, personal allegations of *mala fides* have been made against the Chairman, his father-in-law and sister-in-law but none of them have been impleaded as respondents by name.

15. As regards the second ground i.e. (ii) above is concerned, it is true that her two blank signed papers were received by the Chairman of the Managing Committee of respondent No.2 but there is nothing on record to indicate coercion and it is apparent from the pleadings and evidence on

record that these papers remained in the possession of the Chairman, which were never used, rather the same were returned to her on her asking. This is apparent from the fact that she had requested for return of her blank papers on 25.04.1983 Exhibit PW-1/5, which were returned to her along with the letter dated 10.05.1983 Exhibit PW-1/8, although she had submitted her resignation on 22.04.1983 Exhibit PW-1/3 which was accepted on 23.04.1983 Exhibit PW-1/4. Perusal of Exhibit PW-1/4 would show that the resignation was accepted by the Chairman, Dev Samaj College of Education, Chandigarh, with extreme regret. It was further mentioned that the Chairman personally felt that the matter needs reconsideration by the appellant and she was requested to continue as Principal of the college till an alternative arrangement could be made. Appellant on 25.04.1983 Exhibit PW-1/5 sought for return of her two blank signed papers, which were submitted by her to repose faith in the Chairman. She sought return of the signed papers so that it may not be misused, however, the appellant vide communication dated 26.04.1983 expressed her gratitude for accepting her resignation with immediate effect and in view of the same, she informed that she relinquished her charge with effect from 25.04.1983 (A.N.). In view of the above, it cannot be said that the resignation which has been submitted by the appellant, was not voluntary, especially when the same has been written in her own handwriting and submitted by her.

16. Another aspect which needs mention herein is that the request of the appellant for adjustment as a Lecturer in the college was duly considered by the Managing Committee and accepted as she was again offered the post of Lecturer in Ferozepur, where she could join by

25.08.1989 but the same was not accepted. The reason given by the respondents for not offering her the post of Lecturer in the same college in Chandigarh is that it would be embarrassing for her to work as a Lecturer in the same college, where she had been the Principal, which appears to be reasonable and logical. It is also an admitted fact in the cross-examination of the appellant that she had been communicated the decision of the respondents that she has been appointed as a Lecturer in Dev Samaj College of Education, Ferozepur, initially orally and thereafter in writing as well. Had there been any animosity against the appellant, her request for appointment as a Lecturer would not have been accepted. It has further come in the pleading that the said post continued to be vacant from 1983 till 1989, when another Lecturer was appointed subject to the outcome of the civil suit.

17. Another ground which has been taken by the counsel for the appellant is with regard to the requirement of regulation 11.1 of the Panjab University Calendar Volume I, which mandated three months' notice, which did not find mention in the resignation letter submitted by the appellant and, therefore, could not have been accepted by the respondents, would not detain this Court for long in the light of the order passed in Review Application preferred by the appellant, wherein the Division Bench after reproducing paras 27 and 28 of the writ petition, held as follows:-

“The Statute enables a permanent teacher to terminate his or her engagement by giving the Governing Body three months' notice in writing or three months' salary in lieu thereof. If a permanent teacher wants to terminate his/her engagement forthwith, the Management can call upon him/her to comply with the Statute. The Management can

waive it also. The rule is directory and not mandatory. The petitioner, who is a permanent teacher, cannot maintain that since she had not tendered her resignation in conformity with the statute, the same is invalid. The objection raised is devoid of any merit.

The review application is accordingly allowed. However, it does not affect the merits of the case since we have held that the objection regarding the non-compliance of statute 11(1) of the Panjab University Calendar Vol. I can only be raised by the management.”

18. It may be added here that the judgment of the Division Bench dated 13.09.1990 Exhibit PW-1/10 in the main writ petition as well as the order dated 12.03.1991 Exhibit PW-1/11 passed in the Review Application were challenged by the appellant by filing SLP which was numbered as Special Leave Petition No.15159-60/91, which was dismissed by the Supreme Court on 10.10.1991 Exhibit PW-1/12.

19. It may also be added here that another ground which has been taken by the counsel for the appellant is that the resignation submitted by the appellant has only been accepted by the Chairman of the Managing Committee and the same has not been put up before the Dev Samaj Council which according to regulation 7 as passed by the Dev Samaj Partinidhi Sabha dealing with the management of Dev Samaj Educational Institutions is the appointing authority of the Principal which also has the powers to transfer and remove the Principal. The resignation, therefore, having not been accepted by the competent authority cannot be said to be legal and valid, which cannot be accepted in the light of the judgment of the Division Bench of this Court in CWP No.99 of 1985, where

the counsel for the appellant which was that the resignation in question was not valid one in view of statute 11.1 of the Panjab University Calendar Volume I, 1981 governing the conditions of service and conduct of teachers in non-Government affiliated colleges, which reads, “a permanent teacher may at any time terminate his engagement by giving the governing body three months notice in writing or three months salary in lieu thereof.”

“As far as the second contention of Sh. Anand Swaroop, as noticed above is concerned, we find that no such plea has been taken by the petitioner either in this petition or even at an earlier stage before the Director or the Additional District Judge. Therefore, we need not examine this aspect of the matter at this later stage. This is more so when it is the conceded case of the petitioner that the acceptance of her resignation (Annexure P-4) by Sh. Nirmal Singh Dhillon the Chairman of the Managing Committee was later placed before the Governing Body i.e. Dev Samaj Council Society (Respondent No.1) and was approved by the said Body. Therefore, we need not say anything more on this point.”

20. In view of the above, none of the grounds which have been raised by the counsel for the appellant, carry any weight and, therefore, the appeal stands dismissed being devoid of merit.

21. The judgment and decree as passed by the Courts below, therefore, do not call for any interference by this Court in the present appeal and thus are upheld.

July 8th, 2019

Puneet

(AUGUSTINE GEORGE MASIH)

JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

No