

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

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CM No.15694-C of 2018 in/and
Regular Second Appeal No.111 of 2014

Date of Decision: March 7th, 2019

Jogender Singh

...Appellant

Versus

The Director School Education, Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Rajneesh Chadwal, Advocate
for the applicant-appellant.

Mr. Pradeep Prakash Chahar, Deputy Advocate General,
Haryana.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.15694-C of 2018

Prayer in this application is for fixing an early actual date for disposal of the appeal, which was adjourned *sine die* because of the arguing counsel for the appellant seeking time in the matter.

Notice of the application was issued to the opposite counsel, who had appeared and on the last date of hearing, counsel was called upon to argue the case.

The present application, is therefore, allowed and the appeal is taken on board for consideration.

RSA No.111 of 2014

Challenge in this appeal is to the judgment and decree dated 24.01.2011 passed by the Civil Judge (Junior Division), Mahendragarh, whereby the suit for declaration preferred by the appellant-plaintiff for reinstatement in service along with all the consequential benefits including salary for the years 2004-2005 and 2005-2006 at

Collector's rate along with interest at the rate of 12% per annum, amount of expenses as ₹12,000/- during the interregnum and compensation to the tune of ₹20,000/- was partly allowed to the extent of granting the appellant-plaintiff the pay and salary for the years 2004-2005 and 2005-2006 at the Collector's rate along with interest at the rate of 6% per annum from the date the amount became due till the actual payment of the amount with a further direction to the respondents-defendants to make the payment within a period of 30 days, appeal against which preferred by the appellant-plaintiff as well as the respondents-defendants was dismissed by the Additional District Judge, Narnaul, vide judgment dated 09.04.2013.

2. It is the contention of learned counsel for the appellant that the appellant was appointed as Water Carrier (part time) in a Government school initially on 02.01.2003. Thereafter he was transferred by adjustment to another school on 12.02.2004, where he continued as such till 28.02.2006 when his services were terminated. On termination of the appellant-plaintiff, another person was appointed in his place on 01.03.2006. Appellant-plaintiff having completed more than three years of service was entitled to regularisation of services in the light of the Haryana Government Policy of the year 2003, which entitled an employee, who has completed more than three years of service for regularisation thereof. He, therefore, contends that the Courts below have wrongly proceeded to dismiss the suit of the appellant-plaintiff with regard to the said relief. He, thus, contends that the judgments and decree as passed by the Courts below deserve to be set aside and the suit of the appellant-plaintiff decreed *in toto*.

3. Learned counsel for the respondents, on the other hand,

contends that the services of the appellant-plaintiff were terminated as per

the terms of contract. He contends that the services of the appellant could not be regularised in the light of the fact that there was no regular sanctioned post, against which he could be so regularised and in the absence of any sanctioned post, no relief could have been granted to the appellant-plaintiff as prayed for.

4. Learned counsel for the parties have been heard and with their assistance, I have gone through the impugned judgments.

5. The facts as have been admitted are that the appellant-plaintiff was appointed on the post of Water Carrier on 02.01.2003 and he continued in service till 28.02.2006, therefore, completing more than three years of service with the respondents. The policy under which the appellant-plaintiff was seeking regularisation of his service has neither been mentioned in the civil suit nor has it been produced before the Courts below. That apart, no evidence has been led by the appellant-plaintiff to show that there was a regular sanctioned post available, against which his services for regularisation could be considered. The onus was on the appellant-plaintiff to prove his case with regard to there being a Class-IV regular sanctioned post available, against which his services could be regularised. The plea which has been raised by learned counsel for the appellant that in his place, another employee has been employed on 01.03.2006 after terminating his services on 28.02.2006, has not been pleaded in the civil suit. That apart, the said person who is so stated to have been appointed, by the counsel for the appellant, is not even a party to the civil suit. No discrimination has been pleaded by the appellant-plaintiff in his civil suit and the case which has been projected in the civil suit is limited to the extent of challenging his

conditions of his appointment. In the light of the pleadings and the evidence which has been led by the parties, the findings as has been returned by the Courts below, cannot be faulted with. DW-1 Mool Chand, whose testimony has been referred to by the Courts below, has stated that there was no vacant post of Class-IV employee and, therefore, the said fact having gone unchallenged, the relief which is being claimed by the appellant in the present appeal, cannot be granted.

6. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

7. No substantial question of law is involved in the present appeal. Therefore, there being no merit in the present appeal, the same stands dismissed.

March 7th, 2019
Puneet

AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No