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

**RSA No. 2516 of 2018(O&M)
Date of decision : 18.10.2019**

Varinder Kaur

..... Appellant

versus

Arjinder Kaur and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Tarun Vir Singh Lehal, Advocate
for the appellant.

G. S. SANDHAWALIA, J. (ORAL)

CM-6641-C-2018

Application is allowed as prayed for.

CM-6640-C-2018

For the reasons recorded in the application, delay of 50 days in
refiling the present appeal is condoned.

Application stands disposed of.

CM-6642-C-2018

For the reasons recorded in the application, delay of 11 days in
filing the present appeal is condoned.

Application stands disposed of.

Main case

The present appeal has been filed by the appellant-plaintiff against the concurrent findings of the Courts below whereby her suit for declaration challenging the order dated 27.08.2008 passed by defendant no.3 i.e. Child Development and Project Officer, Kahnuwan, whereby her services have been terminated, has been dismissed.

The claim in the civil suit as such was that the plaintiff had joined as Anganwari worker on 01.10.2007 as she fulfilled all the requisite qualifications but her services had wrongly been terminated by defendant No.3 and in her place defendant No.1 has wrongly been appointed by virtue of the said order. Defendant No.1 allegedly did not possess the requisite qualification of passing Punjabi subject up to matric level and was thus not eligible to be appointed as Anganwari worker.

The Civil Judge(Junior Division), Gurdaspur vide judgment dated 15.04.2014 came to the conclusion that the order was passed in pursuance of directions issued by this Court in CWP No. 10158 of 2008 whereby speaking order was directed to be passed on the legal notice of defendant No.1 Arjinder Kaur. It was noticed that in pursuance of the speaking order it had been noticed that said Arjinder Kaur had got 12 marks in the merit list whereas one Dalbir Kaur had got 11 marks and the plaintiff had got only 10 marks. The plea that Punjabi language was compulsory for the appointment as Anganwari worker was repelled on the ground that there was no provision or notification brought on record to show that the said qualification was necessary since it was the scheme of the Central Government. Resultantly the suit was dismissed while noticing that the

opportunity as such had been granted for hearing and thereafter the speaking order had been passed.

In appeal application under Order 41 Rule 27 CPC had also been filed to bring on record the notification dated 22.10.2008, newspaper dated 26.02.2015 along with amendment in Punjab Language Act, 2008 with regard to clause 8 vide which Punjabi language was made compulsory and mandatory in Punjab. The defence of the respondent was that the scheme was launched by the Government of India and as per the news item the Act was made applicable in the year 2015. The appointment of defendant No.1 was prior to the said period. The Appellate Court thereafter came to the conclusion that both the parties were heard on 19.08.2008 and the merit list was prepared. The speaking order had noticed that on an earlier occasion the certificate of matric was not produced by defendant no.1 and she was not considered whereas her certificates were duly attached with her application. Resultantly keeping in view the directions of the Division Bench of this Court on 30.05.2008 the benefit was granted to her. In view of her having secured more marks in merit i.e. 12 marks in comparison to the plaintiff who secured only 10 marks and, therefore, she secured the appointment over and above the appellant. Resultantly the order has been upheld and the appeal was dismissed on 02.05.2017.

The findings which have been recorded, as such are justified as much as respondent no.1 having been wrongly non-suited inspite of having the matric certificate and once the authority found that she was wrongly kept out of the zone of consideration merit, she was recommended for appointment as Anganwari worker. The appellant was given the opportunity

argument that Punjabi as such was mandatory as per the application for additional evidence would have no bearing as it is clear that the amendment was made on 26.02.2015 whereas as per the case of the appellant herself she had joined on 01.10.2007. In such circumstances the application for additional evidence has rightly been dismissed and would not be relevant as such for the decision of the case and also would not come in the ambit of the provisions of Order 41 Rule 27 CPC. It was the specific case in the plaint as such that it is necessary to have the basic qualification of passing Punjabi subject. Once that was the case of the plaintiff it was necessary to bring on record the necessary evidence at the initial stage rather than file it in appeal and, therefore, as per the settled principles an application for additional evidence cannot be filed for filling up the lacuna in the case. Reference can be made to the judgment of the Apex Court in **Satish Kumar Gupta vs. State of Haryana, AIR 2017 SC 1072.**

Resultantly no question of law as such arises for consideration by this Court which would warrant for the enquiry. The appeal is thus dismissed in limine.

(G.S.Sandhawalia)

Judge

18.10.2019

sunita

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No