

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 07.12.2020	Delivered on 18.12.2020
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CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

SA. No.879 of 2018
and CMP No.23471 of 2018 & 11352 of 2020

Don Bosco Mat. Hr. Sec. School,
Rep. By its Rector and Correspondent,
Fr. Gregory Devarajan
Egmore, Chennai 600 008. ...Appellant/3rd Defendant

Vs.

1. R.Vijayakumar
Physical Director (Retired)1st Respondent/Plaintiff
2. The Director of Matriculation School,
DPI Compound,
Chennai 600 006.
3. The Inspector of Matriculation Schools,
No.10, Gandhi Irwin Road,
Egmore, Chennai 600 008. ...Respondents 2 & 3/
Defenants 1 & 2

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the decree and judgment dated 03.10.2018 passed in A.S.No.45 of 2018 on the file of the XVI Additional City Civil Court, Chennai, reversing the judgment and decree in OS.No.484 of 2015 dated 13.04.2017 by VII Assistant Court, City Civil Court, Chennai.

For Appellant : Mr.N.L.Rajah, Senior Counsel,
for M/s.BFS Legal

For Respondents: Mr. Ravi Paul, SC
for M/s. Paul and Paul, for R1

Mr.Y.T.Aravind Gosh,
Additional Government Pleader,
for RR 2 & 3

J U D G M E N T

This matter is taken up for hearing through Video-Conferencing.

The third defendant in OS No.484 of 2015 has come up with this Second Appeal. Challenge in this Appeal is to the judgment of the Appellate Court made in AS No.45 of 2018 reversing the judgment and decree of the Trial Court and granting a decree for declaration that the plaintiff is entitled to salary and other allowances at the rates fixed by the Sixth pay Commission and directing payment of pension on the basis of the pay and other allowances fixed on the basis of the Report of the Sixth Pay Commission.

2. The suit came to be filed seeking the above prayers on the ground that the third defendant, viz. the employer had agreed to pay salary and allowances as payable by the Government of Tamil Nadu from time to time. The plaintiff was appointed as a Post Graduate Physical Director on 18.06.1979 with a salary of Rs.600/- per month. Upon completion of probation, he was made permanent with effect from 01.06.1981 on a pay scale of Rs.600-30-750-35-890-40-1050.

3. From the date of confirmation his basic pay was fixed at Rs.660/-. It is claimed that though the third respondent is an Unaided Minority Educational Institution, it has been paying salary to the teachers at rates on par with the salaries paid by the Government of Tamil Nadu. It is also claimed that the contract of appointment also provided that the appointee is entitled to salary and other allowances at the rates fixed by the Government of Tamil Nadu from time to time. Therefore, according to the plaintiff, he would be entitled to salary, as per the recommendations of the Pay Commissions. Though the plaintiff attained the age of superannuation on 27.12.2008, he was allowed to continue in service till the close of the academic year on 31.05.2009.

4. As per the Report of the Sixth Pay Commission, the teachers became entitled to a higher salary with effect from 01.01.2006 notionally and with monetary benefit from 01.01.2007. Therefore, it is the case of the plaintiff that he having retired on 31.05.2009, is entitled to the benefits of the recommendations of the Sixth Pay Commission and he is entitled to get pay and allowances from 01.01.2006 to 31.05.2009, as per the Sixth Pay Commission recommendation. Inasmuch as, the third defendant denied such entitlement, the plaintiff had come up with the above suit. The Consequential prayer that was sought for is mandatory injunction directing the third defendant to pay pension and gratuity to the plaintiff as per the revised scale of pay.

5. Though the Educational Authorities, viz., The Director of Matriculation School and The Inspector of Matriculation Schools were impleaded as defendants 1 and 2, since they had no control over the fiscal policies of the third defendant, they remained *exparte*. The third defendant contested the suit. The main contention of the third defendant was that it being an Unaided Minority Institution, it cannot be compelled to pay salary and allowances on par with the Government teachers. Reliance was placed on various judgments of the Hon'ble Supreme Court with reference to the financial autonomy of such Unaided Minority Institutions. The claim of the plaintiff that the contract provided for payment of the same salary as payable to Government Teachers was also specifically denied. It was also pleaded that the suit filed in the year 2014 is hopelessly barred by limitation, since the plaintiff retired even on 31.05.2009. The parties went to trial on the above pleadings.

6. At trial, the plaintiff examined himself as P.W.1 and produced Exhibits A1 to A8. One Thomas Sundar, Assistant Headmaster was examined as D.W.1 and Ex.B1 was marked.

7. The Trial Court upon a consideration of the evidence on record concluded that a Teacher of an Unaided Minority Institution is not entitled to claim salary on par with a Government School Teacher as of right. The learned Trial Judge further concluded that the suit filed three years after retirement is barred by limitation and the claim of continuing cause of action was rejected. The Trial Court placed reliance on the judgment of the Hon'ble Supreme Court in *T.M.A.Pai Foundation & Ors v. State Of Karnataka & Ors.*, reported in 2002 (8) SCC 481 and the judgment of this Court in *The Correspondents/Principal, Arokiyamada Matriculation Higher Secondary School, Udumalai Road, Pollachi v. T.Sorubarani and others*, reported in 2015 (6) CTC 129. On the above conclusions, the learned Trial Judge dismissed the suit. Aggrieved the plaintiff preferred an Appeal in AS No.45 of 2018 on the file of the XVI Additional Judge, City Civil Court, Chennai.

8. The learned Appellate Judge upon a reconsideration of the evidence on record concluded that the plaintiff would be entitled to a declaration as prayed for, on the finding that the contract of employment obliged the third defendant to pay salaries at the rates fixed by the Government. The learned Appellate Judge also concluded that being a claim for salary, the relief of declaration made by the plaintiff is a continuing cause of action and therefore, the question of Limitation will not arise. On the above findings, the learned Trial Judge allowed the Appeal setting aside the judgment and decree of the Trial Court. Though she found that the judgment and decree of the Trial Court are liable to be set aside, the

learned Appellate Judge did not specify as to what would be the result of the suit. Neither the judgment nor the decree of the Appellate Court discloses the fate of the suit. It merely records that the Trial Court was in error in dismissing the suit and that the judgment and decree of the Trial Court are set aside. It is against this judgment and decree of the Appellate Court the third defendant, assuming that the suit had been decreed, has come up with this Second Appeal.

9. Before going into the merits of the rival contentions of the counsels appearing on either side, I wish to point out that the disposal of the Appeal by the Appellate Court is wholly unsatisfactory. An Appellate Court which sets aside the decree and judgment of the Trial Court is under an obligation to declare the result of the suit. It is just not enough for the Appellate Court to conclude that the judgment and decree of the Trial Court are erroneous and that they need to be interfered with. An Appellate Court, which sets aside the judgment and decree of the Trial Court, should go a step further and signify as to what happens to the suit.

10. A perusal of the judgment of the Appellate Court does not show that the Appellate Court has signified the result of the suit in the judgment. The same is carried out in the decree of the Appellate Court also and the decree of the Appellate Court reads as follows:

- i. that the appeal suit be and the same is hereby allowed.
- ii. that the judgment and decree passed by the learned VII Assistant Judge, City Civil Court, Chennai in O.S.No.484/2015 dated 13.04.2017 is hereby set aside.
- iii. that there be no costs.

A reading of the above decree does not show that the suit has either been decreed or dismissed or partly decreed or partly dismissed.

11. Order 41 Rule 31 of the Code of Civil Procedure requires the judgment of the Appellate Court to state

- "a) the points for determination;
- b) the decision thereon;
- c) the reasons for the decision; and
- d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled."

The mandatory requirement is that the Appellate Court, when it reverses or varies the decree of the Trial Court is required to state the relief to which the appellant is entitled to. The concluding paragraph of the judgment of the Appellate Court,

reads as follows:

"In the result, the appeal is allowed. The judgment and decree passed by the learned VII Assistant Judge, City Civil Court, Chennai in O.S.No.484/2015 dated 13.04.207 is set aside. No costs."

A perusal of the above would show that the mandatory requirements of Order 41 Rule 31 (d) have not been complied with. I also find that the only point for determination that is framed by the Appellate Court is couched as follows:

9. Point for consideration is that whether the judgment and decree passed by the learned VII Assistant Judge, City Civil Court, Chennai in O.S.No.484/ 2015 dated 13.04.207 is unsustainable ?

This again is not in conformity with the requirements of Order 41 Rule 31 of the Code of Civil Procedure.

12. The Hon'ble Supreme Court and this Court have been consistently pointing out that the Appellate Court, dealing with an Appeal under Section 96 of the Code of Civil Procedure, being a final Court of fact is bound to frame points for determination, consider the evidence independently and come to its own conclusions. In Santosh Hazari v. Purushottam Tiwari (Dead) by Lrs., reported in AIR 2001 SC 965, the Hon'ble Supreme Court had reiterated the duties of the first Appellate Court. In doing so, it has observed as follows:

"15. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court."

Adverting to the duties of the Appellate Court which reverses the findings of the Trial Court, the Hon'ble Supreme Court had observed as follows:

"..... Secondly, while reversing a finding of fact the appellate Court must come into close quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the Court hearing a further appeal that the first appellate Court had discharged the duty expected of it. We need only remind the first appellate Courts of the additional

obligation cast on them by the scheme of the present Section 100 substituted in the Code. The first appellate Court continues, as before, to be a final Court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal...."

13. The same principle has been reiterated by the Hon'ble Supreme Court in H. Siddiqui (dead) by Lrs. v. A.Ramalingam, reported in 2011 (4) SCC 240, wherein the Hon'ble Supreme Court has observed as follows:

"20. The High Court failed to realise that it was deciding the First Appeal and that it had to be decided strictly in adherence with the provisions contained in Order XLI Rule 31 of the Code of Civil Procedure, 1908 (hereinafter called CPC) and once the issue of alleged power of attorney was also raised as is evident from the point (a) formulated by the High Court, the Court should not have proceeded to point (b) without dealing with the relevant issues involved in the case, particularly, as to whether the power of attorney had been executed by the respondent in favour of his brother enabling him to alienate his share in the property.

Order XLI, Rule 31 CPC:

21. The said provisions provide guidelines for the appellate court as to how the court has to proceed and decide the case. The provisions should be read in such a way as to require that the various particulars mentioned therein should be taken into consideration. Thus, it must be evident from the judgment of the appellate court that the court has properly appreciated the facts/evidence, applied its mind and decided the case considering the material on record. It would amount to substantial compliance with the said provisions if the appellate court's judgment is based on the independent assessment of the relevant evidence on all important aspects of the matter and the findings of the appellate court are well founded and quite convincing. It is mandatory for the appellate court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points. Being the final court

of fact, the first appellate court must not record mere general expression of concurrence with the trial court judgment rather it must give reasons for its decision on each point independently to that of the trial court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in terms of the said provisions and the court must proceed in adherence to the requirements of the said statutory provisions. (Vide: Sukhpal Singh v. kalyan Singh & Anr., AIR 1963 SC 146; Girijanandini Devi & Ors. v. Bijendra Narain Choudhary, AIR 1967 SC 1124; G.Amalorpavam & Ors. v. R.C. Diocese of Madurai & Ors., (2006) 3 SCC 224; Shiv Kumar Sharma v. Santhosh Kumari, (2007) 8 SCC 600; and Ganmani Anasuya & Ors. V. Parvatini Amarendra Chowdhary & Ors., AIR 2007 SC 2380)

22. In B.V. Nagesh & Anr. v. H.V. Sreenivasa Murthy JT (2010) 10 SCC 551, while dealing with the issue, this Court held as under:

"4. The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case therein is open for re-hearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put-forth and pressed by the parties for decision of the appellate Court. Sitting as a court of appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. Vide Santosh Hazari vs. Purushottam Tiwari, (2001) 3 SCC 179 and Madhukar and others vs. Sangram and others, (2001) 4 SCC 756."

14. Tested on the above principles of law, I am of the considered opinion, that the judgment of the Appellate Court, in the case on hand, does not satisfy the requirements of Order 41 Rule 31 of the Code of Civil Procedure. I am conscious that a mere non framing of a point for determination would not render the judgment of an Appellate Court liable to be reversed at the hands of the second Appellate Court. But in the case on hand apart from the failure to frame a point for determination the judgment of the Appellate Court fails to meet the mandatory requirement of Order 41 Rule 31 (d) of the Code of Civil Procedure, which requires the Appellate Court to state the relief to which the appellant is entitled to.

15. As already pointed out the judgment of the Appellate Court only says that the judgment and decree of the Trial Court is set aside. The fate of the suit is unknown. There are two prayers sought for in the suit. From the perusal of the judgment of the Appellate Court, it is not known whether both the prayers were granted or any one of the prayers was granted. Therefore, I am of the considered opinion that judgment of the Appellate Court is liable to be set aside. Though various questions of law have been framed at the time of admission and subsequently also, I do not think that as a second Appellate Court, I will be justified in going into those questions in the light of what has been observed above.

16. I am unable to resist observing that many of the judgments of the Appellate Courts suffer from such vices. This Court has in effect relaxed the mandatory requirements of Order 41 Rule 31 of the Code of Civil Procedure, in many cases only to avoid an order of remand and a prolongation of the litigation thereby. Time has come that the Appellate Courts must be sensitised on their duties and obligations. In many of the Appellate judgments, the sole point framed for determination is, as to whether, the judgment and decree of the Trial Court should be reversed or not. This universal point for determination cannot and will not satisfy the requirements of law. I am therefore of the considered opinion that the Appellate Courts which deal with Appeals under Section 96 must comply with the mandatory requirements of Order 41 of the Code of Civil Procedure.

17. In the light of the above, I am constrained to set aside the judgment and decree of the Appellate Court and remit the Appeal to the Appellate Court for fresh disposal in accordance with law. Considering the fact that the suit is of the year 2014 and the remand is necessitated, because of the dereliction of duty on the part of the Appellate Court I direct the Appellate Court to hear the Appeal within a period of four months from the date of the receipt of the records from this Court and dispose of the same on merits. Needless to emphasise that due care should be taken by the Appellate

Court to see that its judgment and decree are in conformity with the requirements of the Order 41 of the Code of Civil Procedure. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

jv

To

1. The XVI Additional Judge,
City Civil Court, Chennai.
2. The VII Assistant Judge, City Civil Court,
Chennai.

Copy to:

1. The Section Officer,
V.R. Section,
High Court of Madras.
2. The Section Officer,
"F" Section,
High Court, Madras.

+1cc to M/s.BFS Legal, Advocate SR.42378
+1cc to M/s.Paul & Paul, Advocate SR.42380

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and CMP No.23471 of 2018 & 11352 of 2020

VD(CO)
CB(29/01/2021)

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