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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.11.2021
PRONOUNCED ON : 01.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A. No.182 of 2010

Kalasekar ... Appellant /Plaintiff

versus

Chevalier T.Thomas Educational Trust,
Represented by its Managing Trustee,
No.16, Madhavaram High Road,
Perambur, Chennai - 600 011. ...Respondent / Defendant

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 09.10.2007 made in A.S.No.208 of 2007 on the file of the learned Additional District Judge, Fast Track Court No.V, Chennai, confirming the judgment and decree dated 01.12.2006 made in O.S.No.1577 of 2004 on the file of the learned II Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.S.A.Sayed Shuhaibb
for Mr.R.Bharath Kumar

For Respondent : Mr.S.Vennimalai

J U D G M E N T

Aggrieved over the concurrent findings made in A.S.No.208 of 2007 dated 09.10.2007 on the file of the learned Additional District Judge, Fast Track Court No.V, Chennai and in O.S.No.1577 of 2004 dated 01.12.2006 on the file of the learned II Assistant Judge, City Civil Court, Chennai, the appellant, who is the plaintiff in the above referred suit, is before this Court with the present Second Appeal.

2.Before the trial Court, the appellant / plaintiff herein filed the suit, seeking the relief of declaration, declaring that the order passed by the defendant



dated 16.03.2004, as illegal and void and consequentially, for the relief of injunction, restraining the respondent, his men and servant, in implementing the order dated 16.03.2004.

3.By judgment and decree dated 01.12.2006, the learned II Assistant Judge, City Civil Court, Chennai, had dismissed the suit with entirety. Challenging the same, the appellant preferred an appeal, in A.S.No.208 of 2007 on the file of the learned Additional District Judge, Fast Track Court No.V, Chennai. By judgment and decree dated 09.10.2007, the learned Additional District Judge, Fast Track Court No.V, Chennai, after confirming the findings arrived at by the trial Court, dismissed the appeal. Feeling aggrieved over the judgment and decree, the plaintiff in the suit, preferred this Second Appeal.

4.For the sake of convenience, hereinafter, the parties, are referred to, as per their litigative status before the trial Court.

5.The laconic averments made in the plaint, are as follows:

(i) The defendant Trust is a public Trust constituted under the Trust Act and the founder of the Trust was Late Chevalier T.Thomas. After the death of the founder, his wife, namely, Elizabeth Thomas was the Correspondent and the Managing Trustee. The defendant Trust runs many institutions viz. Marian Higher Secondary School, Kottayam, Kerala, St.Mary's Boys Higher Secondary School, Perambur, St.Mary's Girls Matriculation Higher Secondary School, Perambur, Chennai, St.Mary's Matriculation Higher Secondary School, Red Hills, St.Mary's Girls Primary School, Kodugaiyur, Chennai, CTTE College of Women, Sembiam, Chennai and PAM Engineering College, Ponneri.

(ii) After becoming Correspondent by Elizabeth Thomas, due to the intervention of the Court, the defendant Trust was run by the present Managing Trustee L.Palamalai under the Chairmanship of J.Kanagaraj. After taking over of the Trust, the present Managing Trustee L.Palamalai has been taking arbitrary decisions in the Administration of Trust.

(iii) The plaintiff was appointed by the defendant Trust as a Teaching Assistant in Marian Higher Secondary School, Kottayam, Kerala, in the year 1993. At the time of appointment, the plaintiff was paid a consolidated pay of Rs.1,000/- per month and the defendant Trust did not give any written appointment order, but however, by order dated



18.07.1994 passed by the Correspondent, the plaintiff was appointed as a Teaching Assistant with a consolidated amount. The plaintiff had been discharging her duties faithfully and effectively. While so, the warden of the hostel at Marian Higher Secondary School, Kottayam, Kerala, had left and the plaintiff was taking care of the post of warden incharge and also as a Teaching Assistant.

(iv) On 01.07.1997, the plaintiff was appointed as Administrative Officer of Marian Higher Secondary School, Kottayam, Kerala, subsequently, by order dated 29.06.1998, the plaintiff was transferred to the defendant Trust Office at Chennai as a Administrative Officer w.e.f. 01.06.1998. The plaintiff was drawn the salary of Rs.8,058/- as on 06.02.2002.

(v) By order dated 14.02.2003 the present Managing Trustee L.Palamalai had given an increment and basic pay was fixed as Rs.5,600/-. However, on 05.03.2003, the defendant passed a vague order that, the plaintiff was being posted as Clerk at St.Mary's Matriculation Higher Secondary School, Perambur, Chennai. Since the plaintiff salary was not altered at that time, the plaintiff continued the work in the same post. Subsequently, by order dated 25.06.2003, the defendant again posted the plaintiff as Counter Clerk at St.Mary's Matriculation Higher Secondary School, Redhills, Chennai. The plaintiff in her letter dated 09.07.2003 addressed to the Chairman objected to the harassment made by the management, she has also requested the management to provide a teaching post.

(vi) Again, by order dated 20.10.2003, the defendant passed an order stating that, she has been drawing a pay of Rs.5,750/- w.e.f. 01.07.2003 in the scale of pay of Rs.5,000 - 150 - 8,000 and that, the plaintiff being working in the clerical scale from 01.08.1998 onwards and thus, the salary was re-fixed at Rs.3,625/- w.e.f. 01.10.2003 by adopting a pay scale of Rs.3,200 - 85 - 4,900 and had also informed that the excess salary paid from 01.08.1998 would be recovered from the plaintiff salary.

(vii) Subsequently, the plaintiff has sent a reply dated 01.11.2003 explaining the entire fact. Again, the defendant Trust in its letter dated 17.12.2003 states that, the plaintiff, is not working as a teaching staff and had vaguely rebutted the plaintiff's claim. The plaintiff again made an appeal to the Board of Trustees by way of Registered Post dated 14.01.2004 requesting to review the decision taken by the Managing Trustee L.Palamalai. The management had earlier



requested the plaintiff to stay in the campus to take care of the buildings from nearby encroachers. In the meantime, the present Managing Trustee had passed an order to recover a sum of Rs.4,000/- from her salary.

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(viii) The defendant in his impugned order dated 16.03.2004 had confirmed the earlier order passed by him and had found the plaintiff's appointment as a Clerk was totally justified and so was the reduction of the plaintiff scale of pay, as correct and hence, the plaintiff, is constrained to file the present suit for declaration to declare the impugned order passed by the defendant dated 16.03.2004, as illegal and for permanent injunction, restraining the defendant, his men and servant, in implementing the impugned order dated 16.03.2004.

6.The case of the defendant, is as follows:

(i)The plaintiff does not disclose a cause of action, therefore, the suit is barred in law and liable to be rejected under the provisions of Order VII Rule 11 of C.P.C. The Hon'ble Division Bench of this Court in O.S.Appeal No.49 of 1995 has framed a scheme for the administration of Chevalier T.Thomas Educational Trust and its properties including the several educational institutions run by it. Under the said scheme, the Hon'ble Division Bench has appointed a Board of Trustees with Hon'ble Mr.Justice K.Kanakaraj, retired Judge of the Madras High Court, as Chairman and Sri.L.Palamalai, I.A.S., (Retd) as the Executive Trustee and 5 other persons as trustees forming the Board of Trustees.

(ii)The Board of Trustees had elected L.Palamalai as the Managing Trustee and Correspondent. The present management had taken charge in January 2003 and they have been in administration of the Trust. Under the scheme decree, all the decisions are taken by the Board only. The Managing Trustee / Correspondent, is empowered to represent the Board of Trustees and carry out the decisions of the Board only.

(iii)The suit for declaration that the order dated 16.03.2004 made by the defendant, is illegal and void and for consequential injunction, restraining the defendant in implementing the said order, is barred under the provisions of Specific Relief Act. The plaintiff, is not entitled to the relief for declaration, as prayed for in the suit.

(iv)The defendant being the public charitable Trust and admittedly, the plaintiff, is an employee engaged by the Trust. It is purely a contract of personal service and



therefore, the suit filed by the plaintiff, is not maintainable. The plaintiff cannot complain of infringement of any right and seek for declaration based on such infringement. In law, the plaintiff will be entitled to claim for reasonable damages only if his services are terminated, without notice. It is settled law that in respect of personal contracts, the employer is entitled to revise the salary of its employees for valid reasons. The decision to revise the pay scales of various employees of the Trust was taken by the Board of Trustees. Absolutely, there is no merits in the claim made by the plaintiff. There is no cause of action for the suit.

7. Brief contentions of the additional written statement filed by the defendant, are as follows:

(i) The plaintiff was appointed as Teaching Assistant from 10.06.1993 to 07.10.1994 in Marian Higher Secondary School at Kottayam on a consolidated pay. From 15.02.1995, she was posted to be incharge of Hostel on consolidated salary of Rs.2,000/- with work allocation. Again, on 04.06.1997, the plaintiff was permitted to join the Marian Higher Secondary School, as Office Assistant and was entrusted with charge of night study of the hostilities.

(ii) On 01.07.1997, she was designated as Administrative Officer. In the year 1998, she was transferred to Madras to function as Administrative Officer of the New Engineering College to be opened. After the closure of the Engineering College by July 2002 and on return from medical leave, she was posted as a Clerk in St. Mary's Matriculation Higher Secondary School, Redhills, Chennai.

(iii) Though the plaintiff passed B.Ed. examination in May 1997, she did not handle any classes from 9th standard onwards for the prescribed manner of periods, but did only clerical work from 15.02.1995 as evidenced from records. However, she was given teachers' B.T. Scale of Rs.1300-30-1440-40-1800-50-2200 in Kerala from 01.06.1998 and consequent to her transfer to Madras, the corresponding B.T. Scale of teachers was followed from 01.08.1998 onwards, since she happened to be the sister's daughter of the then Managing Trustee.

(iv) Again, she was posted on 25.06.2003 in the Marian Higher Secondary School as Counter Assistant, which is equivalent to the post of clerk. The sanction of increment fixing the pay at Rs.5,600/- on 01.01.2003 was on completion of one year from sanction of last increment. As the request made in the letter dated 09.07.2003 for a teaching post could not be



considered, she was not disturbed from her clerical post. The letter dated 20.10.2003 was a notice inviting objections from the plaintiff giving reasons for the pay to be fixed at Rs.3,625/- w.e.f. 01.10.2003 and it was not an order.

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(v) The Board in the meeting held on 29.11.2003 after taking note of the explanations offered by the 12 non-teaching staff members including the plaintiff to the notices issued by the Managing Trustee and Correspondent and resolutions were made in this regard. Thus, the order dated 15.12.2003 passed by the defendant on merits of the case, on considering the reply of the plaintiff dated 01.11.2003 gives the clear reasons for fixing her pay at Rs.3,625/- from 01.10.2003.

(vi) The appeal petition of the plaintiff was placed in the meeting of the Board of Trustees held on 06.03.2004 along with the recommendation of the Administrative and Disciplinary Committee. The Board on considering the appeal petition of the plaintiff along with the recommendation of the sub-committee has resolved to reject the petition. Thus, fixation of pay in clerical cadre was found to be in order. No arbitrary decision has been taken by the defendant as alleged and that, the funds are not mismanaged. There was no demotion of the plaintiff as alleged. There is no illegality in the order passed by the defendant. Therefore, the suit, is liable to be dismissed with costs.

8. Based on the above said pleadings, the learned II Assistant Judge, City Civil Court, Chennai, framed necessary issues and tried the suit. On the side of the plaintiff, plaintiff herself examined as P.W.1 and marked 13 documents, as Ex.A.1 and Ex.A.13. On the side of the defendant, one witness, namely, P.S.Venkatesan was examined as D.W.1. and marked 7 documents, as Ex.B.1 to Ex.B.7.

9. Having considered the materials placed before him, the learned II Assistant Judge, City Civil Court, Chennai, vide judgment and decree dated 01.12.2006, concluded the suit that, the prayer sought for by the plaintiff, is not maintainable and thereby, the suit was dismissed. Aggrieved over the same, the plaintiff preferred an appeal in A.S.No.208 of 2007. By judgment and decree dated 09.10.2007, the learned Additional District Judge, Fast Track Court No.V, Chennai, confirmed the findings arrived at by the trial Court and dismissed the appeal.

10. Feeling aggrieved over the said findings of



the Court below, the plaintiff, is before this Court with the present Second Appeal. The Second Appeal was admitted on file after formulating the following substantial questions of law;

"(i). Whether the Courts below correct in dismissing the suit as barred under Section 14 of Specific Relief Act ?

(ii). Whether the Courts below correct in dismissing the suit when there is no alternative remedy for the relief claimed in the suit which cannot be agitated before the Tribunal of Forum constituted under the Industrial Disputes Act ?

(iii). Whether the judgment and decree of the Courts below is correct in lieu of the law laid down by this Court reported in 1995 (1) CTC 318 ? "

Substantial questions i to iii :

11.It is the submission made by the learned counsel for the respondent that, in view of bar under Section 14 of the Specific Relief Act, the suit filed by the plaintiff, is not maintainable before the Civil Court.

12.On the other hand, by relying on the judgment of this Court in VIRUDHUNAGAR SARVODAYA SANGH vs. S.SATHIYATHINAKARAN reported in 1995 (I) CTC 318, the learned counsel for the appellant would submit that, the Civil Court is having the ambit power to decide the issue involved in the appellant's case. The relevant portion of the above referred judgment, is extracted below;

"17.In Sitaram Kashiram Konda v. Pigment Cakes and Chemicals (Mfg. Co.,) 1979 (4) SCC 12, the suit was one for a declaration that the dismissal is invalid and also for reinstatement, and alternatively for compensation and costs. Considering that case, their Lordships, after following the Principles enunciated in the Premier Automobiles Case, held that the suit is maintainable before the Civil Court. While explaining the position, their Lordships held thus:-

"The Court is obliged to Mr.K.Jayaram for assisting it as amicus curiae in this case. After having appreciated the entire facts and the circumstances of the case, we are of the opinion that it is not quite correct to say that the suit filed by the appellant is not maintainable at all in



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a Civil Court. The Correct position of law is that the main reliefs asked for by him which when granted will amount to specific performance of the contract of service and therefore they cannot be granted....."

The decision also makes it clear that the enforcement of a personal contract of service, a civil court may not be in a position to grant. In the instant case, the plaintiff has not asked for enforcement of any contract of service. Section 14 of the Specific Relief Act also does not bar any such relief being granted by a Civil Court."

13. Applying the ratio laid down in the above referred judgment to the case on hand, here, it is a case, the plaintiff, seeks the relief of declaration, to declare the notice dated 16.03.2004 is null and void. On the other hand, she has not disputed the fact that, she has been appointed by the defendant Board on contract basis.

14. In this occasion, since the plaintiff is not disputed the fact that, she being appointed on a contract basis, it would necessary to see the judgment of PEARLITE LINERS (P) LTD. vs MANORAMA SIRSI reported in (2004) 3 SCC 172, wherein our Hon'ble Apex Court has held as follows;

"It is a well-settled principle of law that a contract of personal service cannot be specifically enforced and a court will not give a declaration that the contract subsists and the employee continues to be in service against the will and consent of the employer. An employer cannot be forced to take an employee with whom relations have reached a point of complete loss of faith between the two. This general rule of law is subject to three well-recognised exceptions: (i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the industrial law; and (iii) where a statutory body acts in breach of violation of the mandatory provisions of the statute."

15. Now, applying the ratio laid down referred above, to the case on hand, the present case does not fall in any of the three exceptions. It is neither a case of public



employment so as to attract Article Section 311 of Constitution of India nor is a case under the Industrial Disputes Act. The defendant is not a statutory body. There is no statute governing her service conditions. Hence, relationship between the parties is based on a contract between two private parties.

16. Admittedly, there is no written contract. If there had been a written contract, it would have contained terms and conditions governing the relationship between the parties. Since, there is no written contract between the parties, the dispute cannot be resolved with reference to any terms and conditions governing the relationship between the parties. Accordingly, the declaration that the plaintiff enforces the right of salary, the same would amount to enforcing the contract of personal service, which is barred under law. Accordingly, the suit filed by the plaintiff before the trial Court, is not maintainable. The Courts below, are also considered the plaintiff's case in same path and dismissed the suit and thereby, it cannot be held that, the findings arrived at by the Courts below in respect to the maintainability, is erroneous in law.

17. The another submission made by the learned counsel for the appellant is that, without any opportunity to the plaintiff, the Managing Trustee reduced the salary of the plaintiff and the same is violation of natural justice. In this regard, it is the submission made by the learned counsel for the respondent that, the defendant Trust, after appointing the sub-committee for deciding the issue raised in plaintiff's case and upon the report given by the sub-committee, the defendant passed the impugned order dated 16.03.2004.

18. Now, on considering the said submissions with the relevant records, it is the evidence given by the defendant that, initially the plaintiff was appointed as a teaching staff and thereafter, particularly, after transfer from Kottayam to Chennai, she was assigned with clerical work.

19. On the other hand, it is the evidence given by D.W.1, being the reason that the plaintiff was doing the clerical work, she is not entitled to receive the salary equivalent to the salary received by the teaching staff. In this aspect, while at the time of giving evidence as P.W.1, the plaintiff gave evidence as after transfer from Kerala, vide order [Ex.A.3] dated 29.06.1998, she was appointed as a Administrative Officer in Trust Office at Chennai.

20. Thereafter, vide order [Ex.A.6] dated



05.03.2003, she was appointed as Clerk in St.Mary's Matriculation School. She gave further evidence that, vide order [Ex.P.7] dated 25.06.2003, she was appointed as a Counter Clerk. Therefore, the said evidence given by P.W.1 would reveal the fact that, she is doing clerical work alone. Therefore, claiming salary equivalent to the teaching staff, cannot be entertained. Though she has been completed B.Ed. degree, in the absence of any work in respect to the teaching, claiming salary equivalent to teaching staff, cannot be entertained.

21.Though it was argued on the side of the appellant that, before passing the order dated 16.03.2004, the plaintiff was not given any opportunity to submit her case. The exhibits relied on by the plaintiff revealed the fact that, the Board issued the show cause notice to the plaintiff in respect of anomaly found in the pay fixation. Further, by letter dated 01.11.2003, the plaintiff submitted her representation for the letter dated 20.10.2013 (Ex.A.9). Therefore, the exchange of letters proved the fact that before passing order, the plaintiff was given an opportunity to represent her case.

22.Furthermore, while at the time of giving evidence as P.W.1, the plaintiff has stated before the trial Court that, the appeal prayed for by herself and others was dismissed by the Trust based upon the report given by the sub-committee, which was appointed by the Board of Trustees. The said circumstances shows that, only after giving sufficient opportunity, the order dated 16.03.2004 has been passed by the defendant. Accordingly, I am of the view that the order dated 16.03.2004, is not an erroneous one.

23.In general rule is, that the High Court will not interfere with the concurrent findings of the Courts below. In a Second Appeal, the jurisdiction of the High Court being confined to substantial question of law, a finding of fact is not open to challenge in second appeal, even if the appreciation of evidence is palpably erroneous and the finding of fact incorrect as held in Ramchandra vs. Ramalingam [AIR 1963 SC 302]. An entirely new point, raised for the first time, before the High Court, is not a question involved in the case, unless it goes to the root of the matter.

24.Here, it is a case, the findings arrived at by the Court below, is full of reasons. As already observed, the suit filed by the plaintiff itself, is not maintainable. Accordingly, I am of the considered view that, the substantial questions of law framed are answered in favour of the respondent



and therefore, the findings of the trial Court, cannot be justified.

25. In fine, the Second Appeal is dismissed. The judgment and decree of the lower Appellate Court dated 09.10.2007 passed in A.S.No.208 of 2007 on the file of the learned Additional District Judge, Fast Track Court No.V, Chennai, is hereby confirmed. However, there is no order as to costs.

Sd/-
Assistant Registrar(CS-VII)

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Sub Assistant Registrar

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To

1.The Additional District Judge,
Fast Track Court No.V, Chennai.

2.The II Assistant Judge,
City Civil Court, Chennai.

Copy To

The Section Officer,
VR Section, High Court,
Madras.

+lcc to Mr.R.Bharath Kumar, Advocate SR.No.62791

S.A. No.182 of 2010

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