

RSA-1587-2020 (O&M)

Date of decision: 10.11.2021

State of Punjab and others

.....Appellants

versus

Swaran Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**Present:** Mr. Nikhil Chopra, DAG, Punjab
for the appellants-State.Mr. Namit Kumar, Advocate
for the respondent.**FATEH DEEP SINGH, J.**

Due to outbreak of pandemic COVID-19, the instant case is being taken up for hearing through video conferencing.

Arguments heard.

Earlier, Swarn Singh-plaintiff, now respondent, filed a suit for declaration seeking entitlement for proper fixation of pay in the Grade of Rs.110-250 on account of having passed M.A. II year as well as Basic Training (BT) in light of letter of the Government dated 19.02.1979 and 20.09.1979 and, thus, seeking revision of pay, pension with consequential benefits along with interest @ 18% when the amount became due till the realization of the amount. Further, the plaintiff sought decree of mandatory injunction seeking directions

against the State of Punjab for release of benefits of grade of Rs.200-500 to the plaintiff from the date along with the revised pay and pension as well as the consequential benefits along with interest @ 18% from the due date till its realization. The claim of the plaintiff based on Government Letter bearing Memo No.9/9/79-F2(2)/143 dated 19.02.1979 whereby Teachers in the Punjab, who acquired higher qualification, were entitled for higher grade. It was further contended that there was no adverse entry in the service record of the plaintiff and has never been ever charge sheeted or any enquiry was held against him. The plaintiff claims that on the basis of Basic Training (BT), he is entitled to grade of Rs.110-250 which he had acquired on 06.08.1964 seeking support from DPI order N. (4223)-ES(6)-2/110-75 dated 29.12.1975. Support has sought to be made further on Punjab Government Education Department letters bearing Memo No.8937-5E-DII-79/2059 and, thus, sought higher grade pay on the basis of having acquired this enhanced educational qualification.

The defendants' unison stand is of total denial pleading that the suit was not maintainable though accepted that all Teachers in the Educational Department of the State who have improved their qualification before the issue of the letter Memo No.9/9/79-F2(2)/143 dated 19.02.1979 be allowed the benefit of higher scale on the basis of their qualification. It is claimed that since the claim of the plaintiff did not fell within the laid parameters, he was not found entitled to.

Upon completion of pleadings, the Trial Court framed the following issues:-

- a. *Whether the plaintiff is entitled to relief of declaration as prayed for? OPP*
- b. *Whether the plaintiff is entitled to relief of mandatory injunction as prayed for? OPP*
- c. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- d. *Whether the notice under Section 80 CPC has been received but its legality and validity is hereby under challenge? OPD*
- e. *Whether the plaintiff has no cause of action to file the present suit as prayed for? OPD*
- f. *Relief.*

The plaintiff examined as PW-1 on the basis of his affidavit PW-1/A and proved documents as P-1 to P-9 and P-X (some documents/judgments do not find mention therein). On the other hand, defendant examined as DW-1, Kashmir Kaur, Principal, Government Senior Secondary School, who through her affidavit DW-1/A proved documents as Ex-D-1 to Ex-D-6 (some documents/judgments do not find mention therein).

The Court of the learned Civil Judge (Junior Division) vide judgment/decreed dated 31.08.2018 dismissed the suit of the plaintiff. Upon appeal by the unsuccessful plaintiff, the Court of the learned Additional District Judge, Jalandhar, vide impugned judgment/decreed dated 18.12.2019, set aside the orders of the Trial Court and, thereby, allowing the appeal decreed the suit of the plaintiff holding him to be entitled to grant of grade of Rs.220 12-340/15-400/20-500

on the basis of letter bearing Memo No.9/9/79-F2(2)/143 dated 19.02.1979 of the Finance Department and, thereby, directing the State to pay enhanced salary revised pension along with arrears with interest of 6% per annum from the due date till realization of the amount.

It is against these findings the State has come up in this appeal.

Heard counsel of both the sides and perused the records.

Upon hearing the counsel for the two sides at length and perusal of the records, the moot point around which the case of the parties revolves is the entitlement of the plaintiff to the claim of enhanced grade pay which he has sought. In their submissions, the State does not refute the fact that on attaining of enhanced educational qualification, the plaintiff was entitled to enhanced grade pay. It is well elicited on the records comprising of service books of the plaintiff proved as Ex-D-3 to Ex-D-6 that vide entry Exhibit PY/5, the pay grade of the plaintiff has already been enhanced with effect from 01.11.2016 and furthermore, on the basis of Exhibit PY/3 and PY/5 higher pay scale of Rs.200-500 being granted to the plaintiff in the year 1997 whereas, the plaintiff had retired from service in the year 1996. The learned Trial Court has correctly and rightly appreciated this evidence from the proven records on the file and which submissions of the learned State counsel could not be successfully controverted on behalf of the respondents' counsel Mr. Namit Kumar.

Besides the fact, the Trial Court has taken cognizance of the fact that earlier two civil suits by the plaintiffs which were decided by then Civil Judge (Junior Division) vide judgment/decreed dated 22.03.2016 and 20.01.2017 were both dismissed during which period till the institution of the present case in the year 2016, the plaintiffs slept over the matter and has suddenly woken up from his slumber after his retirement, are matters which cannot escape judicial scrutiny. The learned First Appellate Court has completely misconstrued this undisputed and un rebutted evidence on the record and has arrived at a legally infirm and perverse findings holding that the plaintiff was not awarded enhanced grade pay on account of his enhanced MA qualification. The first Appellate Court has misinterpreted the entries in the service book and, thus, fallen into an error by reversing the findings of the Trial Court. Since, the plaintiff had filed a suit for declaration and which ought to have been filed within 03 years of the cause of action and as has already been discussed and detailed above, the present suit has come belatedly when earlier first suit of the plaintiff stood dismissed in March, 2016 in respect of the same very claim to enhance pay grade which was claimed on the basis of enhanced educational qualification of MA. Moreover, in the service book Ex-D-6 Vol. IV, entry is duly made on 01.08.1965 allowing three increments on attainment of MA II year qualification and, therefore, no sustainable and subsisting cause of action had ever accrued to the plaintiff necessitating filing of the suit in question. Furthermore, since,

the plaintiff has knocked at the doors of the Court on the basis of claim which was not only stale, not subsisting at that point of time and rather in his suit, has tried to mislead the Court by suppressing the facts of dismissal of his earlier two civil suits on the same claim, disentitles the plaintiff for seeking this equity based relief. The findings of the learned First Appellate Court is wholly perverse in its approach and illegal in its findings, needs to be set aside by way of allowing the instant appeal, however, with no order as to costs.

The present appeal stands allowed.

10.11.2021
Neha

(FATEH DEEP SINGH)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No