

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

RSA-2067-2005 (O&M)  
Date of Decision: 21.12.2023

State of Punjab and others

...Appellants

versus

Tilak Raj

...Respondent

**CORAM : HON'BLE MR. JUSTICE AMAN CHAUDHARY**

Present: Mr. Deepanjay Sharma, DAG, Punjab.

None for the respondent.

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**AMAN CHAUDHARY, J**

1. The present regular second appeal has been filed challenging the concurrent findings of facts returned by Courts below in favour of the plaintiff-respondent in a suit filed for declaration with the consequential relief of mandatory injunction.

2. The declaration sought by the plaintiff in the suit filed was to the effect that order dated 27.08.1996 was non-speaking, since without assigning any reason, the JST grade of Rs.110-250 was declined to the plaintiff w.e.f. 19.10.1959, being the date of his appointment on temporary basis. Additional prayer was made to grant mandatory injunction directing the Department to allow the said grade to him.

3. A resistance to the same was offered by the defendant-Department by filing a written statement that there were breaks in his service, hence it was not continuous and therefore, he was entitled to the scale and annual grade increments

only from 01.05.1961, on which date his services were regularised, apart from assailing the validity and legality of the Notice issued under Section 80 CPC.

4. The trial Court after framing the issues and on the basis of evidence led by the parties, observed that the plaintiff had acquired the qualification of F.A. in the year 1957, prior to his having been appointed as a teacher on adhoc basis against a regular and permanent post and upon having been regularised w.e.f. 01.05.1961, held him entitled to the scale in terms of para 4 of the Circular, Ex-P9.

5. Dissatisfied by the above findings, defendant-Department preferred an appeal, which was dismissed by the lower appellate Court, after having considered the case, by coming to be conclusion that since, the plaintiff had acquired the qualification before 19.02.1959, thus, in terms of the judgment of Hon'ble the Supreme Court dated 23.02.1988, the Department issued instructions dated 11.10.1991 to allow the benefit to the non-petitioners as well, he was entitled to regularisation from that date itself.

6. Learned counsel for the State would submit that the appointment of the plaintiff was on adhoc basis and prior thereto it was only on account of the breaks in service of plaintiff, his initial appointment having been based on three months, he was not entitled to the benefits as prayed for, thus, the Courts below have wrongly ruled in his favour.

7. Heard and perused.

8. Indubitably, the plaintiff was initially appointed on adhoc basis against a regular and permanent post on 19.10.1959 and had acquired the qualification of F.A., prior to his appointment, whereafter his services were even regularised w.e.f. 01.05.1961 as is the finding of the trial Court. He was rightly held to be entitled to the scale of Rs.110-250, from his initial date of appointment, moreso, in view of the circular issued pursuant to the judgment dated 23.02.1988

of Hon'ble the Supreme Court allowing the benefit to those, who had acquired the qualifications in question and were appointed on adhoc basis before 19.02.1979, from the date of their adhoc appointment. Thus, the plaintiff fell within the ambit of the instructions. The Courts below, after due consideration and sifting through the evidence, arrived at a judicious conclusion and recorded concurrent findings of fact, which cannot be faulted with.

9. The learned State counsel has not been able to point out any jurisdictional error or infirmity apparent on the record of the case so as to convince this Court to take a different view than the one taken by the Courts below, which have recorded concurrent findings. There is no apparent misinterpretation or disregard of evidence.

10. Regarding the scope of interference at the hands of this Court while exercising jurisdiction at the stage of second appeal, Hon'ble the Supreme Court in **Randhir Kaur vs. Prithvi Pal Singh**, (2019) 17 SCC 71, observed and held that, "A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact... In view of the above, we find that the High Court could not interfere with the findings of fact recorded after appreciation of evidence merely because the High Court thought that another view would be a better view..."

11. In **Satyender vs. Saroj**, 2022 SCC OnLine SC 1026, Hon'ble the Supreme Court has held that, "Be that as it may, though the requirement of formulation of a substantial question of law was not necessary, yet Section 41 of

the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a “question of law”. In other words, second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court”.

12. In wake of the above, this Court finds there to be neither any question of law involved nor any perversity or illegality in the impugned judgments and decrees. As such, the present appeal being bereft of merit is hereby dismissed.

(AMAN CHAUDHARY)  
JUDGE

21.12.2023  
Hemant

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