

CM-6034-C-2022 in/&
RSA-3290-2011

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-6034-C-2022 in/&
RSA-3290-2011
Date of Decision :11.04.2023

Principal, Hindu Vidya Peeth School,
Kath Mandi, Sonapat and others

..Appellants

Versus

Sudha Wahi

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Anupam Sharma, Advocate for the applicant-respondent.

None for the non-applicant/appellant

* * *

Harsimran Singh Sethi, J. (Oral)

CM-6034-C-2022

The present application has been filed for early hearing of the main regular second appeal.

Notice of the application was issued to the counsel opposite.

Keeping in view the averments made in the application, the application is allowed. Regular second appeal is taken up for hearing today itself.

RSA-3290-2011

Present regular second appeal has been filed against the judgment and decree of the lower Appellate Court dated 20.05.2011 by which, the judgment and decree of the trial Court dated 17.02.2010 has been

set aside and the suit filed by the respondent-plaintiff has been allowed by holding that the termination of her service was bad and a direction was given to reinstate the respondent-plaintiff in service and she was made entitled for the grant of pay, allowance and other benefits by treating her to be in service along with interest @ 9% per annum.

On 05.03.2012, while issuing notice of motion, a Coordinate Bench of this Court passed a detailed order qua the maintainability of the suit keeping in view the relief sought of enforcing the contract of service and permissibility of the same in view of Section 14 of the Specific Relief Act, 1963 and the settled principle of law noticed therein and the same is reproduced hereinafter:-

“Plaintiff-respondent had sought a decree for mandatory injunction directing the defendant-appellants to reinstate her in service with all service benefits for the period she remained out of job on account of letter dated August 7, 2006 issued by the defendant-appellants claiming that she had joined as JBT Teacher in Hindu Vidyapeeth School, of defendant-appellants on July 1, 1993. The said school is affiliated to Central Board of Secondary Education (CBSE), Delhi vide affiliation NO.530041 and the affiliation bye-laws of CBSE. Plaintiff-respondent claimed that her appointment on July 1, 1993 was for a probation period of one year which ended on June 30, 1994 and she continued in service with the defendant-appellant School i.e. Hindu Vidyapeeth School without any break. On August 7, 2006 her services were terminated by the defendant-appellants illegally and arbitrarily. She claims that she would stand confirmed upon expiry of probation period which could run maximum upto two years till May 30, 1995. Though the defendants had not passed any order regarding her confirmation but she completed the

probation period during which her conduct was found satisfactory and that she claimed deemed confirmation on expiry of probation period. She challenged her termination being violation of statutory provisions. The defendants admitted that the School is run by the Managing Committee and is affiliated with CBSE. The affiliation of the School with CBSE is for the purpose that the Board will conduct examination for the grade 10 and 12 and declare their results and that the school will adopt the syllabi prescribed by CBSE, otherwise, the CBSE had nothing to do with appointment or termination of the service of the school employees. The CBSE bye-laws were simply guidelines and directory. It was claimed that the removal of plaintiff-respondent from service was not in breach of statutory provisions as per the terms of appointment letter and service contract and that she could be terminated by serving one month's notice or payment in lieu thereof but has been paid three months salary in lieu of three months notice as her services were terminated. The trial Court framed the following issues:-

- i) Whether the termination of services of the plaintiff by letter dated 7.8.2006 is illegal, null and void and not binding on the rights of the plaintiffs?OPP
- (ii) If issue NO.1 is proved, whether the plaintiff is entitled for a decree of declaration as well as mandatory injunction as prayed?OPD
- (iii) Whether the suit of the plaintiff is not maintainable in the present form? OPD
- (iv) Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD
- (v) Relief

The trial Court decided issue No.1 against the plaintiff respondent holding that the services of the plaintiff could be terminated by serving three months notice. It was held that the defendant-appellant were competent to frame their own rules and regulations governing the services and conduct of their employees. Issue Nos.3 and 4 were decided in favour of the

defendants and against the plaintiff.

The plaintiff filed appeal. The lower Appellate Court decreed the suit of the plaintiff-respondent and declared that the letter dated August 7, 2006 issued by defendant-appellant NO.1 was the statutorily invalid and was illegal, null void and violative of principle of nature justice besides being violative of Rules framed by CBSE and affiliation bye-laws and in violation of Education Rules of the State and the said letter was not binding on the rights of the plaintiff-respondent, in any manner. It was held that the plaintiff was declared entitled to be treated in service of the school with all benefits of service towards pay and other allowances as if she had not been removed from service. It was further held that if the defendants decide not to take the plaintiff in job she would be entitled to her pay, allowance and all other benefits including provident fund, gratuity etc. and if her services were never terminated to continue her in service throughout till her normal age of retirement. She also entitled for interest at the rate of 9% per annum on arrears of pay. The defendants have challenged the judgment of reversal.

I have heard learned counsel for the appellants at length as well as learned counsel for the plaintiff-respondent. The copy of the appointment letter, annexure R-1 dated July 1, 1993 and order of termination Ex.D1 dated August 7, 2006 have been carefully perused by me in context to various regulations. The adjudication of this appeal involves decision, inter alia, of following substantial questions of law:-

i) Whether the judgment of reversal of lower Appellate Court could be said to suffer from vice of perversity as the suit of the plaintiff-respondent has been decreed for enforcing a contract of personal service despite the bar contained in Section 14(1) (b) of the Specific Relief Act, 1963 in context to the following judgments:

i) Dr. S. Dutt Vs. University of Delhi, AIR 1958 SC 1050;

- ii) Siri Municipality Vs. Cecilia Kom Francis Telis, (1973) 1 SCC 406;
- iii) Executive Committee of Varish Degree College Vs. Lakshmi Narain, (1976) 2 SCC 58;
- iv) Pearlite Liners vs. Manorama Sirsi (2004) 3 SCC 172;
- v) Apollo Tyres Limited vs. C.P. Sebastian (2009) 14 SC 360.
- ii) Whether the lower Appellate Court has not acted illegally in ordering that the plaintiff-respondent would be deemed to have been confirmed in view of the contents of the appointment letter dated July 1, 1973?
- iii) Whether the CBSE bye-laws would governing the service conditions of the plaintiff-respondent? If it is presumed that the termination of the plaintiff-respondent was illegal, whether it was a case to grant compensation to her or to grant all the consequential service benefits presuming her to be in service w.e.f the date of termination?

Admitted.

The execution of the decree will be stayed subject to defendant-appellant depositing a sum of Rs.1 lac with the Executing Court out of which the plaintiff-respondent will be entitled to get sum of Rs.50,000 released subject to the final decision of the case.

To be heard within two years.”

No one is appearing on behalf of the appellant to pursue the present appeal.

Learned counsel for the respondent-plaintiff submits that the only reason given in the appeal is that suit is not maintainable keeping in view the relief granted by the lower Appellate Court for reinstatement and continuity in service in view of the Section 14(1)(b) of the Specific Relief Act, 1963.

Learned counsel for the respondent-plaintiff further submits that

keeping in view the settled principle of law on the issue of maintainability of the relief of enforcement of a contract of personal service as mentioned in the order dated 05.03.2012 passed by a Coordinate Bench of this Court, respondent-plaintiff be given a chance to avail the remedy of seeking damages for her wrongful termination of service as wrongful termination of service of the respondent-plaintiff has already been proved before the Courts below.

Keeping in view the above, judgment and decree of the lower Appellate Court dated 20.05.2011 is set aside and the suit filed by the respondent-plaintiff is held to be non-maintainable qua her claim of reinstatement and continuation in service but with liberty to the respondent-plaintiff to seek damages qua wrongful termination of her services by availing appropriate remedy, if so advised.

Learned counsel for the respondent-plaintiff submits that respondent-plaintiff was terminated from service in the year 2006 and since then she is before the competent Court of law hence, a direction be issued to the Courts below that as and when any suit seeking damages for wrongful termination of services of respondent-plaintiff is filed by her, the same will be treated within limitation.

No such direction is needed to be passed by this Court keeping in view the facts and circumstances of the present case. Limitation Act itself provides a remedy where a particular remedy was being availed under the misconception. In the present case, once the suit challenging the termination of service by order dated 07.08.2006 filed by the respondent-plaintiff within limitation, the respondent-plaintiff will be well within her right to seek

condonation of delay in filing the suit for damages by bringing the same to the notice of Court while filing the suit for damages.

Present regular second appeal is allowed in above terms.

April 11, 2023
aarti

(HARSIMRAN SINGH SETHI)
JUDGE

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