

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(212)

CM-1269-C-2015 in/and
RSA No. 456 of 2015 (O&M)
Date of Decision : 20.01.2023

Kishori Lal

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. S.S. Randhawa, Advocate for the appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM-1269-C-2015

Present application has been filed seeking condonation of delay of 04 days in filing the appeal.

Keeping in view the averments made in the application, which is duly supported by an affidavit, the same is allowed and delay of 04 days in filing the appeal is condoned.

CM-1270-C-2015

Application is allowed, as prayed for.

RSA-456-2015

The present regular second appeal has been filed by the appellant-plaintiff challenging the order dated 05.11.2011 passed by the trial court by which the suit filed by the appellant-plaintiff was dismissed as well as the order dated 20.08.2014 by which, the appeal preferred against the dismissal of the suit by the trial court, was also dismissed by the lower

appellate court.

Before coming to the arguments raised, certain facts need to be enumerated so that the controversy in hand could be appreciated in correct prospective. Appellant-plaintiff was appointed as S.S. Master in Government High School, Bairawas, Tehsil and District Mahendragarh on 17.08.1982 through employment exchange though, the said appointment was not through the regular mode of selection for appointment to the post of S.S. Master. While working on the post of S.S. Master, the posts of Language Teacher under the department of Tehcnical Education were advertised and the appellant-plaintiff competed for the same and was ultimately selected on the said post on 26.07.1983 on which post, he joined on 06.08.1983. After joining the post of Language Teacher in the Technical Education Department, the pay of the appellant-plaintiff was fixed in the pay scale of ₹525-1050/-, which is the pay scale admissible for the post of Language Teacher. The appellant-plaintiff kept on working on the post of Language Teacher but after a period of 23 years of appointment, the present suit was filed by the appellant-plaintiff claiming that at the time when he joined as a Language Teacher on 06.08.1983 while working as S.S. Master in the Department of Education, which is a different department and he was getting basic pay of ₹600/-, which pay should have been protected by the Technical Education Department while fixing his salary as a Language Teacher upon the selection in the year 1983.

Notice of motion was issued in the suit. Respondents appeared and took an objection that the claim being raised by the appellant-plaintiff was not sustainable as the appointment of the appellant-plaintiff to the post

of S.S. Master was only a temporary appointment and that too not through proper process of selection hence, benefit of said appointment to the post of S.S. Master cannot be given while making regular selection for the post of Language Teacher and as it was for the very first time that the appellant-plaintiff was recruited on regular basis as Language Teacher in the pay scale of ₹525-1050/- in the year 1983, his pay was rightly fixed at the minimum pay scale of ₹525/- as given to the other Language Teachers, who were appointed along with the appellant-plaintiff.

After going through the facts of the case and the evidence lead, the trial court dismissed the suit of the appellant-plaintiff on the ground that not only the claim was time barred having been filed after 23 years of accruing of the cause of action, even otherwise on merits, hence no benefit of the previous service of S.S. Master in the Education Department could have been given in the Technical Education Department as the appellant-plaintiff was not a regular employee in the Education Department while working as S.S. Master.

The appellant-plaintiff filed an appeal, which was also dismissed by the lower appellate court vide order dated 28.04.2014 holding that the judgment of the trial court dated 05.11.2011 is as per the facts and law and hence needs no interference.

In the present regular second appeal, both the orders i.e. the order dated 05.11.2011 passed by the trial court dismissing the suit as well as the order dated 20.08.2014 passed by the lower appellate court dismissing the appeal filed by the appellant-plaintiff have been impugned.

Learned counsel for the appellant-plaintiff argues that once the

appellant-plaintiff was being given pay on the basis of a regular pay scale, even if, he was continuing on a temporary basis as S.S. Master, the said pay needs to have been protected by the Technical Education Department after his regular appointment as a Language Teacher in July, 1983. Learned counsel for the appellant-plaintiff further argues that once even while working as S.S. Master, an increment was extended to him, the benefit of same needed to be protected in the subsequent appointment. Though, the argument has been raised but no rule or regulation has been cited or produced before this Court for the grant of said benefit. No such rule has been brought on record by way of evidence to support the claim raised in the civil suit. Once, it has been conceded before this Court that the appointment as a S.S. Master in the Education Department was not on regular basis, no rule, which permits the benefit of temporary service while being recruited on regular basis subsequently, has been cited so as to extend the benefit of temporary service after regular appointment and that too through open competition. In the absence of any rule being cited to support the claim, it cannot be said that the judgment of the trial court as well as that of the lower appellate court is bad either on facts or on law.

Further, learned counsel for the appellant-plaintiff has not been able to discharge the onus of proving that the suit filed in the year 2005 was within the prescribed limit as concededly, the protection of salary is being claimed from the year 1983 onwards and no explanation had come for filing the suit after 23 years.

No further argument has been raised.

Keeping in view the above, as no perversity in the findings of

the courts below has been pointed out by learned counsel for the appellant-

plaintiff either on facts or on law, no interference is called for by this Court
in the present regular second appeal.

Dismissed.

January 20, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No