

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

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RSA No. 5107 of 2015 (O & M)

Date of decision : 7.2.2023

Seema Sharma

.....Appellant

Vs.

M/s Challangers Abacus Edu-Tech (India) Pvt. Ltd.

.....Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Amit Jaiswal, Advocate, for the appellant

Mr. Lalit Rishi, Advocate, for the respondent

TRIBHUVAN DAHIYA, J. (Oral)

This is plaintiff's second appeal against the concurrent findings of both the Courts below.

2. The facts of the case in brief are, the appellant/plaintiff (hereinafter referred to as 'the plaintiff') filed a suit for recovery of damages to the tune of Rs.19750/- and mandatory injunction by pleading that she was working as Program Instructor with the respondent/defendant (hereinafter referred to as 'the defendant') pursuant to an agreement dated 11.10.2008 (Ex.DC) entered into between the parties. On the basis of the said agreement, she agreed to become the Program Instructor and take classes in different centres of the defendant company anywhere in India. The defendant initially agreed to pay a salary of Rs.2500/-per month, which was to be increased to Rs.2750/-per month after one year, i.e., w.e.f. October 2009, and to Rs.3000/- w.e.f. October 2010. However, Vishal Public School Centre, where the plaintiff was working as Program Instructor, was closed in May 2010. Thereupon, the plaintiff contacted

the defendant to adjust her in some other centre of the defendant as the term of contract between the parties was upto October 2011. The same was, however, not done, nor was she paid salary for the last three months as well as for the remaining period of contract. It was further pleaded that neither the contract was terminated, nor any other centre was allotted to the plaintiff.

3. The suit was contested by the defendant pleading that it was not liable to pay any salary as there was no clause regarding salary in the agreement dated 11.10.2008. It was further pleaded that Vishal Public School Centre was not closed by the defendant. The Centre was being run by Area Business Associate Deepak Kumar Dubey with the help of Program Instructors, and only he was responsible for closing the same.

4. On pleadings of the parties, following issues were settled by the trial Court:

1. Whether the plaintiff is entitled to the recovery of damages from the defendants? OPP
2. Whether it is proved then what shall be quantum of damages? OPP
3. Whether the plaintiff is entitled to the decree for mandatory injunction? OPP
4. Whether the suit of the plaintiff is without any cause? OPP
5. Whether the suit has been properly allowed for purpose of court fee and jurisdiction? OPP
6. Whether there is no privity of contract in between plaintiff and defendant in respect of payment of salary? OPD
7. Relief.

5. Both the Courts concurrently held, though execution of the agreement, dated 11.10.2008 (Ex.DC), stood admitted between the parties, there was no stipulation in it that the defendant was liable to pay any salary/damages to the plaintiff. The suit was, accordingly, dismissed, and the decree was

affirmed by the lower appellate Court.

6. It could not be disputed by learned counsel for the plaintiff before this Court either that there was no stipulation in the agreement in question with respect to payment of any salary to the plaintiff. He, however, contended that payment of salary by the defendant was to be impliedly read into the agreement, since there could not have been any engagement to employ the plaintiff without payment of salary. He has referred to testimony of PW-2, Area Business Associate Deepak Kumar Dubey, to the effect that the plaintiff was being paid salary initially at the rate of Rs.2500/- per month, and that she was also granted increment of Rs.250/- per month after one year of service.

7. Learned counsel for the parties have been heard.

8. The arguments advanced by learned counsel for the plaintiff have no merit. In the face of written agreement between the parties, there cannot be any presumption in favour of one of them. The terms of the contract/agreement have to be read in letter and spirit, as they exist. A perusal of the agreement nowhere establishes that the payment of salary to the plaintiff by the said Area Business Associate was based upon the agreement in question. There is no such recital in the agreement, nor does it mention anywhere that the defendant would be liable to pay salary to the plaintiff for her work as Program Instructor in any of the centres of the defendant company. Merely because salary was being paid by the Area Business Associate, that would not bind the defendant. The plaintiff was engaged to be appointed in one of the centres only, and salary was to be paid by the centre where she would work. In the absence of any stipulation in the agreement to pay salary, the defendant cannot be made liable to pay the same or damages in lieu thereof.

9. There is no dispute about the settled proposition of law that a civil

Court is not to go beyond the agreement/contract arrived at between the parties. Once the plaintiff has approached the Court raising a claim based on the agreement in question, it was upon him to establish that the defendant's liability to pay salary arises out of the agreement only. This fact has not been established on record. Besides, it has also not been established that the said Vishal Public School Centre, where the plaintiff was working as Program Instructor, was bound by the agreement in question to pay salary to her on behalf of the defendant. In the absence of these material facts having been established on record, no exception can be taken to the concurrent findings recorded by the Courts below dismissing the suit in question. No substantial question of law arises for consideration either.

10. Dismissed.

11. Pending miscellaneous application(s), if any, stand disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

7.2.2023

Ashwani

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No