

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(112) CM-2471-C-2023 in/and
RSA-3351-2014 (O&M)
Date of Decision : 16.03.2023

Haryana Welfare Society for Hearing and Speech Handicapped and
others

...Appellants

Versus

Sharda Yadav

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jaspal Singh Maanipur, Advocate for the appellants.

Mr. Rakesh Nagpal, Advocate for the respondent.

Harsimran Singh Sethi J. (Oral)

CM-2471-C-2023

Present application has been filed for fixing the RSA No. 3351
of 2014 to an early actual date of hearing.

Keeping in view the averments made in the application, which
are duly supported by an affidavit, the same is allowed and RSA No. 3351
of 2014 is taken up for hearing today.

RSA-3351-2014

In the present regular second appeal, the challenge is to the
judgment and decree of the lower appellate court dated 14.05.2014 by
which, the appeal preferred by the respondent-plaintiff against the judgment

and decree of the trial court dated 22.08.2013 was accepted and a direction has been issued to the appellants-defendants to treat the respondent-plaintiff in service up to the age of 60 years along with consequential benefits of salary and fixation of pension.

Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

The respondent-plaintiff joined on a Class-IV post of Mali with the appellants-defendants, which is a Society. It is a conceded fact between the parties that there are no rules, which govern the service condition of the employees but as per the decision of the appellant-Society, the superannuation age of all the employees has been fixed at 58 years. Keeping in view the date of birth of the respondent-plaintiff, he was to attain the age of superannuation on 30.06.2010.

As the respondent-plaintiff was to attain the age of retirement in near future, he filed a civil suit for a declaration with consequential relief of permanent injunction and mandatory injunction directing the appellant-Society to allow him to continue in service upto the age of 60 years. The appellants-defendants filed a reply that as per the decision taken by the Society, the age of retirement has been fixed at 58 years qua all the employees of the Society and the extension being sought by the respondent-plaintiff of continuation upto the age of 60 years is by placing reliance upon the Haryana Civil Services Rules, which are not applicable in the present case as the same has never been adopted rather as a matter of fact, all the employees of the Society, who have already retired, have been retired at the age of 58 years including Class-IV employees. Keeping in view the evidence, which came on record, the trial court dismissed the suit vide

judgment and decree dated 22.08.2013.

Feeling aggrieved against the judgment and decree of the trial court dated 22.08.2013, appeal was preferred by the respondent-plaintiff, which came to be decided by the lower appellate court vide judgment and decree dated 14.05.2014. The lower appellate court came to the conclusion that as the appellant-Society is being managed with the funds received from the Government and Deputy Commissioner, Gurugram is an Ex-Officer of the Society and the Hon'ble Governor is the President of the Society, the State of Haryana has control over the Society hence, the Haryana Civil Services Rules are *ipso facto* applicable upon the Society concerned without being adopted to mean that Class-IV employees of the Society are entitled to continue in service up to the age of 60 years. Hence, non-adherence of Haryana Civil Services Rules so as to allow Class-IV employees upto the age of 60 years was held to be bad and the suit filed by the respondent-plaintiff was allowed with a direction that he will be treated to be on duty upto 30.06.2012 with all consequential benefits including the pay for the period of two years starting from 01.07.2010 onwards till 30.06.2012. The said judgment of the lower appellate court dated 14.05.2014 is impugned in the present regular second appeal.

Learned counsel for the appellant-Society argues that the lower appellate court has made applicable Haryana Civil Services Rules upon institution without there being any order of adoption of the same. Learned counsel for the appellant-Society further argues that unless and untill any specific rules are adopted by a Society to govern, the courts do not have power to infer the adoption of the said rules merely because funds were being received from the Government for the management of the Society

concerned. Hence, the lower appellate court has exceeded its jurisdiction in recording a finding, which is not supported by an evidence on record to hold that Haryana Civil Services Rules are applicable upon the appellant-Society so as to allow the respondent-plaintiff continue in service upto the age of 60 years being a Class-IV employee.

Learned counsel for the respondent-plaintiff argues that once, the appellant-Society comes within the meaning of other institutions as envisaged under Article 12 of the Constitution of India, the Haryana Civil Services Rules will be applicable *ipso-facto* even without adoption, especially when, the appellant-Society is being governed and managed by the Officers of the Government of Haryana. Hence, the judgment and decree of the lower appellate court dated 14.05.2014 is perfectly valid and legal and is liable to be upheld.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The courts are required to interpret the rules governing the service and do not have jurisdiction to infer as to which rules should be made applicable upon the employees of a particular institution. In the present case, learned counsel for the respondent-plaintiff has not been able to point out any evidence on record to show that the Haryana Civil Services Rules have been made applicable by the appellant-Society at any given point of time by adopting the same. In the absence of adoption of the Haryana Civil Services Rules by the Society concerned, the lower appellate court exceeded its jurisdiction to make the said rules applicable upon the appellant-Society. The Society has jurisdiction to manage its affairs in the way the Society intends. No rules, so as to govern the employees of the

Society can be imposed upon the Society and that too against its wishes. In the present case, it has already come on record in the evidence that the superannuation age of all the employees of the Society has been fixed at the age of 58 years and they were being retired at the said age irrespective of the Class of post held by them at the time of attaining the age of superannuation hence, the judgment of the lower appellate court ignoring the said fact and by imposing the Haryana Civil Services Rules upon the appellant-Society merely on the ground that the same is being managed by the State of Haryana financially and administratively is perverse to the evidence on record.

Learned counsel for the respondent-plaintiff submits that one of the witness has mentioned in the testimony that one Mahesh Dutt Sharma, who was working on a Class-III post, has been retired after following the Rule 3.26 of the Punjab Civil Services Rules as applicable to Haryana Civil Services Rules and, therefore, the said admission is good enough to be made applicable in case of the Class-IV employees also.

With regard to the said argument, it may be submitted that merely a witness mentioning a particular fact in the statement and the said statement is contrary to the fact and the said fact is not corroborated, the said statement cannot be taken into account for the grant of benefit to the respondent-plaintiff ignoring the other relevant facts. No order of the appellant-Society has been cited by the lower appellate court to hold that Haryana Civil Services Rules are applicable in the facts and circumstances of the present case. Even otherwise, it is conceded that the said Mahesh Dutt Sharma was working on a Class-III post and had retired on attaining the age of 58 years, which age is prescribed for the retirement by the

appellant-Society for all employees hence, argument being raised by the learned counsel for the respondent-plaintiff will not come to the rescue of the respondent-plaintiff to claim the retirement age to be of 60 years based upon Haryana Civil Services Rules.

Keeping in view the facts and circumstances mentioned hereinbefore, the judgment of the lower appellate court dated 14.05.2014 is perverse to the evidence as well as to the facts on record and cannot be sustained.

Keeping in view the above, the findings of the lower appellate court that Haryana Civil Services Rules are applicable in the present case so as to allow the respondent-plaintiff to continue in service upto the age of 60 years, is set-aside and the judgment and decree of the trial court is restored and suit filed by the respondent-plaintiff is dismissed.

Accordingly, the present regular second appeal is allowed.
Decree sheet be prepared.

Any miscellaneous application, if pending, is disposed of accordingly.

March 16, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No