

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

(219)

RSA-3653-2014

Date of Decision : May 24, 2023

Kulwant Singh

.. Appellant

Versus

Registrar Guru Nanak Dev University Amritsar and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Kanwaljit Singh, Senior Advocate, with
Ms. Neha Anand Mahajan, Advocate, for the appellant.

Mr. M.K. Dogra, Advocate, for the respondents.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present Regular Second Appeal, the challenge is to the concurrent findings of the Courts below by which, the suit filed by the appellant-plaintiff has been dismissed.

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

3. The appellant-plaintiff was appointed as a Director Physical Education (D.P.E.) in Amardeep Singh Shergill Memorial College, Mukandpur, District Nawanshahr. It is a conceded position that the post of Director Physical Education was an aided post and a regular appointment to the said post could have only been made after due approval of Guru Nanak

made on adhoc basis in the year 1999.

4. While the appellant-plaintiff was working in Amardeep Singh Shergill Memorial College, the Guru Nanak Dev University decided to take over the said institution. A memorandum of understanding was entered into between the University and the institution. According to which, the employees working in the College were to be taken over with the same status as they were holding in the college itself.

5. As the appellant-plaintiff was working in the College on adhoc basis, the management of the College concerned requested the Principal of the institution that as the service of the appellant-plaintiff are needed in the College and his work and conduct is satisfactory, his case be sent to Guru Nanak Dev University for approval of his regular appointment. A copy of same is already on record as Ex.P-2.

6. Not understanding the said request in correct perspective, the Principal passed an order regularizing the services of the appellant-plaintiff in the regular pay scale, copy of which has been appended as Ex.P-1.

7. Realizing his mistake for regularizing the services of the appellant-plaintiff without there being an approval, the same was rectified by the Principal concerned by writing a letter to Guru Nanak Dev University, copy of which has been appended as Ex.P-6, that approval be given for the regular appointment of the appellant-plaintiff as the appellant-plaintiff is already being paid the pay in regular pay scale.

8. Before the approval could come, the College was taken over by the Guru Nanak Dev University and the appellant-plaintiff continued working in the same position as he was i.e. on ad hoc basis.

appellant-plaintiff filed a civil suit with a prayer that the respondent-University be restrained from altering the conditions of service of the appellant after the institution was taken over as the appellant is to be treated as a regular employee for all intents and purposes and the University be restrained from terminating the services of the appellant-plaintiff.

10. Keeping in view the evidence which came on record, the trial Court dismissed the suit of appellant-plaintiff by recording a finding that the services of the appellant though were regularized but the same was done by the Principal of the College who did not had the jurisdiction to do the same and though the claim of the appellant-plaintiff for regularization was sent to the University for its consideration but nothing has come on record as to what happened to the said request before the appellant-plaintiff was relieved from service and the suit filed by the appellant-plaintiff was dismissed with the finding that at the time of relieving from the service, the appellant-plaintiff was not working on regular basis as D.P.E in the said institution so as to claim the benefits, as claimed in the suit.

11. Feeling aggrieved against the decision of the trial Court dated 22.08.2012, an appeal was preferred by the appellant-plaintiff, which appeal came to be dismissed by the lower Appellate Court vide judgment and decree dated 03.04.2014 and the judgment and decree of the trial Court was upheld. Hence, the present Regular Second Appeal.

12. Learned senior counsel appearing on behalf of the appellant-plaintiff submits that though it might be a contention that the services of the appellant-plaintiff were not regularized by the competent authority at the time when the institution was taken over by the respondent-University but

it is also a conceded fact keeping in view the evidence which has come on

record that the institution, prior to being taken over by the University, had written to the University to consider the grant of approval for the regularization of the services of the appellant-plaintiff and without taking any decision on the said aspect, the appellant-plaintiff was relieved from service which itself is arbitrary and illegal as, before taking any action, the said claim of the appellant-plaintiff needed to be decided, which factor has been ignored by both the Courts while rejecting the claim as raised in the suit.

13. Learned counsel for the respondents, on the other hand, submits that keeping in view the affidavit dated 19.07.2017 filed by the University in the present Regular Second Appeal, it has been mentioned that no such request was pending with the University at the time when the services of the appellant-plaintiff were discontinued hence, the University was not in a position to decide the said claim of regularization of the services of the appellant-plaintiff.

14. Learned counsel for the respondent-University has not been able to rebut that there was a letter written by the institution, a copy of which has been exhibited as Ex.P-6 requesting the University to regularize the services of the appellant-plaintiff but he is unable to say what was the outcome of the said request.

15. Though, keeping in view the evidence which has come on record, no interference is called for by this Court qua the finding recorded by the Courts below that the services of the appellant-plaintiff were not regularized by the time he was relieved from service by the respondent-University in the year 2010. But at the same time, once the request of the institution for regularization the service of the appellant-plaintiff was

pending with the University and the same was pending for almost more than five years before the appellant-plaintiff was relieved from service in the year 2010, it was incumbent upon the University either to accept or to reject the same by giving due reasons. Hence, in the facts and circumstances of the present case, the University is directed to take appropriate decision keeping in view the request made by the institution through Ex.P-6 within a period of two months from the receipt of copy of this order. While taking a decision, all the factors such as grant of regular pay scale and the facts recorded in the service book, which documents are already with the University, be kept in mind whether, in all those facts as well as keeping in view the recommendation of the Managing Committee, whether the appellant-plaintiff was entitled for the regularization of the services or not. If any order on the said aspect is already passed, same be conveyed to the appellant-plaintiff for his information and necessary action, otherwise an appropriate order be passed on the said pending request.

16. Needless to say that in case any order is passed by the University which causes prejudice to the appellant-plaintiff, he will be free to avail appropriate remedy for the same.

17. The present Regular Second Appeal is disposed of in above terms.

May 24, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes