

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

(227)

RSA No. 1074 of 2017

Date of Decision : 30.01.2023

Gian Chand

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Anmol Verma, Advocate for the appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana
for the respondents.

Harsimran Singh Sethi J. (Oral)

In the present regular second appeal, the challenge is to the order passed by the lower appellate court dated 17.02.2016 by which, the appeal filed by the respondents-defendants was allowed and the suit filed by the appellant-plaintiff, which was allowed by the trial court vide order dated 18.09.2014, was dismissed.

The suit was filed by the appellant-plaintiff for a declaration to the effect that the appellant-plaintiff is entitled for receiving the salary of Chowkidar at DC rate along with all allowances and benefits as admissible to the Class-IV Govt. employees. The appellant-plaintiff was appointed as a Chowkidar by the Parent Teacher Association by passing a Resolution dated 22.05.2006. He was appointed on a consolidated salary of ₹800/- per month to be paid by the Parent Teacher Association from its own fund, which was

further raised to ₹1,000/- per month from 01.07.2010 onwards. While working on the said post, on 09.12.2010, the Headmaster of the Govt. High School, Naraingarh wrote a letter to the District Education Officer, Ambala that the appellant-plaintiff is working on a monthly salary of ₹1,000/- per month, which is being paid by the Parent Teacher Association and in view of the letter dated 15.11.2020 issued by Director Secondary Education, Haryana, the Class-IV employees are entitled to be paid at DC rate hence, permission be granted to appoint the appellant-plaintiff as a Chowkidar on DC rate.

In reply to the said letter, the District Education Officer, Ambala wrote that employee can only be engaged through outsourcing policy as, no employee on the DC rate are being appointed by the Education Department. Feeling aggrieved against the said action, the appellant-plaintiff filed a civil suit No. 2837 of 2013 claiming that as he is working as a Chowkidar with the respondent-defendant no. 3 since 22.05.2006, he is entitled for the salary at DC rate.

The respondents-defendants appeared before the trial court and took a stand that the appellant-plaintiff is not the employee of the Govt. of Haryana but has been appointed in the school by the Parent Teacher Association and the appellant-plaintiff is being paid salary from the said Parent Teacher Association fund only hence, the question of giving him the salary by the State under the DC rate does not arise. Further, it has been denied by the respondents-defendants that at the time of appointment, the respondent-State of Haryana had issued any appointment letter to the appellant-plaintiff as Chowkidar.

Keeping in view the evidence, which was led by the parties, the suit filed by the appellant-plaintiff seeking the salary of the Chowkidar at DC rate was allowed by the trial court vide order dated 18.09.2014 and the salary of the Chowkidar at DC rate was made admissible to the appellant-plaintiff along with all the other admissible benefits and allowances to a Govt. employee.

Aggrieved against the said action, the respondents-defendants filed an appeal before the lower appellate court and the lower appellate court came to the conclusion that as the appointment of the appellant-plaintiff was done by the Parent Teacher Association from its own fund and that too on a temporary basis and the appellant-plaintiff is only working twice a week to look after the building, holding the appellant-plaintiff to be Govt. employee so as to grant the salary at DC rate by the trial court, was held to be bad and the appeal filed by the respondent-defendants was allowed vide order dated 17.02.2016. In the present regular second appeal, the judgment of the lower appellate court dated 17.02.2016 is under challenge.

Learned counsel for the appellant-plaintiff argues that the appellant-plaintiff is entitled for salary at DC rate for the period, he had worked with the respondents-defendants. Learned counsel for the appellant-plaintiff submits that even as per the letter dated 15.11.2010 written by the Education Department, a copy of which has been appended as Annexure A3 with this appeal, the employees, who were appointed through the outsourcing agency, were entitled for the DC rate hence, the judgment of the trial court was perfectly valid and the same has been set-aside by the

lower appellate court by misreading the evidence on record.

It may be noticed here that the appellant-plaintiff was not appointed as Chowkidar by the Govt. of Haryana. The appointment of appellant-plaintiff was only qua the Resolution dated 22.05.2006 passed by the Parent Teacher Association asking the appellant-plaintiff to discharge the duties twice a week and that too on a fixed salary. Once, the finding has been recorded by the lower appellate court that there was no appointment by the Education Department, appointing the appellant-plaintiff as Chowkidar and his appointment was on temporary basis by the Parent Teacher Association, the denial of grant of salary on DC rate admissible, which is only admissible to a govt. employee cannot be made applicable to an employee i.e. appellant-plaintiff, who is being paid out of the Parent Teacher Association's fund, cannot be faulted one. In order to claim benefits as admissible to a govt. employee, there has to be an appointment by the Govt.

Learned counsel for the appellant-plaintiff fairly conceded that there is no evidence, which has come on record to prove that the appellant-plaintiff was appointed by the Govt. of Haryana. That being so, the claim of DC rate, which is admissible to a govt. employee either appointed by the department or being employed through the outsourcing agency, cannot be made applicable to an employee, who has been appointed by the Parent Teacher Association and is being paid from its own fund.

No other argument has been raised.

Keeping in view the above, as learned counsel for the appellant-plaintiff has failed to point out any perversity in the findings of

the lower appellate court qua the facts or evidence on record, no interference is called for by this court in the present regular second appeal.

Dismissed.

January 30, 2023
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No