

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(236)

RSA-2156-2017

Date of Decision : February 23, 2023

Manjinderjit Kaur

.. Appellant

Versus

District Programme Officer Amritsar and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Sharma, Advocate, for the appellant.

HARSIMRAN SINGH SETHI J. (ORAL)

Present Regular Second Appeal has been filed against the judgment and decree of the trial Court dated 11.08.2014 as well as the judgment and decree dated 21.11.2016 of the lower Appellate Court by which the suit filed by the appellant-plaintiff seeking a declaration to the effect that the appellant-plaintiff was rightly appointed as Anganwari Worker and seeking permanent instructions restraining the defendants from the relieving the appellant-plaintiff from service has been dismissed.

Notice of the suit was given to the respondents-State after which, a written statement was filed by the State bringing on record that the appellant-plaintiff was appointed as an Anganwari Worker on temporary basis on 30.11.2009 wherein after, a complaint was received from the Gram Panchyat in question that eligible candidates who applied for the said post, belonging to the same village and were better suited from the appellant-

plaintiff have not been considered. After receiving the complaint from the Gram Panchayat concerned, an enquiry was initiated wherein it had come to notice that one Balwinder Kaur, who had also applied for being appointed as Anganwari Worker and had a better claim than the appellant-plaintiff, was ignored and keeping in view the said fact, temporary appointment given to the appellant-plaintiff was withdrawn on 30.03.2010 and Balwinder Kaur was appointed on the said post.

Keeping in view the evidence, which came on record, it was proved that the allegations being levelled by the appellant-plaintiff that Balwinder Kaur was being adjusted by the Child Development and Project Officer after taking bribe, could not be proved and hence the appellant-plaintiff was relieved from service so as to give appointment to a better suited candidate namely Balwinder Kaur on the post in question and the suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 11.08.2014.

Feeling aggrieved, the appellant-plaintiff filed an appeal before the lower Appellate Court, which also came to be decided against her on 21.11.2016. Hence, the present Regular Second Appeal has been filed.

Learned counsel for the appellant-plaintiff argues that in the present case, the services of the appellant-plaintiff were terminated wrongly so as to adjust Balwinder Kaur.

It may be noticed that the order relieving/terminating the services of the appellant-plaintiff was passed on 30.03.2010 but while filing the suit, the said order was never challenged by the appellant-plaintiff. The only prayer was to allow the appellant-plaintiff to continue in service keeping in view her appointment dated 30.11.2009.

Once, order terminating the services/relieving the appellant-plaintiff from service already existed on the day when the suit was filed and the said order has never been challenged by the appellant-plaintiff, raising any grievance qua the said order now does not arise. Order terminating the services of the appellant-plaintiff is in existence and till the validity of the same is challenged, no finding qua the same could have been given by the Courts below.

Learned counsel for the appellant-plaintiff very fairly conceded the factum that the services of the appellant-plaintiff were terminated vide order dated 30.03.2010 and the suit was filed on 05.04.2010 i.e. after the said date and that too by withholding the information that her services have already been terminated. That being so, once the order dated 30.03.2010 has never been challenged by the appellant-plaintiff, raising any grievance qua the said termination order now does not arise and the Courts below were also not required to give the finding qua the validity otherwise of the said order.

The only prayer of the appellant-plaintiff before the trial Court was that she has been appointed on temporary basis on 30.11.2009 and hence, she should be allowed to continue her services. It has already come on record that the temporary appointment of the appellant-plaintiff was re-considered by the authorities concerned keeping in view the complaint made by the Gram Panchayat concerned where the Anganwari Worker was to be posted and it transpired that one of the candidate namely Balwinder Kaur, who had a better merit than the appellant-plaintiff, was not considered and appointed and ultimately, order has passed on 30.03.2010 relieving the appellant-plaintiff from the temporary appointment and said Balwinder

Kaur was appointed on the post in question, which action is not under challenge.

Once the evidence has come on record that temporary appointment of the appellant-plaintiff was withdrawn so as to appoint a better suited candidate and no allegation has been pointed out even before this Court, the continuance in service as being claimed by the appellant-plaintiff, has rightly been declined by the Courts below in the facts and circumstances of this case.

No other argument was raised.

No finding being perverse to any fact or evidence could be pointed out by the learned counsel for the appellant-plaintiff. No ground is made out for any interference by this Court in the present Regular Second Appeal.

Dismissed.

February 23, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No