

Neutral Citation No. 2024:PHHC:031495

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
201

RSA-861-1994
Date of Decision:05.03.2024

State of Punjab and others

.... Appellants

Vs

Hardial Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Ms. Amrita Garg, AAG, Punjab.

Mr. Sandeep Bansal, Advocate
for contesting respondent No.1.

None for proforma- respondents No.2 and 3.

SUVIR SEHGAL, J. (ORAL)

1. State-defendants No.1 to 3 are in second appeal before this Court challenging the concurrent finding recorded by both the courts below.
2. Hardial Singh, plaintiff-respondent No.1, filed a suit for declaration to the effect that the action of the defendants in disallowing the pay-grade of Classical and Vernacular Teacher as per decision taken vide letter dated 18.12.1980, is invalid and that he is entitled to receive the revised grade of Rs.570-1080 per month w.e.f. 01.01.1979 including all allowances and other benefits admissible to him from time to time.

3. Upon notice, suit was contested by the State-defendants No.1 to 3 and by defendants-respondents No. 4 and 5 by filing separate written statements, wherein besides taking various preliminary objections, a stand was taken that the plaintiff had joined the school after giving an undertaking that he will not claim higher pay. In his replication, plaintiff-respondent No.1, reasserted his claim. After framing of issues and leading of evidence by the parties, trial court by judgment and decree dated 10.08.1991 decreed the suit. Joint appeal preferred by all the defendants was dismissed by learned Additional District Judge, Hoshiarpur vide judgment dated 15.09.1993, resulting in filing of the present appeal by State-defendants No.1 to 3.

4. I have heard counsel for the parties and have considered their respective submissions.

5. During the pendency of the litigation, District Education Officer, Hoshiarpur, defendant No.3 by memo dated 06.08.1990, Ex.P-12, has accepted the claim of the plaintiff-respondent No.1. Letter issued by defendant No.3 deserves to be noticed and its translated copy, supplied by counsel for plaintiff-respondent No.1, is reproduced as under:-

“Subject: Regarding grant of grade of C and V teachers to Sh. Hardial Singh, Hindi Teacher.

Sh. Hardial Singh, B.A. B.Ed. was appointed as Hindi Teacher on 01-01-1979 against the post of Hindi teacher in J.B.T. Grade, approval

of which was given vide this office order No. Auditor-(79) 13/9-789-91 dated 04-01-1980.

2. *The Government vide its letter No. 10227-EDU-3(4)- 73/29098 dated 16-11-1973, approved to grant proficiency grade of C and V teachers alongwith three advance increments to all such Hindi/Punjabi teachers. This was circulated vide D.P.I. (S), Punjab, Chandigarh vide his Memo No. 17/22-69 grant (1) dated 10-12- 1973. D.P.1. (S), Punjab, Chandigarh vide his Memo No. 17/7-84-grant-1(1) dated 13-08-1986 confirmed the above said fact and clarified that educational qualification of such C and V teachers should be B.A., B.Ed. (B.A. passed with Hindi/Punjabi Elective Subject and working at the post of Hindi/Punjabi under proficiency grade 170/350 or 570/1080 of C and V teachers) are eligible for it alongwith three advance increments, provided that their appointment should be after 01-04-1972 and before 23-01-1981 (from the date of implementation of Rules).*

3. *As per the instructions of the government, it is clear that Sh. Hardial Singh Hindi teacher, is entitled for basic salary of Rs. 620/- in Grade of 570/1080 from the date of his appointment i.e. 01-*

01- 1979, and the same be granted to him and entry regarding this be made in his service book.

4. Sh. Hardial Singh will immediately withdraw his civil suit as per his affidavit.

Sd/-District Education Officer Hoshiarpur.”

6. It is evident from facsimile of letter Ex.P-12 that the plaintiff-respondent has been held entitled to basic salary of Rs.620/- in the grade of Rs.570-1080, from the date of his appointment i.e. January, 1979. This letter was issued on the condition that he will withdraw the civil suit as per affidavit submitted by him. Counsel for the plaintiff-respondent No.1 submits that pursuant to this letter monetary benefits have been disbursed to the plaintiff, who after attaining the age of superannuation has retired from service. Consequently, nothing survives for determination in the instant appeal.

7. To be fair to the appellants, the sole argument raised by State counsel deserves to be noticed. She has urged that the plaintiff-respondent No.1 was an employee of a Government aided privately managed school and the civil suit filed by him was not maintainable as his services were governed by the Punjab Privately Managed Recognised Schools Employees (Security of Service) Act, 1979. Her contention has been considered. On the basis of an objection taken by the defendants, issue No. 6 was framed regarding the jurisdiction of the civil court. However, at the time of arguments, this issue was never pressed by the defendants and while decreeing the suit, trial

Court has recorded that parties did not insist upon the decision of the issue. Furthermore, first appeal was preferred by all the three official defendants along with School-defendants No.4 and 5 through a Government Pleader and this question was not urged. Therefore, at the stage of second appeal, it does not lie in the mouth of the State counsel to insist that the suit was not maintainable.

8. In view of the facts noticed above, appeal lacks merit. Judgments and decrees passed by the courts below are upheld and this appeal is dismissed. No costs.

05.03.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

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