

RSA-1961-1995

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1961-1995
Date of decision:-16.01.2024

The State of Punjab and another

...Appellants

Versus

Gian Kaur, Headmistress

...Respondent

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present : Mr.Ajit Singh Natt, AAG, Punjab
for the appellants.

None for respondent.

SUVIR SEHGAL, J.(ORAL)

1. State – defendant is in second appeal before this Court challenging the judgment and decree dated 03.02.1995 passed by the First Appellate Court.
2. Brief facts, may be noticed.
3. Respondent – plaintiff, who was working as a Headmistress in a Govt. School, had filed a civil suit claiming that she was drawing a pay of Rs.775/- as on 01.01.1978, which was raised to Rs.870/- on grant of an increment. She crossed the efficiency bar in 1978 and again in 1986. Without affording her with any opportunity, by order dated 05.06.1991, District Education Officer – defendant No.2 reduced her salary. This order has been challenged in the civil suit, whereby besides declaration, she sought permanent injunction restraining the defendants from effecting any recovery from the emoluments drawn by her. Upon

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being served, suit was contested by the defendants – State wherein a stand was taken that she was not entitled to the increment w.e.f. 02.01.1978, which has been withdrawn. It has been further submitted in the reply that a mistake was committed in the re-fixation of the pay and when it came to the notice of the defendants, the same was rectified. A reference has also been made to a letter addressed by the plaintiff – respondent, wherein she has requested that she be supplied with the calculation of the amount to be recovered from her and she is estopped from filing the suit. The stand of the State was controverted by the plaintiff – respondent by filing a replication.

4. After the framing of issues and leading of evidence, the trial Court by judgment and decree dated 23.07.1994 dismissed the suit. Aggrieved there-against, the plaintiff – respondent filed a First Appeal, which has been partly accepted by the Lower Appellate Court by judgment and decree dated 03.02.1995 and is under challenge in this appeal.

5. State counsel has been heard and record has been examined with his able assistance.

6. In the impugned judgment, learned Additional District Judge gave the following relief to the plaintiff – respondent:

“20. In the result, this appeal is bound to succeed, atleast in part. The respondents are directed to allow the appellant to shift the date of her choice for new scales from 1.1.1987 to 1.2.1987 for which the appellant has already made a representation to the respondents and then re-fix her pay in the new scale within four months from the date on which the certified copy of this judgment

and decree is supplied by the appellant to the respondents. Till the salary of the appellant is re-fixed by the respondents in compliance with this judgment and decree the respondents shall remain restrained from making any recovery under their impugned order dated 5.6.1991. After the respondents have re-fixed the pay of the appellant, in compliance with this judgment and decree, they would be at liberty to make the recovery of the excess emoluments, if any, from the appellants in terms of the pay so-rec-fixed by them. The parties are left to bear their own costs. Counsel fee Rs.500/-.”

7. The sole ground on which the appeal has been partly accepted by the First Appellate Court is that it is the bounden duty of the respondent authorities to give a choice to an employee to opt for new scales, which they have failed to do. Even before this Court, State counsel is not in a position to refer to any document or evidence to show that any such option was given to the respondent – plaintiff.

8. In the absence of any material to the contrary, this Court does not find any infirmity in the judgment of the Lower Appellate Court. Consequently, the judgment and decree of the Lower Appellate Court is upheld and the instant second appeal is dismissed with no orders as to costs.

(SUVIR SEHGAL)
JUDGE

16.01.2024

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Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No