



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

206

RSA-1124-2023 (O&M)

Decided on :17.05.2024

JYOTI SHARMA

Versus

. .Appellant

D.A.V SENIOR SECONDARY SCHOOL KURUKSHETRA AND ANR

. . . Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Mahavir Singh, Advocate for the appellant.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present regular second appeal, the challenge is to the judgment and decree dated 10.02.2020 passed by the Learned Lower Appellate Court vide which, the judgment and decree dated 27.08.2018 passed by the trial Court has been set-aside and the suit filed by the appellant-plaintiff has been dismissed.

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

3. The appellant-plaintiff was working as a TGT (Sanskrit) with the respondent-institution since 18.08.2003. During the service, the appellant-plaintiff had applied for the medical leave which was granted to her and the appellant-plaintiff delivered a male child on 11.07.2011. It may be noticed that the medical leave was allowed to the appellant as per her own application from 11.07.2011 to 24.12.2011, but the same was without pay. After availing the said medical leave, the appellant-plaintiff joined back the respondent-institution and continued working for a period of ten months after which, the appellant-plaintiff resigned and left the respondent-institution and thereafter, she joined another institution.



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4. In the year 2016, the appellant-plaintiff filed a civil suit before the Courts below claiming the benefit of maternity leave for the period she was granted medical leave from 11.07.2011 to 24.12.2011. Keeping in view the evidence which had come on record the suit filed by the appellant-plaintiff was allowed by the trial Court vide judgment and decree dated 27.08.2018 and it was directed that the appellant-plaintiff be given the benefit of maternity leave from 11.07.2011 to 24.12.2011.

5 Feeling aggrieved against the decision of the trial Court, the respondent-institution filed an appeal before the lower Appellate Court, which came to be allowed on 10.02.2020 and the judgment and decree dated 27.08.2018 passed by the trial Court has been set-aside and the suit filed by the appellant-plaintiff has been held to be not maintainable keeping in view the limitation provided. Hence, the present regular second appeal.

6. Learned counsel for the appellant argues that the appellant-plaintiff had raised the claim for the grant of the maternity leave on 11.07.2011 but the respondents-institution forced her to apply for medical leave without pay, which the appellant availed and hence, once the appellant was entitled for the grant of maternity leave for the period in question, forcing her to apply for a medical leave and that too without pay was arbitrary and illegal and the benefit of maternity leave was rightly allowed by the trial court in favour of the appellant which judgment of the trial Court has wrongly been set-aside by the Lower Appellate Court.

7. Learned counsel for the appellant further submits that once, the appellant is entitled for the maternity leave, the same is to be treated as a recurring cause so as to grant the benefit of the maternity leave to the appellant.

8. I have heard learned counsel for the appellant and have gone



through the record with his able assistance.

9. It is a conceded fact that on an application filed by the appellant-plaintiff seeking the medical leave, the same was allowed from 11.07.2011 to 24.12.2011. It is also a conceded fact that after availing the said medical leave, the appellant-plaintiff joined the respondent-institution again and served for a period of ten months and during the said period, the appellant-plaintiff did not raise any objection regarding non-grant of maternity leave to her. Further, the civil suit was filed by the appellant-plaintiff in the year 2016 i.e. even after more than three years after leaving the respondent-institution.

10. Keeping in view the all facts, it cannot be said that the suit filed by the appellant-plaintiff to seek the benefit of converting the medical leave granted to maternity leave was within the time frame. In case, the appellant-plaintiff was forced to apply for the medical leave on 11.07.2011 and was restricted from claiming the maternity leave, the cause of action arose to her on the said date i.e. 11.07.2011. The appellant-plaintiff should have immediately claimed the benefit of maternity leave which was not done.

11. Even otherwise, after availing the said medical leave, the appellant-plaintiff could have again agitated her claim for the maternity leave immediately or within a period of three years of 11.07.2011, which she failed despite continuing working for a period of 10 months with the respondent-institution even after joining the post in question after availing the benefit of medical leave.

12. Not only this, the appellant left the institution in the year 2012 and the suit was filed by her beyond the limitation of three years when cause of action accrued or within a period of three years of leaving the respondent-institution.



13. Even otherwise, as per the settled principle of law settled by the Hon'ble Supreme Court of India in **Civil Appeal No.1852 of 1989 titled as State of Punjab and others vs. Gurdev Singh and Ashok Kumar, decided on 21.08.1991**, that every order passed in case, causes prejudice, has to be challenged within a period of three years. The lower Appellate Court while deciding the appeal filed by respondents-institution has rightly been relied upon the said judgment passed in **Gurdev Singh's case (supra)**. The relevant paragraphs of the said judgment are as under:-

“ 4. First of all, to say that the suit is not governed by the law of Limitation runs afoul of our Limitation Act. The statute of limitation was intended to provide a time limit for all suits conceivable. Section 3 of the Limitation Act provides that a suit, appeal or application instituted after the prescribed "period of limitation" must subject to the provisions of Sections 4 to 24 be dismissed although limitation has not been set up as a defence, Section-2(J) defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 2(J) also defines, "prescribed period" to mean the period of limitation computed in accordance with the provisions of the Act. The Court's function on the presentation of plaint is simply to examine whether, on the assumed facts the plaintiff is within time. The Court has to find out when the "right to sue" accrued to the plaintiff. If a suit is not covered by any of the specific articles prescribing a period of limitation, it must fail within the residuary



article. The purpose of the residuary article is to provide for cases which could not be covered by any other provision in the Limitation Act. The residuary article is applicable to every variety of suits not otherwise provided for. Article 113 (corresponding to Article 120 of the Act 1908) is a residuary article for cases not covered by any other provisions in the Act. It prescribes a period of three years when the right to sue accrues. Under Article 120 it was six years which has been reduced to three years under Article 113. According to the third column in Article 113, time commences to run when the right to sue accrues. The words "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the 'cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted (See: (i) Mt. Bole v. Mt. Koklam and Ors., AIR 1930 PC 270 and (ii) Gannon Dunkerley and Co. v. The Union of India, AIR 1970 SC 1433).

8. It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of



limitation. If the statutory time limit expires the Court cannot give the declaration sought for.

11. The Allahabad High Court in Jagdish Prasad Mathur and Ors. v. United Provinces Government, AIR 1956 All 114 has taken the view that a suit for declaration by a dismissed employee on the ground that his dismissal is void, is governed by Article 120 of the Limitation Act. A similar view has been taken by Oudh Chief Court in Abdul Vakil v. Secretary of State and Anr., AIR 1943 Oudh 368. That in our opinion is the correct view to be taken. A suit for declaration that an order of dismissal or termination from service passed against the plaintiff is wrongful, illegal or ultra vires is governed by Article 113 of the Limitation Act. The decision to the contrary taken by the Punjab & Haryana High Court in these and other cases ((i) State of Punjab v. Ajit Singh, [1988] 1 SLR 96 and (ii) State of Punjab v. Ram Singh, [1986] 2 SLR 379 is not correct and stands overruled.”

14. In the present case, the grant of medical leave which is being contested by the appellant-plaintiff was given on 11.07.2011. The appellant should have availed the remedy within the period of 3 years from 11.07.2011 and concededly, on the date when the suit was filed by the appellant, the limitation period to claim the benefit of maternity leave had already expired.

15. With regard to the argument of the learned counsel for the appellant that the appellant made a request for the grant of maternity leave which was wrongly denied to her, it has come in the judgment of the lower appellate Court that the appellant conceded in her statement that the said



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application for maternity was not submitted by her but the said application was sent by her husband who was never examined before the Courts below. In the absence of any person examined as to whether the claim was raised for maternity leave, the same was also disputed by the respondents and nothing has been shown to this Court that any evidence has come on record that any application was submitted for the grant of maternity leave as being claimed by the appellant-plaintiff.

16. Keeping in view the above facts and circumstances recorded herein above, no ground is made out for any interference by this Court in the present regular second appeal, **hence, the present regular second appeal stands dismissed.**

16. Pending civil miscellaneous application, if any, stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

17.05.2024

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Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*