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Date of Decision: 14.10.2024

... Appellant

VAISH GIRLS SR. SEC. SCHOOL AND ORS.

... Respondents

1. The appellant through instant second appeal is seeking setting aside of judgement and decree dated 30.03.2005 passed by learned Civil Judge (Jr. Div.), Panipat in Civil Suit No. 407/2000 vide which the suit filed by the appellant for declaration to the effect that order of dismissal dated 30.12.1996 passed by respondent no.3 is illegal and void with consequential relief of mandatory injunction directing the respondents-defendants to allow the appellant to join the school as headmistress along with complete salary w.e.f. 01.11.1996 with interest, was dismissed. At the same time, prayer is also made in the instant second appeal for setting aside the judgement and decree dated 30.09.2005 passed by learned Additional District Judge, Panipat vide which the first appeal filed by the appellant was dismissed.



2. Succinctly, the facts as per the plaint are that the appellant, who possessed educational qualification of M.A., B.Ed., and a work experience of more than 10 years as a teacher, was appointed as the Headmistress of the school-respondent no.1 by the Managing Committee-respondent no.2. It was alleged that there was unwarranted interference in the functioning of the school by the manager-respondent no.3. The appellant raised objections against the conduct of respondent no.3 being the Headmistress of the school but he refused to mend his ways. Consequently, a resolution was passed by the school management on 01.09.1996 vide which certain restrictions were put in place and the same remained in operation till 16.12.1996. Thereafter, respondent no.3 passed the impugned order of termination dated 30.12.1996 out of resentment against the appellant. The appellant moved a representation before the Director, Secondary Education Haryana-respondent no.5 and District Education Officer, Panipat- respondent no.6 but to no avail. Aggrieved, the appellant filed C.W.P. No. 11633 of 1997 before this Court while respondent no.3 also filed C.W.P. No.546 of 1998, which were clubbed and heard together, thereby, dismissing the writ petition filed by the appellant whereas the writ filed by respondent no.3 was allowed. Thereafter, a review petition was preferred against the aforesaid order and the same was dismissed while making certain observations. Consequently, the appellant preferred a suit before the learned trial Court with the abovementioned prayer.

3. The respondents appeared before the learned trial Court and



contested the suit vide two separate written statements, one on behalf of respondents no. 1 to 3 & 7 and another by respondents no. 4 to 6. Therein, preliminary objections were taken by the respondents to the effect that the suit of the appellant was not maintainable and that the suit was filed against the observations/directions of this Court as she was granted permission to challenge the impugned termination order solely on the ground that resolution was a fabricated document. Thereafter, replications to the aforesaid written statements were filed by the appellant-plaintiff. From the pleadings of the parties, as many as 8 issues were framed including the issue of relief. Thereafter, the evidence of the parties was considered and ultimately, the suit of the appellant-plaintiff was dismissed with cost. Affronted, the appellant-plaintiff preferred an appeal before the learned lower Appellate Court which also met with the same fate. Now, the appellant has approached this Court for a second bout.

4. Learned counsel for the appellant vociferously contends that the learned trial Court rightly decided issues no.1 and 2 in the favour of the appellant whereas the findings on issues No.3, 4 & 8 are not in accordance with law. It is also contended that learned lower Appellate Court has erred in law by reversing the findings of the learned trial Court on issues No.1 & 2. It is further argued that this Court clearly allowed the appellant to challenge the termination order as well the validity of the impugned resolution, therefore, the question of maintainability of the suit no longer survived. It is also argued that the appellant was dismissed from service without holding any



inquiry, in clear violation of principles of natural justice.

5. Learned counsel for respondent no.1 and 2 submits that impugned judgements and decrees have been passed after correct appreciation of the evidence on record in accordance with the law and therefore, do not deserve any interference by this Court.

6. In view of the judgments passed by the Hon'ble Supreme Court ***Pankajakshi (Dead) through Legal Representatives and others Vs. Chandrika and others (2016) 6 SCC 157, Randhir Kaur Vs. Prithvi Pal Singh and others (2019) 17 SCC 71*** and ***Gurbachan Singh (dead) through LRs Vs. Gurcharan Singh (dead) through LRs and others***, questions of law are not required to be framed in second appeal before the Punjab and Haryana High Court whose jurisdiction is circumscribed by provisions of Section 41 of the Punjab Act, however, since this Court vide order dated 11.09.2006 has already framed the substantial questions of law as mentioned below, the same are being clubbed and answered together: -

- I. *Whether after holding the impugned resolution and termination order to be forged, the appellant is not deemed to be continuing in service for all purposes?*
- II. *Whether after holding the impugned resolution and termination order to be non-existent, there remains any question of enforcement of services of the appellant upon the respondent No.1 by the Court and the appellant is not automatically deemed to be continuing in service?*
- III. *Whether respondent no.1 while receiving grant in aid for the post of*



Principal/Headmistress from the State, and the terms and conditions of the post being governed by the statutory provisions of Haryana Aided Schools (Security of Services) Act and Rules 1974 cannot be compelled by the court and the authorities to abide by the statutory provisions and mandatory directions issued by the Court?

IV. Whether the appellant is not entitled to all consequential benefits of continuity of service and full back wages with interest from the date she was illegally removed from the post and further to continue in service till the date of her retirement with all attendant benefits?

7. I have heard the learned counsel for the parties and perused the paper-book with their able assistance. A perusal of the orders dated 01.05.1998 and 18.09.1998 passed in the review application No.167 of 1998 moved in Civil Writ Petition No.11633/1997 and the Civil Miscellaneous Application No.21122 of 1998 clearly shows that jurisdiction of the Civil Court was in no way shackled to decide only a limited issue of genuineness of the resolution dated 30.12.1996 (mark DA). Furthermore, the respondents have failed to establish the genuineness of the aforesaid resolution rendering it to be forged and fabricated and the learned Additional District Judge, Panipat rightly proceeded to hold that respondent no.3 terminated the services of the appellant-plaintiff in absence of a management resolution. However, the non-existence of a management resolution by respondent no.2 qua the termination order dated 30.12.1996 in itself does not fully vitiate her termination since the said procedural lacunae is deemed to be cured by the



conduct of the Managing Committee-respondent no.2 in accordance with Section 196 of the Contract Act, 1882 as the termination order has not been disowned or challenged by respondent no.2 in their written statement. Rather, it has been claimed in the written statement filed by respondent no.2 in the present suit that the impugned termination order has been passed in accordance with its decision.

8. As far as the question of violation of terms and conditions (Ex.P-2) of appellant's appointment is concerned, it transpires that as per the said terms, condition of payment of one month's salary in case of resignation or termination except on account of disciplinary action, is not a condition precedent to the termination of service. Although, a right to claim one month's salary did accrue in favour of the appellant but her termination cannot be held as illegal on the ground of non-payment of one month's salary to her. It is pertinent to note here that as per Rule 8 of the Haryana Aided Schools (Security of Services) Rules, 1974, the appellant was on probation for a period of 2 years from the date of her appointment. As per the same Rule, services of a person who is on probation can be dispensed with by the appointing authority if it finds the conduct and work of such person unsatisfactory, as is the case of the appellant.

9. In view of the above discussion, the issues framed in the present case are all answered in negative. Resultantly, this Court is of the considered opinion that no interference is warranted by this Court in the judgement and decree dated 30.03.2005 passed by learned Civil Judge (Jr. Div.), Panipat and

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the judgement and decree dated 30.09.2005 passed by learned Additional District Judge, Panipat. Therefore, the instant second appeal is hereby dismissed.

10. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

14.10.2024*Ajay Goswami***(HARPREET SINGH BRAR)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No