

RSA-5949 of 2017 (O&M)

2024:PHHC:069859



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-5949 of 2017 (O&M)

Reserved on: 01.05.2024

Pronounced on: 14.05.2024

Smt. Kirandeep Kaur

.....Appellant

Versus

The State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Baltej Singh Sidhu, Sr. Advocate,
With Mr. Chandan Singh, Advocate,
for the appellant.

Mr. Surya Kumar, AAG, Punjab.

NAMIT KUMAR, J.

1. This regular second appeal is directed against the judgment and decree dated 08.07.2016, passed by the Court of learned Additional Civil Judge (Senior Division), Bathinda, whereby suit for declaration filed by the plaintiff-appellant was dismissed as well as against the judgment and decree dated 02.05.2017, passed by the Court of learned Additional District Judge, Bathinda, whereby appeal filed by the plaintiff-appellant against the judgment and decree dated 08.07.2016, was also dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Brief facts of the case are that plaintiff filed a suit for declaration pleading therein that she was appointed as Elementary Teacher on contract basis in Government Elementary School, Virk Kalan, Distt. Bathinda having registration

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No.3263, on the basis of office letter No.669-672 dated 27.9.2008 issued by defendant No.2. Plaintiff joined her duty on 27.10.2008 as per appointment letter No.E1/2008/allotment/133 dated 25.10.2008. Thereafter services of the plaintiff have been terminated by the defendant No.2 vide office order dated 22.10.2009 on the plea of having produced a bogus experience certificate, though the enquiry regarding its genuineness is still pending with enquiry officer as per information sought under RTI Act dated 7.5.2014 given by defendant No.2. It is further submitted that as per observation of verifying officer, who verified the experience certificate of plaintiff, the experience certificate issued to the plaintiff by Headmaster of Prince Public Middle School, Goniana Mandi w.e.f. 5.6.1998 to 31.12.1998 and 1.2.1999 to 31.3.2000 does not seem to be genuine because attendance register and pay register were not available in the school. As per Screening Committee, the experience certificate of plaintiff seems to be doubtful, because the particulars of attendance register and pay register do not tally. It has been further averred that as per school and other relevant record, plaintiff worked in the Prince Public Middle School, Goniana Mandi which has been admitted by Screening Committee. The Experience certificate of plaintiff was properly signed by the Headmaster of Prince Public Middle School, Goniana Mandi and countersigned by District Education Officer, Bathinda after inspection of relevant record. It is averred that impugned order dated 22.10.2009 is arbitrary, illegal and against principles of natural justice. The plaintiff has been punished without any fault on her part and only

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saying that the plaintiff produced a doubtful experience certificate which does not seem to be genuine at the time of joining of Government Service. If there were some technical mistakes/doubts related to experience certificate of plaintiff, same can be rectified/removed and for that plaintiff will have no objection. Plaintiff served a legal notice dated 16.6.2014 under section 80 CPC, but to no effect. However, a letter dated 1.8.2014 has been received from office of defendant No.1 that it has been written to Director of Education Department Punjab (EE) Mohali to decide the legal notice served under section 80 CPC within a week. The plaintiff repeatedly requested the defendants to admit her rightful claim and release all the service benefits and arrears, but to no effect.

3. Upon notice, defendants appeared through counsel and filed written statement to the effect that suit is not maintainable as the plaintiff has not availed departmental remedy which is available to her. Plaintiff has no locus standi and cause of action to file the present suit. Plaintiff has not approached the Court with clean hands. On merits, it is submitted that plaintiff obtained the services of defendant by submitting bogus, fake and fabricated experience certificate. During the course of inquiry, defendant-department gave sufficient opportunity to plaintiff to produce the record regarding genuineness of experience certificate and issuance authority. Headmaster of Prince Public Middle School, Goniana Mandi was also called alongwith record regarding issuance of experience certificate to plaintiff, but school failed to produce any record regarding genuineness of above said experience

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certificate. The school failed to produce any attendance register showing the presence of plaintiff during alleged period mentioned in the experience certificate and also failed to produce any record regarding payment of salary to plaintiff during the alleged period of experience. As such, experience certificate was found to be bogus, fake, ingenuine. It is further submitted that service of plaintiff has been rightly terminated by the defendant department. The action taken by defendant department is legal and valid. Denying all the other averments, defendants prayed for the dismissal of the suit.

4. Replication was filed by the plaintiff reiterating the averments of the plaint and controverting the submissions made by the defendants in their written statement.

5. From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is entitled to suit for declaration as prayed for? OPP
2. Whether the plaintiff has no locus standi or cause of action to file the present suit? OPD
3. Whether the suit of the plaintiff is not maintainable in its present form? OPD
4. Whether the plaintiff has not approached the Court with clean hands? OPD
5. Relief.

6. The Court of first instance, after appreciating evidence on record vide judgment and decree dated 08.07.2016 dismissed the suit filed by the plaintiff.

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7. Feeling aggrieved against the said judgment and decree of the trial Court, plaintiff preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 02.05.2017.

8. Learned Senior counsel for the appellant contended that judgments of both the Courts below are based on conjectures and surmises. He further contended that judgments of both the Courts below are the result of mis-reading of evidence as the order dated 22.10.2009 vide which the services of the appellant were terminated is illegal and against the principles of natural justice. He further contended that judgments and decrees of the Courts below being perverse are liable to be set aside. He also submitted that even if the experience certificate in question furnished by the appellant was treated as bogus one even then the appellant would fall in the zone of the merit claiming higher marks of experience in comparison to others.

9. On the other hand, learned State counsel supported the judgments and decrees of the Courts below and contended that same are perfectly legal and valid.

10. I have heard learned counsel for the parties and perused the record.

11. Plaintiff-appellant was working as Elementary Teacher on contract basis. Her services were terminated by respondent/defendant No.2 on the ground that she got the job on the basis of bogus experience certificate. Appellant concealed the fact from the Courts below that she had also filed CWP No.9171 of 2010 against the order

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dated 22.10.2009 which was disposed of vide order dated 18.05.2010 with a direction to them to represent to the authorities in this regard. Further respondents-defendants filed LPA No.239 of 2011 before this Court and in compliance to order passed in the said LPA, four-member committee was constituted by the respondents to look into the matter. Respondents-defendants proved on record report of the committee as Ex.D3, according to which appellant could not produce any document regarding genuineness of her experience certificate and the enquiry committee found the experience certificate of the appellant as bogus. Therefore, the services of the appellant rightly terminated by the respondents-defendants.

12. Learned Senior counsel for the appellant has failed to show that concurrent findings recorded by Courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. No other point has been urged.

13. No question of law, muchless substantial question of law arises for consideration in the present appeal.

14. Dismissed.

15. Pending application(s), if any, stand disposed of accordingly.

14.05.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No