
(2007) 03 OHC CK 0051
In the Orissa High Court

Arya Samaj Mandir

APPELLANT

Vs

Rajwanti (Smt.) and Others

RESPONDENT

Date of Decision : 08-03-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32, 36A

Citation : (2007) 104 CLT 658

Hon'ble Judges : AR. Lakshmanan, J;Altamas Kabir, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Altamas Kabir, J.—Leave granted.

2. Respondent 1 in this appeal was appointed as Science Mistress in the Appellant School on 7-9-1988. At the time of joining her duties she was given an appointment letter on 5-7-1988 indicating that she was being appointed as Science Mistress in the school with effect from the date she joined her duties in the grade of Rs. 1400-2600 plus usual allowances sanctioned by the Haryana Government from time to time.

3. On 28-1-1994 Respondent 1 filed Civil Suit No. 49 of 1994 in the Court of Civil Judge (Senior Division), Jhajjar, inter alia, for the following reliefs:

It is therefore prayed that this Hon''ble Court may be pleased to pass a decree of declaration to the effect that the Plaintiff is entitled to the regularisation of her services w.e.f. 6-7-1988 with right of contribution to the contributory provident fund from the same date as also to receive her future salaries by crossed cheques and that she is entitled to all kinds of leaves and as admissible under the Rules ever since her appointment on 6-7-1988 along with decree of permanent injunction restraining the Defendants from deducting any money from her monthly emoluments on any ground except through due process of law. Any other relief that the Hon''ble Court deems fit and proper may also kindly be granted.

4. The suit was duly contested by the Appellant School by filing written statement and on the pleadings of the parties the following issues were framed:

1. Whether the Plaintiff is entitled to regularisation of her service with effect from 6-7-1988 with right of contribution to the contributory provident fund? OPP.
2. Whether the Plaintiff is entitled to receive salary by crossed cheque? OPP.
3. Whether the Plaintiff is entitled to all kinds of leaves admissible under Service Rules? OPP.
4. Whether the Plaintiff has no locus standi to file the present suit? OPD.
5. Whether the suit is not maintainable in the present form? OPD.
6. Whether the Plaintiff is estopped from filing the suit by her own act and conduct? OPD.
7. Whether the Plaintiff has concealed material facts from the Court, if so to what effect? OPD.
8. Whether the Defendants are entitled to special costs u/s 36-A CPC? OPD.
9. Relief.

5. The suit was ultimately decreed in favour of Respondent 1 and the following decree was passed by the Learned Trial Court:

It is ordered that suit of the Plaintiff for declaration with consequential relief of permanent injunction is hereby decreed with costs by declaring that the Plaintiff is entitled to the regularisation of her service w.e.f. 6-7-1988 with a right to Contributory Provident Fund Scheme and also is entitled to receive the salary through crossed cheques and further the Defendants are hereby restrained from deducting any amount from her monthly emoluments on any ground except through due process of law.

6. Since according to Respondent 1, the Appellant was not giving effect to the decree, she put the decree into execution by way of Execution Petition No. 18 of 1999 for recovery of a sum of Rs. 2,71,436. In the execution petition Respondent 1 stated as under:

That the suit of the Plaintiff has been decreed by the Hon"ble Court on 15-10-1998 and the Hon"ble Court directed the Defendants to make payments of (sic to) decree-holder by cheque and without deducting any amount as per government scale. The Plaintiff has submitted the entire balance of amount due towards the Defendants on Annexure "A" which is to be read as a part of the execution petition. The amount be recovered from the movable and immovable property of the Respondents which is attached with the petition. Further action under Order 21 Rule 32 CPC be also initiated against Respondents 1 to 4 for not regularising the service and not giving benefit of Contributory Provident Fund Scheme to the Petitioner as per decree. The copy of Judgment and decree are

attached with the petition.

7. As will be evident from the claim made by Respondent 1, the amount calculated by her towards her balance dues on account of salary was on the basis of the government scale which was Rs. 1400-2600, as revised from time to time.

8. It appears that in the execution proceedings the officials of the Education Department calculated the salary of Respondent 1 from December 1993 to February 2002 in the grade of Rs. 1400-2600 plus usual allowances as sanctioned by the Government, to come to a finding that Rs. 6,00,584 was due and payable to her. Ultimately, by its Order Dated 28-10-2002 the executing Court, after giving credit to the Appellant for having paid a sum of Rs. 1,70,806, directed the Appellant to pay the remaining amount of arrears of salary amounting to Rs. 4,29,778 to Respondent 1. Inasmuch as the said order was not given effect to, a further order was passed by the executing Court on 28-11-2002 issuing non-bailable warrants of arrest against the school authorities.

9. Aggrieved by the order passed by the executing Court. the Appellant filed Civil Revision No. 6130 of 2002 in the High Court of Punjab and Haryana and the Learned Single Judge vide Order Dated 11-8-2003, while admitting the revision, stayed further proceeding before the executing Court.

10. While the revision was pending in the High Court, Respondent 1 herein filed an application to vacate the interim Order Dated 11-8-2003 staying the execution proceedings. The stay application was taken up for hearing along with the revision application on 2-4-2004 for final disposal. On consideration of the submissions made, the Learned Single Judge, dismissed the revision petition with costs of Rs. 5000 and directed the executing Court to execute the decree forthwith and to complete the execution proceedings within a period of three months from the date of receipt of a certified copy of the order.

11. The present appeal is directed against the said order of the Learned Single Judge dated 2-4-2004.

12. On behalf of the Appellant it was submitted that when Respondent 1 was appointed as Science Mistress in the School, an agreement was entered into between the School and the said Respondent on 7-9-1988 stipulating the terms and conditions of her appointment. One of the terms was that her pay scale would be Rs. 480-760. It was urged that Respondent-1 knowingly signed the said agreement which was made Ext. PW 4/ A in the suit.

13. It was further submitted that the decree as passed in the suit filed by Respondent 1 did not specify the salary of Respondent 1 and, in fact, no specific issue was also framed to decide the quantum of the salary of Respondent 1. Both the appointment letter issued to Respondent 1 on 5-7-1988 and the agreement dated 7-9-1988 had been brought to the notice of the Learned Trial Court, but despite the above, the Learned Trial Court had not specified the salary of Respondent 1 on the basis whereof her dues were to be calculated.

14. It was also submitted that as per the agreement, whatever was due to Respondent 1 had been duly paid and over and above the same a further amount of approximately Rs. 1,00,000 had been realised by her by attaching the bank account of the School. There was, therefore, no further dues payable to Respondent 1 and the subsequent calculation made by the District Education Authorities had no foundation and the executing Court erred in relying on the same.

15. It was submitted that the executing Court had travelled beyond its jurisdiction in directing payment on the basis of the calculation made by the District Education Authorities on the basis that the Petitioner's salary was in the pay scale of Rs. 1400-2600.