

(2022) 07 P&H CK 0137

In the Punjab And Haryana At Chandigarh

Case No : Latter Patent Appeals No. 486 Of 2022

Mamta Sharma

APPELLANT

Vs

Educational Tribunal-Cum-District Judge, Ambala And Others

RESPONDENT

Date of Decision : 12-07-2022

Acts Referred:

Haryana School Education Rules, 2003 — Rule 103
Code Of Civil Procedure, 1908 — Section 2(9), Order 43 Rule 1

Citation : (2022) 07 P&H CK 0137

Hon'ble Judges : G.S. Sandhawalia, J;Vikas Suri, J

Bench : Division Bench

Advocate : Brijender Kaushik

Final Decision : Dismissed

Judgement

G. S. Sandhawalia, J

The present appeal has been preferred against interim order of learned Single Judge dated 31.05.2022 passed in CWP No.12103 of 2022, whereby continuation of service of the appellant till the age of 60 years was declined. The reasoning, which weighed with the learned Single Judge was that the appellant herself, being Principal, had passed the orders of retirement of other employees at the age of 58 years. Even her predecessor had retired at the age of 58 years but was re-appointed afresh for a period of two years and therefore, her case was distinguished. It was also noticed that three teachers also retired in the last five years at the age of 58 years and therefore, interim order was not passed in her favour and the appellant had retired on 31.05.2022 itself.

It has to be noticed that while passing the order, learned Single Judge was also dealing with the detailed interim order dated 25.05.2022 passed by the Educational Tribunal, Ambala whereby in the main case, a declaration had been sought by the present appellant to the effect that she was liable to be retired at the age of 60 years as per Bye-Law 30 of the Central Board of Secondary

Education. Therefore, she sought relief of permanent injunction directing respondents not to retire her on 31.05.2022 at the age of 58 years. The Educational Tribunal also examined the three ingredients which are required to grant necessary benefit of interim relief and noticed that counsel for the appellant had failed to point out any averment to the effect that before approaching the Court, any right of the appellant had been infringed and whether the appellant had approached the respondent Authorities raising her grievances by making necessary representation, demanding the consideration of her rights, at the appropriate time.

The issue in dispute is whether retirement is to be done as per provisions of Rule 103 of the Haryana School Education Rules, 2003 or as per Bye-Law 30 of Central Board of Secondary Education, as relied upon by learned counsel for the appellant, as per the pleadings of the parties.

It is not disputed that the appellant was appointed in the year 1985 and her senior colleagues superannuated at the age of 58 years from the Institute, in which she was employed. At the fag end of her service, she approached the Court with the positive hope that she would get a blanket interim injunction, which would in fact mean allowing the petition itself.

We are of the considered opinion that the relief, which has been sought, has rightly been declined both by the Educational Tribunal and by the learned Single Judge as the matter is yet to be decided as to which of the Rules would be applicable. In similar circumstances, the Apex Court, while dealing with the issue of change in date of birth in State of UP and another vs. Shiv Narain Upadhyaya, (2005) 6 SCC 49, has held that granting of interim relief in such cases should be exceptional as the employee can always be compensated and unless there is clinching and conclusive material, only then interim relief is to be granted. The same principle would also be applicable in the present case.

Keeping in view the above facts and circumstances of the case, we are of the considered opinion that the case in hand does not fall within the ambit of exception as at the fag end of service, an attempt to hold on to the office by the employees, is resorted to in this type of litigation, whether it regarding change of date of birth or date of superannuation. This is classic example of such type of litigation which has been initiated just before the retirement with the sole purpose of getting an interim order which would sail the main litigation through for a period of two years before the case is decided, thus allowing the main relief by continuing with all the financial benefits for the additional period of two years.

Even otherwise, we are of the considered opinion that the present appeal is not maintainable keeping in view the law laid down by the Apex Court in *Midnapore Peoples' Coop. Bank Ltd. and others vs. Chunilal Nanda and others*, (2006) 5 SCC 399, wherein the Supreme Court, while deciding the issue of maintainability regarding the Letters Patent Appeal against interim/interlocutory orders, has held as under :-

"15. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories :

- (i) Orders which finally decide a question or issue in controversy in the main case.
- (ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.
- (iii) Orders which finally decide a collateral issue or question which is not the subject-matter of the main case.
- (iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.
- (v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.

The term "judgment" occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in Section 2(9) CPC and orders enumerated in Order 43 Rule 1 of CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) to (iii) above, are, therefore, "judgments" for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not "judgments" for the purpose of filing appeals provided under the Letters Patent."

We are, thus, of the considered opinion that the order, which is subject matter of challenge, is not a "judgment" in which, LPA would be maintainable, and therefore, is not such an order, which would cause prejudice or inconvenience. It does not finally determine the rights and obligations of the parties, as noticed above. In case, the appellant eventually succeeds in her endeavour that the Bye-Laws of Central Board of Secondary Education are applicable, the petitioner would be entitled for all the monetary benefits for the additional period of employment claimed.

Keeping in view all the circumstances enumerated above, we are of the considered opinion that the present appeal deserves dismissal on both the counts i.e. neither the appeal is maintainable nor it seems that learned Single Judge has faulted in any manner while passing the impugned order.

Dismissed.