
(2012) 01 P&H CK 0321

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 604 of 2012 (O and M)

Om Parkash

APPELLANT

Vs

Principal, Government Sr. Secondary School, Nilokheri and
others

RESPONDENT

Date of Decision : 27-01-2012

Acts Referred:

Citation : (2012) 167 PLR 203

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Saurabh Dalal, for the Appellant;

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—Challenge in the present petition is to the order dated 9.1.2012, passed by the learned court below, rejecting the application filed by the petitioner-plaintiff for amendment of the plaint. A suit was filed by the petitioner-plaintiff challenging the selection of respondent No. 4-defendant No. 4 as Guest Teacher in Government Senior Secondary School, Nilokheri. The entire evidence of the parties was over and the case was fixed for rebuttal and arguments, when the application in question was filed to incorporate para No. 10(a) in the plaint and a para in the prayer clauses, which are extracted below:

Para No. 10(a)

That the applicant filed a writ petition No. 7242 of 2006 in the High Court of Punjab and Haryana at Chandigarh against the defendants but the same was withdrawn by the counsel of the applicant on 11.5.2006 as oral direction of the Hon'ble High Court regarding jurisdiction and maintainability of the said writ petition as the matter between the parties should be tried by the Civil Court having territorial jurisdiction as the applicant was informed by his counsel at Chandigarh.

Prayer clause

A decree in the mandatory form directing the defendants No. 1 to 3 to appoint the plaintiff as Guest Teacher for the post of Hindi Lecturer in Govt. Sr. Sec. School instead of defendant No. 4 according to rule and policies framed by the Govt. of Haryana since the date of appointment i.e. 21.12.2005. Defendants No. 1 to 3 be also directed to pay all the salary and benefits as defendant No. 4 got due to her illegal appointment in collusion with defendants No. 1 to 3.

2. Learned counsel for the petitioner submitted that the amendment, which is sought by the petitioner-plaintiff is formal in nature. The petitioner will not lead any evidence as the material already on record is sufficient to decide the case.

3. After hearing learned counsel for the petitioner, I do not find any merit in the submissions made. As is evident from the impugned order, evidence of the petitioner-plaintiff was closed on 25.11.2008. The defendants also closed their evidence on 23.9.2009. Thereafter, the case was fixed for rebuttal and arguments. It was at that stage that application for amendment of the plaint was filed, which was dismissed. The facts sought to be brought on record in the pleadings in the form of para No. 10(a) is that the petitioner-plaintiff had earlier filed CWP No. 7242 of 2006 in this court, which was withdrawn on 11.5.2006 on the oral directions by this court regarding jurisdiction and maintainability of the writ petition in this court. As to from where the petitioner-plaintiff has sought to plead that there was any oral direction for withdrawal of the petition filed by him is not borne out from the record. The proceedings in the court always take place in writing, whether it is in the form of pleadings, recording of oral evidence, production of documents or the final judgment. It is not disputed by learned counsel for the petitioner that the writ petition was simply withdrawn and nothing, as is sought to be alleged in the amended pleadings to be filed in the court below, has been mentioned in the order passed. Statements of fact as to what transpired at the hearing, recorded in the judgment/order of the court, are conclusive of the facts stated therein. No one can be permitted to contradict the same by way of affidavit or otherwise. In case a party finds that there is some error in recording of the order or judgment, it is incumbent upon the party to move an application for correction immediately after such an order was passed. On the issue, Hon'ble the Supreme Court in Jagvir Singh and Others Vs. State (Delhi Admn.), opined as under:

if really there was no concession, the only course open to the appellants was to move the High Court in line with what has been said in State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, In Bhavnagar University v. Palitana Sugar Mill Pvt. Ltd. and others, 2002 AIR S.C.W. 4939 the view in the said case was reiterated by observing that statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated that no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judge who has made the

record. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. It is not open to the appellants to contend before this Court to the contrary.

4. Hence, to claim that the writ petition was withdrawn on account of certain observations made by this court cannot be accepted.

5. The amendment, which is sought to be made by the petitioner-plaintiff in the suit now shows that the fact that earlier the petitioner had approached this court by filing a writ petition claiming same relief and its withdrawal was not mentioned in the suit filed, which was otherwise required to be mentioned. It may amount to concealment of a fact. The prayer sought to be made in the suit is for direction to the Government to appoint the petitioner as a Guest Teacher, as if the court is to consider comparative merits of the candidates and direct appointment in Government service.

6. For the reasons mentioned above, I do not find any illegality in the order passed by the learned court below dismissing the application for amendment of the plaint. Accordingly, the present petition is dismissed.