

(2014) 08 P&H CK 0286
In the Punjab And Haryana At Chandigarh
Case No : Cr No. 3222 of 2014

Rajni Saggu

APPELLANT

Vs

The Managing Committee Sant Francis School

RESPONDENT

Date of Decision : 04-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 14, Order 6 Rule 17, 151

Citation : (2014) 08 P&H CK 0286

Hon'ble Judges : Bharat Bhushan Parsoon, J

Bench : Single Bench

Advocate : Parminder Singh-1, Advocate for the Appellant; B.S. Guliani, Advocate for the Respondent

Judgement

Dr. Bharat Bhushan Parsoon, J.—Impugned order dated 25.4.2014 whereby allowing application under Order VI Rule 17 CPC, filed by respondent-defendant No. 2 written statement was allowed to be amended is under challenge in this petition at the behest of the petitioner-plaintiff. By way of amendment, the lower Court has allowed the defendants to incorporate pleadings to the effect that services of the petitioner-plaintiff had been terminated on 20.11.2011.

2. In this petition, it is claimed by the petitioner-plaintiff that such an amendment could not have been allowed to be made by respondent No. 2 particularly when right from the beginning no such case had been disclosed by them. It is claimed that the termination order has been created during pendency of the suit and the entire case is sought to be retailored in such a way that it would cause prejudice to the plaintiff.

3. Hearing has been provided.

4. Plea of the respondent - management, however, is that amendment in the written statement can be made even at the appellate stage and defendants cannot be denied their right to put-forth their defence particularly when it comes out from the record maintained by the managing committee.

5. Counsel for the parties have been heard while going through the impugned order, grounds of revision as also the attending facts and circumstances.

6. Before rival claims of the parties are appreciated, it would be better to take stock of the facts and attending circumstances, under which application for amendment of the written statement was filed. The petitioner was working as a Teacher in respondent school since 1999 on permanent basis against a regular post. After summer vacations, when she went to school on 13.7.2011 as usual, respondent - defendant No. 2 did not allow her to join and perform her duty. The petitioner continued meeting time and again for joining her duty but on one pretext or the other, the matter was being dilated. The petitioner then filed a suit for mandatory injunction directing the respondents - defendants to allow her to join and perform her duty as also for direction to them to release her salary, service benefits and allowances w.e.f. 1.7.2011 onwards, with interest @ 12% per annum claiming that she was illegally and unlawfully not being allowed to join her duty. A declaration had also been sought therein that action of the respondent in not allowing her to join and perform her duty was, inter alia, punitive in nature and was against the rules of equity and foreplay and principles of natural justice.

7. In short, the case of the petitioner-plaintiff is that she was neither suspended nor terminated nor even dismissed from service, but was not allowed to join and perform her duty in the school since 13.7.2011, resulting in her harassment by the respondents without any reason or authority. The respondent in their written statement have taken a stand that after summer vacations there was no work available for the petitioner-plaintiff. It has also been claimed that she had not joined any duty after summer vacations. Letters dated 26.9.2011 (Annexure P-5) and 7.10.2011 (Annexure P-6) claimed by the petitioner to have been written to the respondents seeking their intervention to allow her to join and perform her duties were denied. The respondents in their written statement nowhere pleaded that services of the petitioner-plaintiff had been terminated much less on 20.11.2011. The petitioner-plaintiff had even furnished her replication (Annexure P4) dated 16.12.2013 to the written statement (Annexure P3) filed by the respondents. On these pleadings of the parties they went for trial on issues framed on 16.8.2012. On 14.5.2013 on the intervention of counsel for the respondents written statement filed on behalf of defendant No. 1 was ordered to be read for all of them.

8. After examination of three witnesses when the petitioner-plaintiff was nearing conclusion of her evidence (after examination of herself as a witness) and defendants were to start their evidence, application for amendment of written statement was preferred by the defendants, wherein they wanted to introduce to a plea that services of the plaintiff had already been terminated on 20.11.2011. This application was moved by them on 26.3.2014. Copy of the application is Annexure P-7. Tough contest was made by the petitioner-plaintiff vide reply (Annexure P-8). It was clearly explained by the petitioner-plaintiff that there was

no such termination and if there is any such document subsequently created, the same was false, fabricated and forged.

9. These facts are available on record and were in the knowledge of the lower Court. Holding that the amendment sought for is not going to change the nature of the suit and observing that law of amendment in the written statement is more liberal, application of the respondents for amendment in the written statement was allowed, which means that the plea that the petitioner was terminated from service on 20.11.2011 will now be read in the pleadings.

10. When entirety of facts, is gone into, it is abundantly clear that this defence is no more available to the respondents and clearly enough is not only an afterthought but is a venture to introduce evidence for production of which the respondents have already been foreclosed by the Court.

11. There are some prominent factors which militate against the genuineness of the claim of the respondents. For ready reference these are given hereunder:-

(i) Neither in the written statement originally filed nor in their statement of 14.5.2013 when other respondents instead of filing their fresh written statement had adopted the written statement earlier on record, there is no case of the respondents that services of the petitioner had been terminated on 20.11.2011;

(ii) Till filing of the application on 26.3.2014 for amendment of the written statement, no case of termination of petitioner had either been pleaded or even a whisper made about it;

(iii) Termination order is a fact about which is sought to be introduced by way of amendment in the written statement is of 20.11.2011. There is no material on record to show that it had ever been communicated to the petitioner-plaintiff for whom it was meant;

(iv) There is no explanation emerging from the respondents as to why termination order of 20.11.2011 did not see light of the day in the proceedings which are concedingly pending since 1999;

(v) To sustain and support her claim in the petition, the petitioner-plaintiff had moved an application under Order XI Rule 14 CPC on 23.7.2013 seeking production of certain documents from the defendants, wherein it was specifically mentioned that the production of document containing any order of punishment of copy of order on which basis the petitioner-plaintiff was not allowed to join and perform her duty was also required;

(vi) Though the respondent produced certain documents but had not produced the documents which were not traceable, deciding the application for production or documents in favour of the petitioner-plaintiff, Court had specifically called upon the respondents - defendants for production of their documents. The lower Court in its wisdom had recorded statement of counsel for the defendants which for ready reference is reproduced as below:-

It is stated that the documents which have been asked for in the application under Order 11 Rule 14 and Section 151 CPC dated 23.7.2013, most of the documents have been produced and other documents as per application cannot be produced at this time. A date for the evidence of the plaintiff be fixed.

On the basis of said statement voluntarily suffered by counsel for the respondents, the respondents were debarred from producing remaining documents in future; and,

(vii) If such document was in existence, the respondents were not to stop short of production of the same in the Court.

12. Order of 4.12.2013 vide which the defendants were debarred from producing any document in future other than already produced by them is reproduced as below:-

Today the counsel for the defendant M.S. Randhawa suffered statement that the document which was in his possession has been produced. He has in possession of the document and will produce later on. Since the applicant is produce the document at this stage. He has debarred from the document in future. Accordingly application for production of document is dispose of. Now come upon for 21.12.2013 for replication, if any.

13. Keeping in view the facts and circumstances, it is abundantly clear by now that the amendment in pleadings has been sought merely to circumvent this order and adopting the circuitous route the respondents-defendants want to produce the alleged termination order which was non-existence as no such termination of services of the petitioner had ever been pleaded by the respondents-defendants.

14. Even otherwise the amendment sought for has been allowed when the plaintiff had almost concluded her evidence and the defendants were to start their case. In view of proviso added to Order VI Rule 17 CPC when the amendment could not have been allowed once trial had started. For ready reference the said proviso is read as under-

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

15. Even otherwise, the controversy now raked up by the defendants is neither in tune with the pleading already suffered by them nor fits in the chain of events emerging on record.

16. Viewed from any angle, the amendment sought for neither is helpful for adjudicating the matter nor advances the cause of justice, rather it defeats it and causes serious prejudice to the petitioner/plaintiff.

17. Keeping in view the totality of these facts and circumstances, the impugned

order is not sustainable in law and the same is set aside. The revision is, consequently, allowed and sequelly the application for amendment of the written statement is dismissed.