
(2012) 08 MP CK 0186
In the Madhya Pradesh High Court
Case No : First Appeal No. 399 of 2005

Smt. Mamta Vaish

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 21-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 6 Rule 17, 80

Citation : (2012) 08 MP CK 0186

Hon'ble Judges : N.K. Mody, J;Brij Kishore Dube, J

Bench : Division Bench

Advocate : H.D. Gupta and Shri. Santosh Agrawal, for the Appellant;
Raghvendra Dixit, Government Advocate for the Respondents No. 1 and 3/State
State and None, for the Respondent

Judgement

Justice N.K. Mody

1. Being aggrieved by the judgment and decree dated 12.9.2003 passed by VIII Additional District Judge in Civil Suit No. 7-B/2000, whereby, suit filed by the appellant for cancellation of the order dated 27.11.1993 was dismissed, present appeal has been filed. Undisputed facts of the case are that the appellant was appointed as teacher at Gopal Bal Prathamik Vidyalaya, Ramkui, Lashkar w.e.f. 27.11.1993. The institution is a Government aided institute which is being run by respondent No. 2. It was alleged that prior to it the appellant was working as teacher in the same institution on temporary basis. It was alleged that appellant continued in service w.e.f. 13.07.1987 to 27.11.1993 as permanent teacher. In the suit, it was alleged that since the appellant was permanent teacher therefore without following the process of law, the services of the appellant could not be terminated. It was alleged that respondent No. 2 wanted to appoint one Ajay Singh Tomar as teacher, therefore, false allegations were made against the appellant and the appellant was asked to submit original certificates. It was alleged that after retaining the copies, appellant submitted the original documents with the respondent No. 2/Institution. It was alleged that after

passing Higher Secondary examination, appellant has passed intermediate examination in second division from Board of Secondary Education, Bhopal and thereafter appellant sought permission to appear in B.A. First year examination, which is being conducted by Jiwaji University, Gwalior. It was alleged that the allegation made against the appellant that the certificates submitted by her are forged while passing Higher Secondary School Certification with Roll No. 011615. Further case of the appellant is that false complaints were made by the respondent No. 2 with the Board of Secondary Education, Bhopal and after enquiry vide order dated 7.4.93 it was found that the certificates submitted by the appellant are genuine. It was alleged that in spite of all the documentary evidence that the appellant was possessing all the requisite academic qualifications, the services of the appellant were terminated vide order dated 27.11.1993. It is submitted that before terminating the services, no opportunity of hearing has been given to the appellant. It was alleged that notice was issued on 1.2.1993 u/s 80 of CPC and repeatedly various representations were submitted, but the relief prayed was not granted to her, hence, it was prayed that the suit filed by the appellant be allowed and the order dated 27.11.1993, whereby, the services of the appellant has been terminated be quashed.

2. No written statement was filed on behalf of respondent No. 1 & 3. The written statement was filed only on behalf of respondent No. 2, which was rejected on the ground that it contains no verification as per the procedure contained in the Code of Civil Procedure, thereafter, permission was sought to submit the verification, which was granted vide order dated 1.4.2002 by the court below, but the order dated 1.4.2000 was set-aside by this Court vide order dated 21.7.2003 passed in W.P.No.350/2003, thus, the net result is that the written statement submitted by the respondent No. 2 was not the written statement in the eye of law. On the basis of plaint pleadings, issues were framed and evidence of the plaintiff was recorded.

3. Shri H.D. Gupta, Senior Advocate submits that the impugned order dated 27.11.1993 is illegal as the services of the appellant were terminated without holding proper enquiry as per the Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karamcharyon Ke Vetano Ka Sandaya) Adhiniyam, 1978 and the rules framed thereunder. Learned counsel submits that no employee could be removed from service without following the procedure as prescribed under law. It is submitted that rules were framed known as Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmacharyon Ke Padachyut Karne/Sewa Se Hatane Sambandhi Prakriya), Niyam, 1983. It is submitted that without following any due procedure the service of the appellant has been terminated while the appellant was a permanent employee of respondent No. 2-institution and was performing her services since more than six years. It is submitted that respondent No. 2 is an aided institution. It is submitted that the judgment and decree passed by the learned court below be set-aside and the appeal filed by the appellant be allowed.

4. Learned Government Advocate submits that after following the procedure prescribed under the law the appellant was terminated from service, as prima-facie it was found that the certificates possessed by her were not genuine. Learned counsel submits that the Board of Secondary Education has also found that the certificates and marksheets submitted by the appellant were not genuine.

5. It appears that to prove the case, the appellant has examined herself as P.W.1 and also examined Nikhil Bhatjiwala as P.W.2, Dr. Kishan Singh Bhadoriya as P.W.3. Apart from this, the appellant has submitted the documentary evidence, Exhibits P-1 to P-7. Exhibit P-1 is the order dated 27.11.1993, whereby, the services of the appellant were terminated. Exhibit P-2 is the marksheet issued by the Board of Secondary Education, Bhopal, whereby, the appellant has been declared as pass in second division. Exhibit P-3 is the marksheet showing that the appellant passed 10+2 Examination in the year 1995. Exhibit P-4 is the certificate issued by the Board of Secondary Education, Bhopal, whereby, it was declared that the appellant has completed her Higher Secondary School Certification from Mahatma Gandhiji Higher Secondary School, Lala Ka Bazar, Lashkar, Gwalior. Exhibit P-5 is the registration certificate issued by Jiwaji University. Exhibit P-6 is the registered notice dated 2.12.93. Exhibit P-7 is the order passed by this Court in M.C.C. No. 2/98 dated 2.12.1999.

6. Respondent Nos.1 and 3 have filed the documents, Exhibit D-1 to D-17. Exhibit D-1 is an application dated 22.6.1988 which was submitted by the appellant before the respondent No. 2, wherein, a prayer was made to appoint her as teacher. Exhibit D-2 is the photocopy of the certificate issued by the Board of Secondary Education. Exhibits D-3 & D-4 are photocopies of the marksheet. Exhibit D-5 is the letter issued by Dayal Seva and Shiksha Samiti, Gwalior dated 2.8.90, wherein, the appellant was directed to submit certificates including marksheets. Exhibit D-6 is the letter issued by the Board of Secondary Education, Bhopal dated 9.11.92, whereby, respondent No. 2 was informed that the concerned candidate (appellant herein) has interpolated the documents and tried to cheat the institution. Exhibit D-7, is the letter issued by Jiwaji University, whereby, it was informed that appellant has never appeared as student for the examination of B.A. Final year with Roll No. 2393. Again, Exhibit D-8 is the letter issued by the Board of Secondary Examination, Bhopal. No defence witnesses has been examined by the respondent No. 2.

7. In absence of pleading, keeping in view the order passed by this Court in W.P.No.350/2003, whereby, it was directed that the written statement submitted by the respondent No. 2 is not in accordance with law, there was nothing on record except the plaint and the evidence adduced by the appellant and the documents on record (Exhibit D/1 to D/17).

8. The appellant has also filed amendment application before this Court for amendment of plaint under Order 6 Rule 17 of CPC and another application under Order 41 Rule 27 of CPC where by certain documents have been filed.

Keeping in view the conduct of respondent No. 2 and the manner in which the written statement was filed before the court below and the absence of respondent No. 2 before this Court and also keeping in view the fact that the appellant is a lady and was appointed some where in the year 1987 as permanent teacher who continued upto the year 1993, the appeal filed by the appellant is allowed in part and the judgment and decree dated 12.9.2003 passed by the court below is set aside. The applications filed under Order 6 Rule 17 CPC and application under Order 41 Rule 27 CPC are allowed with a direction to the learned court below to permit the appellant to amend the pleadings. Learned court below before proceeding further shall issue a fresh notice to the respondents which includes respondent No. 2 and thereafter after giving opportunity of adducing evidence to both the parties shall decide the suit within a period of six months from the date of appearance of the respondents. The respondents shall also be at liberty to file written statement. The learned court below shall decide the suit within the stipulated time as the appeal is arising out from the service matter wherein the services of the appellant has been terminated. It is made clear that learned Trial court while deciding the suit shall keep in view the procedure laid down under the rules framed as Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Padachyut Karne/Sewa Se Hatane Sambandhi Prakriya), Niyam, 1983 and shall not give any unnecessary adjournment. Parties are directed to appear before the Trial Court on 30th October, 2012.