

(2019) 07 UK CK 0053

In the Uttarakhand High Court

Case No : Second Appeal No. 99 Of 2016

State Of Uttarakhand And Others

APPELLANT

Vs

Chandan Singh Rathore And Another

RESPONDENT

Date of Decision : 03-07-2019

Acts Referred:

Uttar Pradesh Public Services Tribunal Act, 1976 — Section 1(4), 6
Uttar Pradesh Intermediate Education Act, 1921 — Section 22
Uttaranchal School Education Act, 2006 — Section 29
Code Of Civil Procedure, 1908 — Section 9, Order 14 Rule 3, Order 14 Rule 4

Citation : (2019) 07 UK CK 0053

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Tarun Lakhera, B.D. Upadhyaya, Naveen Tewari

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. The present Second Appeal has been preferred by the defendants/appellants wherein the Suit preferred by the plaintiff/respondent for a claim of salary for the period from April 1992 to August 1992, and for the period thereafter, had been decreed in his favour by virtue of the judgement under challenge dated 18th August 2010, the learned trial Court of Civil Judge (Junior Division), Almora has rendered the following decree :-

"वादी का वाद सव्यय डिक्री किया जाता है प्रतिवादीगण को आदेशित किया जाता है कि वे वादी को माह अप्रैल 1992 से अगस्त 1992 तक का वेतन रू 12,655/- प्रदान करें एवम उसके पश्चात भी वादी को नियमानुसार देय वेतन एवं परिलब्धियाँ प्रदान करें। प्रतिवादीगण को यह भी आदेश दिया जाता है कि वादी को उपस्थिति पंजिका उपलब्ध कराया जाय।"

2. Being aggrieved against the said judgement and decree dated 18th August 2010, the State has preferred a Civil Appeal being Civil Appeal No. 46 of 2015, State of Uttarakhand and others v. Chandan Singh Rathore and others. The

learned appellate Court too, while considering the propriety of the judgement, as rendered by the learned trial Court has dismissed the appeal vide its judgement dated 27th February 2016. It is as against the judgements rendered by the trial Court on 18th August 2010 in Suit No. 55 of 1992, Chandan Singh Rathore v. State of Uttarakhand and another and of dated 27th February 2006 rendered in Civil Appeal No. 46 of 2016, State of Uttarakhand and others v. Chandan Singh Rathore and another, the present Second Appeal has been preferred by the State, defendants/appellants.

3. The second appeal, when it was instituted, the same has been admitted by the coordinate Bench of this Court vide its order dated 22nd February 2017, and following substantial questions of law was framed:-

"(i) Whether the order of learned District Judge suffers from illegality when he overlooked that the learned Civil Judge (J.D.), Almora committed mistake in decreeing the suit for salary for the period subsequent to August 1992, which relief was never sought by the respondent no. 1, nor he paid requisite court fees which in fact would have been rise to a new cause of action?

(ii) Whether the Civil Suit No. 55/92 filed by the respondent no. 1 before the Civil Judge (J.D.), Almora was maintainable in view of Section 6 of the U.P. Public Services Tribunal Act, 1976?

(iii) Whether the suit of the respondent no. 1 itself was not legally maintainable in view of Section 22 of the Intermediate Education Act, 1921?"

4. The first substantial question of law, which has been argued by the learned counsel for the appellants is to the effect that as to whether the judgement as rendered by the Courts below could be said to be faulted on account of the reasons that the plaintiff/respondent had for the relief had never been sought by the respondent No. 1 nor the plaintiff/respondent had paid the requisite Court fees, which in fact could have been given rise to a new cause of action.

5. In answer to this question, it is the settled law that so far as the issue pertaining to the remittance of the requisite Court fees is concerned, it always goes in consonance to the relief sought in the plaint and if at all the Suit is not properly valued or the Court fees has not been paid it is invariably the responsibility of the Court to have framed an appropriate issue and to answer the same. But as far as the defendant/appellant is concerned, the defendant/appellant has got no right whatsoever to raise the questions pertaining to the suit suffering from the effect of payment of insufficient Court Fees. Even otherwise also, in the case at hand and looking to the relief clause which has been sought for by the plaintiff/respondent in the Suit, if the Suit is decreed, in that eventuality, any interpretation which is being sought to be given by the defendants/appellants to the Court fees will not be ousting the jurisdiction of the Civil Court (Junior Division) to deal with this Suit in question. Thus any question pertaining to the ouster of jurisdiction of Court by the Court Fees would be of no relevance at all.

6. This is being said so because the defendant/appellant's right to raise a question pertaining to the inappropriate valuation of the Suit or for non supply of the sufficient Court fees could only be permitted to be raised when it has an effect of taking away the jurisdiction of the Court before which the Suit has been instituted. That is not the case at hand. Even if the objection which has been taken by the defendant/appellant though not having any right to raise such an objection is taken into consideration and the Suit even if it is permitted to be valued in accordance with the interpretation given by the defendant/appellant, it will not be ousting the the jurisdiction of Civil Judge (J.D.) to deal with Suit. Consequently, the argument as extended by the learned counsel for the appellant pertaining to the question with regards to the payment of insufficient Court fees is answered against him, because it is absolutely the prerogative of the Court to frame a question and to ask the plaintiff for the remittance of the requisite Court fee, is an issue which is inter se between the Court and the plaintiff, who has approached the Court for seeking a particular relief, for which the defendant has got no role to play. Hence, the issue is answered in negative as against the appellant.

7. Even if it is presumed that the insufficient valuation of suit would be having bearing in the decision making process, or regarding the pecuniary jurisdiction of the Court, it ought to have been raised and considered in consonance to the relief sought, which legally ought to be raised at the initial stage of the suit itself. Normally, it should be decided as initial issue if it has any bearing on the jurisdiction of the Court. Otherwise the defendant/appellant has no right to raise the issue of insufficiency of the Court fee as a basic issue and that too at the 2nd appellate stage.

8. The second question, which has been raised by the learned counsel for the appellant/State is that in view of the provisions contained under Section 6 of the U.P. Public Service Tribunal Act, 1976, it creates an absolute bar that no civil Suit would be maintainable before the Court of law for any relief, in respect of the matters, which are covered in relation to the employment or conditions of service or the subjects which are covered by the U.P. Public Service Tribunal Act, 1976.

9. In answer to this question, for the purposes of attracting a bar created by Section 6 of the U.P. Public Service Tribunal Act, 1976, its inevitable to consider the nature and purpose of Section 6 of the Act, which is quoted hereunder:-

"6. Bar of suits. - (1) No suit shall lie against the State Government or any local authority or any statutory corporation or company for any relief in respect of any matter relating to employment at the instance of any person who is or has been a public servant, including a person specified in 1 [clauses (a) to (g)] of sub-section (4) of Section 1.

(2) All suits for the like relief, and all appeals, revisions, applications for review and other incidental or ancillary proceedings (including all proceedings under Order XXXIX of the first schedule to the Code of Civil Procedure, 1908) (Act V of

1908), arising out of such suits, and all applications for permission to sue or appeal as pauper for the like relief, pending before any court subordinate to the High Court and all, revisions (arising out of interlocutory orders) pending before the High Court on the date immediately preceding the appointed date shall abate, and their records shall be transferred [to the Tribunal]² and thereupon the Tribunal shall decide the cases in the same manner as if they were claims referred to it under Section 4:

Provided that the Tribunal shall, subject to the provisions of Section 5, recommence the proceedings from the stage at which the case abated as aforesaid and deal with any pleadings presented or any oral or documentary evidence produced in the court as if the same were presented or produced before the Tribunal.

(3) All appeals pending before the High Court on the date immediately preceding the appointed date arising out of such suits shall continue to be heard and disposed of by that court as heretofore as if this Act has not come into force :

Provided that if the High Court considers it necessary to remand or refer back the case under Rule 23 of Rule 25 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), the order of remand or reference shall be directed [to the Tribunal]³⁶ instead of to the subordinate court concerned and the Tribunal shall thereupon decide the case or issue, subject to the directions of High Court, in the same manner as if it were a claim referred to it under Section 4."

10. In the said Section, it is to be seen that the said bar is only made applicable in relation to the services for which the appointment has been made by the State Government, Local Authority, Statutory Corporation and Companies. Because, each of these entities have got their independent juristic existence. But, as far as the plaintiff/respondent is concerned, the plaintiff/respondent will not fall to be an employee of any of such Institutions referred to in Section 6 for which the bar is created in filing of the suit, where the bar of institution of the Suit is attracted. The justification for the same is that it is not in dispute that the plaintiff/respondent is an employee of an aided Institution, which is receiving a financial assistance and is in grant-in-aid from the State Government only to a limited extent to meet the liability of salary, payable to the staff of the Institution. Because even otherwise also, the employees of the Institutions which are recognised under the then UP Intermediate Education Act 1921, or the present Uttarakhand Education Act 2006, and are employed in the aided Institutions which are the Institutions which are exclusively managed and controlled by an elected Committee of Management, which is being operated by a Society, registered under the Societies Registration Act and thus this Court is of the view that the employees of the Committee of Management of whom the appointing authority of which happens to be the Managers of the Committee of Management will not fall to be within the definition of the juristic persons which has been referred to and included in Section 6 of the U.P. Public Service Tribunal Act, 1976,

thus this question too is answered against the appellant.

11. Further to substantiate his case that the Suit would not be tenable the reference has been made by the appellant to provisions contained under sub Section (4) of Section 1 of the U.P. Public Service Tribunal Act, 1976. Section 1 of the Act it only contemplates the limit and the extent to which the act would be applicable and over which institutions. A specific reference which has been made by the defendant/appellant is to sub Section (4) of Section 1 it is from the viewpoint to carve out an exception that the provisions of U.P. Public Service Tribunal Act, 1976, would not apply to those Institutions, which are referred under sub Section (4). Consequently, if the Institutions, which are being run and managed under the Scheme of Administration, which are framed under Section 29 of the Uttaranchal School Education Act or under the UP Intermediate Education Act, the exception of the applicability of the Act, as contemplated under sub Section (4) of Section 1 would not be attracted in the case at hand, because the petitioner's institution will not be falling within exemption clause as provided under sub Section (4) of Section 1 of the U.P. Public Service Tribunal Act, 1976, thus the Act, if read with Section 6 along with sub Section (4) of Section 1, it will not create a bar that the Suit for the nature of relief claimed by the plaintiff would not be tenable before the Civil Court.

12. Even otherwise also, if the provisions of Section 9 of the CPC is taken into consideration, the legal bar of approaching the Civil Court will only apply in those circumstances where the law specifically by incorporation creates a restriction from institution of the proceedings before the Civil Court which is not the case at hand, because either the U.P. Public Service Tribunal Act, 1976 or the Uttaranchal School Education Act or the UP Intermediate Education Act of 1921 does not create any bar of institution of a Suit by an Institution which is run and managed by the recognized elected Committee of Management under the grant which has been given by the State Government to meet the expenses of the salaries only otherwise the control and management of the Institution is exclusively vested with the management which is created under the Act itself and the appointing authority of the plaintiff/respondent too happens to be the Manager of the institution who is not a public servant in view of the definition of the U.P. Public Services Tribunal Act, 1976. Thus the bar of Section 6 will not come into play.

13. The learned counsel for the appellant in order to oust the jurisdiction of the Civil Court has also made a reference of Section 22 of the Intermediate Education Act, which yet again creates a bar for institution of the proceeding before the Civil Courts for the purposes of brevity, the provisions contained under Section 22 of the Intermediate Education Act, 1921 which reads as under:

"Section 22 - Bar of jurisdiction of Courts [No order or decision made by the Board or any of its Committees in exercise of the powers conferred by or under this Act shall be called in question in any Court.]"

14. If the language of Section 22 is read in precision, the bar of institution of the

proceedings before the Civil Court as made applicable by Section 22 is only with regard to the order or a decision which is taken by the Board as defined under the Act of 1921 or any of the Committee which has constituted by the Board itself that is not the case at hand. Since here the plaintiff/respondent has sought the payment of the arrears of the salary for the period specified in the plaint, the bar of Section 22 and the manner in which it has been interpreted by the appellant will not be applicable, hence the question pertaining to the maintainability of the Suit is answered against the defendant/appellant.

15. There is another important question, which is to be taken into consideration is that if at all the appellant intended to raise an issue pertaining to the maintainability of the proceedings before the Civil Court, though not traceable under law and for reasons given above, the defendant/appellant ought to have exercised its power for getting an appropriate issue framed before the trial Court itself by exercising its power under Order 14 Rule 3 to be read with Rule 4. Surprisingly, despite of raising the argument pertaining to the tenability of the proceedings before the Civil Court at the second appellate stage for the first time, the appellant had never raised such question nor got any such issue framed pertaining to the competence of the Civil Court, to deal with the issue and hence meaning thereby, he himself has not pressed the said issue before the learned trial Court, hence in view of the reasons which has been given above the argument pertaining to the maintainability of the proceedings in view of the bar created by Section 6 of the U.P. Public Service Tribunal Act, 1976, and Section 22 of the Intermediate Education Act, 1921 is decided against the appellant. The reason is further justified that for the purposes of invoking the jurisdiction under Section 9, the Section 9 of CPC specifically contemplates that all proceedings would be maintainable before the Court except those which are specifically barred by a special statute. Since there is no such statute which has been placed on record, which was creating a restriction from filing of a suit for the claiming of arrears of salary by an employee of the Institution which is run, controlled and managed by the Committee of Management, the plea arising out of a substantial question of law, as framed by this Court does not arise for consideration by this Court, hence it is answered against the appellant.

16. Though not a substantial question of law framed at the time of admission of the second appeal, but at the stage of final hearings, the appellant has tried to raise a question pertaining to the fact as to whether the nature of relief, which has been sought for by the plaintiff in the suit with regard to the payment of salary whether at all it could be granted for the period beyond August 1992. What is important is that if the pleading of the plaint is taken into consideration to answer the aforesaid question, the plaintiff had specifically pleaded in para 5 and para 11 of the plaint which is quoted hereunder:

"5. कि वादी ने अपनी सुरक्षा के लिए भी सुरक्षा दिए जाने बाबत लिखा था पर वादी के लिए कोई सुरक्षा-व्यवस्था नहीं की गई। यह सब एक षड़यंत्र था ताकि वादी अपनी अध्यापन कार्य न कर सके। इसके अलावा वादी को बोर्ड की परीक्षाओं किसी प्रकार का कार्यभार नहीं दिया गया। इस बीच माह मार्च 1992 का वेतन वादी को दे दिया गया, जिससे

वादी को यह विश्वास हो गया कि वादी को कोई कार्य के परीक्षा का न देने का कोई विशेष कारण नहीं पर माह अप्रैल से वादी को वेतन देना बन्द कर दिया गया तथा उपस्थिति पंजिका हस्ताक्षरों के लिए उपलब्ध नहीं होने दी गई तथा अन्य रजिस्टर भी छिपा दिये गये।

11. कि वादी को अपने अध्यापन कार्य में हर किस्म की शारिरिक व व्यवस्थापन आदि सम्बन्धी बाधाएं हो रहीं है। जिस वजह से अध्यापन कार्य वादी नहीं कर पा रहा है। प्रतिवादीगण को वादी के कार्य में बाधा करने से हमेशा के लिए बाज रखना आवश्यक है तथा कार्य में आवश्यक रजिस्टर उपलब्ध किये जाने अति आवश्यक है अन्यथा वादी को अपूरणीय क्षति होगी और उसकी नौकरी समाप्त की जा सकती है।"

17. As per the said paragraphs, despite of the fact that plaintiff/respondent intended to discharge his services after the aforesaid periods i.e. after August 1992, but he was unable to do so for the reason that the attendance register or any other document which was otherwise available in the Institution was not provided access to the petitioner to make his endorsement and hence it cannot be said that the plaintiff never intended to discharge his services after August 1992 rather he was restricted by the management to sign the attendance register. At this stage itself this Court feels it pertinent to answer that as far as the pleadings raised in para 5 of the plaint with regard to the non providing of the attendance register, in the written statement there is no specific denial by the defendant/appellant to the pleadings raised in para 5 of the plaint that the plaintiff has not voluntarily signed the attendance register. The reply given in written statement to para 5, 11 and 25 of the plaint read as under:-

"5. कि वाद पत्र के प्रस्तर सं0 5 में वादी को माह मार्च 92 का वेतन दिया जाना स्वीकार है शेष फिकरा जिस प्रकार लिखा गया है स्वीकार नहीं है। शेष तथ्य अतिरिक्त कथन में दिये गये हैं।

11. कि वाद पत्र का प्रस्तर सं0 11 स्वीकार नहीं है।

25. कि वादी का यह कथन भी असत्य है कि उसको आवश्यक रजिस्टर उपलब्ध नहीं कराये गये। वास्तव में हाजिरी रजिस्टर प्रत्येक अध्यापक के लिए उपलब्ध रहता है जिसमें वह अपनी उपस्थिति के हस्ताक्षर स्कूल खुलते ही करते हैं।"

18. In order to elucidate further, the learned counsel for the appellant has made specific reference to para 11 of the plaint wherein the plaintiff is alleged to have raised a plea with regard to his incapacity to discharge his services on account of his physical condition. But simultaneously the said paragraph also contains the pleading to the effect that the direction may be issued to the management that the necessary attendance register should be supplied to him so as to enable him to put his initials of attendance which the petitioner was apprehending that the Committee of Management may take it as ground for dispensing the services of the plaintiff.

19. Even in response to the pleadings raised in para 11, a very vague response has been given in the written statement by the management defendant Nos. 3 and 4 but the learned counsel for the defendant/appellant in order to answer the aforesaid plead, has made reference to para 20 of the written statement of defendant No. 1 and

2 which has got no nexus so far it relates to an act of the management of non

supplying of the attendance register to enable the plaintiff to put his initials:-

"20. कि वादी के कार्य से बिना अवकाश अनुपस्थित रहने के कारण दिनांक 26.3.92 को 31.3.92 तक वेतन भी नहीं दिया जाना था, परन्तु वेतन देयक दिनांक 25.3.92 तक तैयार कर प्रस्तुत कर देने के कारण माह मार्च 92 का पूरा वेतन भुगतान हो गया।"

20. And rather it has been submitted by the learned counsel for the respondent that the plaintiff/respondent was not even permitted to enter the Institution and it is because of these impediments which were created by the Committee of Management in league with the defendant/appellant that he was unable to put the initials on the attendance register though he had been consistently visiting the Institution even after August 1992 to create a ground to dispense his services. Thus considering the substantial question of law, which was required to be answered by this Court in relation to the concurrent finding of facts which has been recorded by the Court for the withholdment of the salary from March 1992 till July 1992, has been decided against the defendant/appellant, the present second appeal deserves to be dismissed as none of the substantial question of law, which was framed and argued by the learned counsel for the appellant had been answered against him as they do not at all call for consideration. Apart from it, one important aspect which this Court feels that it is required to be referred to is that the principal employer i.e. the management defendant No. 3 of the plaintiff/respondent has never questioned the impugned judgements pertaining to the entitlement of salary to the plaintiff for the period which he has claimed in the Suit, consequently, the Second Appeal fails and is accordingly dismissed.

21. However, there would be no order as to cost.