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(1995) 09 P&H CK 0009

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 3979 of 1993

Vishwakarma Education Society (Regd.) and Others	APPELLANT
Vs	
Smt. Madhu Dhamija	RESPONDENT

Date of Decision: Sept. 19, 1995

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 115

Citation: (1996) 112 PLR 288

Hon'ble Judges: V.K. Jhanji, J

Bench: Single Bench

Advocate: Arun Jain, for the Appellant; Baljinder Singh, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

V.K. Jhanji, J.
This shall dispose of Civil Revision No. 3979 of 1993 and Civil Misc No. 9145 - CII of 1995.

2. The revision petition has been directed against the orders of the Courts below whereby the defendants have been directed to allow the plaintiff. Madhu Dhamija, to join and work as Principal of the institution till the decision of the suit on merits.

3. Plaintiff filed a suit for declaration and permanent injunction inter-alia alleging that she joined as Head Mistress in Vishwakarma Bal Mandir on 2.6.1993, which was being run by Vishwakarma Education Society and the School is an unaided institution. It was further alleged that later the designation of Headmistress was changed to Principal and the School was got provisionally affiliated with Central Board of Secondary Education, New

Delhi for a period of three years w.e.f. 1.4.1992 to 31.3.1995. She further alleged that though her basic pay was Rs. 2120/- and full emoluments were Rs. 4130/-. But the pay scale was revised to Rs. 2050/-. Accordingly, she filed the suit apprehending her removal from service. Along with the suit, she filed an application for restraining the defendants from with holding the salary or from removing her from service. Trial Court vide order dated 29.10.1993 granted ad-interim injunction that neither salary of the plaintiff be with held nor she be removed from service. Order dated 29.10.1993 whereby the trial Court on an application filed under Order 39 Rule 2-A, Code of Civil Procedure, ordered the attachment of accounts of the School. Against these orders, defendants preferred an appeal before the Additional District Judge, Rohtak, who vide order dated 1.12.1993 dismissed the appeal, thereby directing the defendants to allow the plaintiff to join and work as Principal of the institution till the decision of the suit on merits. Defendants have now come in revision.

4. Having heard the learned counsel for the parties, I am of the view that on account of subsequent events the orders under revision cannot be sustained. Defendants in their written statement apart from taking pleas on merits, also took up the preliminary objection with regard to maintainability of the suit in the form it was presented, Issue No.6, namely, whether the suit is not maintainable in the present form, was decided as a preliminary issue. The trial Court vide order dated 8.2.1995 decided issue No.6 in favour of defendants and held that since the services of the plaintiff have been terminated the plaintiff is entitled to file suit for damages and that suit for declaration is not maintainable. Thereafter, the appellate Court relying upon the decision of the Apex Court in Executive Committee of Vaish Degree College Shamli v. Laxmi Narain AIR 1976 S.C. 888 and Smt. J. Tiwari Vs. Smt. Jwala Devi Vidya Mandir and Others, has held that plaintiff"s suit for declaration that she cannot be removed from service and is entitled to reinstatement, is not maintainable. The reason being that the suit has been filed against a private institution which does not come under the definition of State under Article 12 of the Constitution of India, nor it has any instrumentality of the State. Civil Revision No. 2615 of 1995 against this order came to be dismissed by this Court. In view of the decision given on issue No. 6, the defendants cannot be directed to reinstate the plaintiff as an interim measure. Remedy, if any of the plaintiff is to seek damages.

5. Accordingly, the revision petition is allowed and orders under revision are set aside. As a consequence thereof, application of the Plaintiff under Order 39 Rules 1 and 2 read with Section 151, Code of Civil Procedure, shall stand dismissed. Resultantly, application under Order 39 Rule 2-A, Code of Civil Procedure, having become infructuous too shall stand dismissed. No Costs.