

**(2002) 09 P&H CK 0041**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 529 of 1986

Som Parkash Bansal

APPELLANT

Vs

Managing Committee, Hindu  
Higher Secondary School and  
Another

RESPONDENT

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**Date of Decision:** Sept. 3, 2002

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17, Order 7 Rule 14
- Constitution of India, 1950 - Article 12

**Citation:** (2003) 1 CivCC 304 : (2003) 133 PLR 535 : (2003) 1 RCR(Civil) 270

**Hon'ble Judges:** Satish Kumar Mittal, J

**Bench:** Single Bench

**Advocate:** D.S. Bedi and D.V. Gupta, for the Appellant;

**Final Decision:** Dismissed

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**Judgement**

Satish Kumar Mittal, J.

This is plaintiffs Regular Second Appeal against the judgment of reversal. The Sub Judge 1st Class, Kaithal vide its judgment dated 22.3.1983 decreed the suit filed by the appellant declaring the order dated 6.7.1980 passed by the Managing Committee, Hindu Higher Secondary School, Kaithal (hereinafter described as respondent No. 1) and the other dated 14.10.1980 passed by the District Educational Officer, confirming the said order, as illegal and against the principles of natural justice. The said judgment of the trial Court, in appeal by respondent No. 1, was set aside and the suit of the plaintiff appellant was dismissed. Against the judgment and decree passed by the first Appellate Court, this Regular Second Appeal has been filed by the plaintiff-appellant.

2. In this suit, the plaintiff-appellant had challenged the order dated 6.7.1980 passed by respondent No. 1 vide which a show cause notice was issued to him by

respondent No. 2 proposing quantum of punishment sought to be inflicted upon him after the completion of departmental enquiry against him. He had also challenged the order dated 14.10.1980 passed by the District Education Officer, Kurukshetra vide which the proposal of the Managing Committee to dismiss the appellant from service was approved. The learned first Appellate Court dismissed the suit of the appellant on the ground that copies of both the aforesaid orders, which were challenged by the appellant, had not been produced on record by the appellant, though he had challenged the legality of these orders. It was held that in view of the provisions contained in Order 7 Rule 14 of the Code of Civil Procedure, it was mandatory for the appellant to produce the copies of the orders which were subject matter of challenge in the suit. Secondly, it was held that the appellant did not challenge his dismissal order, copy of which is Ex.PA on the record. Rather, he had challenged the order vide which a show cause notice was issued to him. A perusal of the order, which had been challenged in the suit, shows that it only contains proposal for inflicting the punishment of dismissal on the appellant and he was further asked to submit his representation, if any, within seven days of the receipt of notice against the proposed punishment of dismissal. The order of dismissal of the appellant from service is contained in Ex.P-1, which was conveyed on 16.10.1980. The said order was not challenged by the appellant in the suit filed by him. It was held that though the trial court declared the order dated 6.7.1980 as illegal and set aside the same, but this will not prove the case of the appellant because the order dismissing him from service still stands and was not challenged by him. It was also held by the learned first Appellate court that the suit filed by the appellant seeking declaration of the dismissal order as illegal and with consequential relief of reinstatement is not maintainable. The appellant can only file the suit for damages and not for reinstatement.

3. Shri D.S. Bali, Senior Advocate assisted by Shri D.V. Gupta, learned counsel for the appellant made three-fold submission. Firstly, he submitted that non-production of the copies of the impugned orders is of no consequence as there was a specific averment in the plaint challenging these orders and there was also a specific denial by the defendants. Once, on the basis of the pleadings of the parties, an issue has been framed, then it is immaterial whether the copies of the impugned orders have been placed on the record or not. In support of his contention, he relied upon a decision of this Court in *Faqir Singh v. Sadhu Singh and Anr.* (1971)73 P.L.R. 608.

4. I have considered the submissions made by the learned counsel for the appellant and I do not find any substance in the same. In a suit for declaration in which a specific order passed by an authority is challenged, the copy of the said order must be placed on record, particularly, when the said copy is admittedly in the possession of the plaintiff. The requirement of Order 7 Rule 14 CPC is mandatory and if copies of the impugned orders under challenge have not been produced, the suit filed by the plaintiff is not maintainable. I have gone through the judgment cited by the learned counsel for the appellant. The said judgment is not applicable in the facts

and circumstances of the present case. In that case, in a suit for pre-emption the plaintiff did not file the sale-deed along with the plaint. In that situation, it was held that the plaint cannot be rejected, but in the present case the position is entirely different. Here, the impugned orders have not been placed on record and exhibited by the appellant. This Court in *National Rice and Dal Mills v. The Food Corporation of India* (1970) 72 P.L.R. 778 has held that the documents, which are in the possession and power of a plaintiff, upon which he sues, that is, which forms the basis of the suit, must be presented to the Court along with the plaint. The consequences of non-observance of the provisions of Order 7 Rule 14 CPC are laid down in Sub-rule (I) of Rule 18, which states that documents not produced or entered in accordance with the former Rule shall not be received in evidence at the hearing of the suit. The appellant neither annexed these documents along with the plaint nor he had produced the same during the trial. The learned counsel for the appellant further argued that by non-production of these documents, no prejudice has been caused to the respondents. There is no force in this contention also, as it is not the question of prejudice which is to be caused to the respondents, but it is mandatory for the plaintiff at least to produce the documents which are under challenge in the suit.

5. Regarding the finding recorded by the first Appellate Court about non-challenging of the dismissal order by the appellant, the learned counsel for the appellant submitted that when the trial was going on, no such objection was raised by the respondents. He further submitted that if the appellant has not challenged the dismissal order, then now he can be allowed to amend the plaint and challenge the said order. I am of the view that the appellant cannot be allowed to amend the plaint at this stage, i.e., after 20 years of the passing of the order of dismissal. It is for the appellant to challenge the right and appropriate order. If he has not challenged the order of dismissal from service, the said order stands valid. By challenging the wrong order in the suit, the order of his dismissal from service cannot be set aside and the same will remain operative.

6. The learned counsel for the appellant further argued that the respondent-Managing Committee falls within the definition of instrumentality of the State. Therefore, the suit for declaration and consequential relief of reinstatement in service is maintainable and the finding recorded by the first Appellate Court that the appellant can only maintain the suit for damages is not correct. I have considered this submission, of the learned counsel for the appellant and I am unable to accept the same. Respondent No. 1 does not construe any authority within Article 12 of the Constitution of India, merely because some aid is provided by the Government to run the school. Respondent-Managing Committee is a private institution and against such institution, no suit for declaration and reinstatement in service is maintainable and if the dismissal/termination is illegal, then only a suit for damages can be filed.

7. No substantial question of law is involved in the present appeal. The judgment passed by the first Appellate Court is based on pure finding of fact and there is no

illegality or infirmity in the same.

For the aforesaid reasons, this Regular Second Appeal is dismissed.