

SUPREME COURT OF INDIA

Municipal Council, Nangal

Vs.

Aruna Saini

C.A.No.3350 of 2017

(S.A.Bobde and L.Nageswara Rao,JJ.,)

28.02.2017

JUDGMENT

L.Nageswara Rao,J.,

SLP (Civil)No.31965 of 2015

1. Leave granted.

2. The Suit filed by the Respondent seeking a direction to the Appellants to reinstate her as Social Studies Teacher in Shivalik NAC High School, Naya Nangal was decreed which was modified in the First Appeal filed by the Appellants. The First Appellate Court held that the Respondent only had a right to be considered for appointment and was not entitled for a direction of reinstatement. The High Court reversed the judgment of the First Appellate Court and restored the judgment and decree of the Trial Court. The said judgment of the High Court is in challenge before us.

3. The Respondent was appointed as a temporary Social Studies Teacher on 20.07.1994 against a leave vacancy. The vacancy arose due to the non-joining of Smt. Raj Verma who availed leave from 15.07.1993 to 17.07.1993 and did not report later. By an order dated 03.12.1994, the Executive Officer-cum-Member Secretary, Shivalik NAC High School, Naya Nangal dismissed Smt. Raj Verma w.e.f. 15.11.1994 for her unauthorised absence. Vide Resolution No.3 dated 15.11.1994 the Respondent was appointed as a Social Studies Teacher on a permanent basis in the post that fell vacant due to the termination of services of Smt. Raj Verma. One of the conditions of the appointment of the Respondent was that she will not be entitled to claim any right if Smt. Raj Verma succeeded in the case filed by her. Smt. Raj Verma was reinstated on 14.07.2003 in view of the decision of the Court in her favour. On 15.07.2003, the Executive Officer of the Municipal Council, Nangal relieved the Respondent on the ground that her services were no longer required in view of the reinstatement of Smt. Raj Verma.

4. The Respondent approached the High Court by filing a Writ Petition challenging the termination of her services and withdrew the same with liberty to approach the Labour Court. She later filed an application for modification of the order with liberty to file a Civil Suit. The said application was allowed by the High Court on 03.09.2004.

5. Pursuant to the liberty given by the High Court, the Respondent filed a Civil Suit for mandatory injunction directing the Appellants herein to reinstate her as a Social Studies Teacher in the Shivalik NAC High School, Naya Nangal by declaring the order dated 15.07.2003 as illegal, unlawful, arbitrary and in violation of principles of natural justice. The Additional Civil Judge (Sr. Division), Rupnagar, Nangal by a judgment and decree dated 16.11.2004 directed the Appellants herein to reinstate the Respondent as Social Studies Teacher w.e.f. 01.09.2004. The Trial Court also held that the Respondent was entitled for all the consequential benefits attached to the post of Social Studies Teacher w.e.f. 01.09.2004. It was further held that the Respondent was entitled for all the dues from 01.09.2004 with interest at the rate of nine per cent per annum. The Civil Court held that the order of termination dated 15.07.2003 was violative of principles of natural justice. Taking note of the fact that Smt. Raj Verma attained superannuation and retired from service on 31.08.2004 and that the Respondent worked as a regular employee for a period of 9 years, the Trial Court directed reinstatement of the Respondent w.e.f. 01.09.2004.

6. The decree and judgment of the Trial Court was modified in favour of the Appellants by the First Appellate Court. It was held that the Respondent only had a right of being considered for appointment to the post as and when it fell vacant. The Respondent approached the High Court by filing a Regular Second Appeal assailing the judgment of the First Appellate Court. The High Court restored the judgment of the Trial Court and set aside the judgment of the Lower Appellate Court. The High Court held that the Respondent worked for a period of 9 years as a regular teacher. She was granted annual increments and there were deductions from her salary towards provident fund. The High Court held that the Appellants ought to have adjusted the Respondent in an available vacancy taking into account the long period of service rendered by her on a regular basis. The High Court found fault with the judgment of the First Appellate Court by holding that fresh consideration of the case of the Respondent would only lead to multiplication of the litigation. The High Court was informed that the Respondent had two more years of service left and in view of the hardship suffered by the Respondent due to her termination, the High Court held that the Trial Court was right in directing reinstatement with consequential benefits.

6. After going through the material on record and considering the submissions made by the parties, we are of the opinion that the judgment of the High Court does not warrant interference. The termination of the services of the Respondent is in clear violation of principles of natural justice as reasonable opportunity was not given to the Respondent to furnish her explanation. Admittedly, notice of a mere 24 hours was given to the Respondent before the order of termination was passed. Undoubtedly, the regular appointment of the Respondent was on a condition that she would make way for Smt. Raj Verma in the event of her succeeding in the pending case. The fact remains that the Respondent worked on regular basis for a period of 9 years before the termination of her services. Thereafter, the

Respondent made a representation to the Appellants to appoint her in the vacancy that had arisen due to the superannuation of Smt. Raj Verma on 31.08.2004. However, the Appellants did not consider such request made by the Respondent. If the termination is bad in law, the Respondent in the normal course, would be entitled for reinstatement from the date of termination with all consequential benefits as the termination order is illegal. But, in view of the condition of the appointment of the Respondent on 20.07.1994, the Trial Court held that the Respondent was entitled for reinstatement only w.e.f. 01.09.2004 i.e. after the superannuation of the incumbent Smt. Raj Verma.

7. The notice issued by this Court in the present case was limited only for the payment of arrears. Counsel for the Appellants submitted that the Respondent is not entitled for payment of salary and other allowances for the period of 10 years during which she did not work and we find force in the said submission. In the facts and circumstances of this case, we modify the decree and judgment of the Trial Court as follows:

“a) The Respondent is entitled for reinstatement w.e.f. 01.09.2004. She would be entitled to fifty per cent of the back wages between 01.09.2004 and the date of her reinstatement.

b) The Respondent is entitled for salary and other allowances from the date of her reinstatement till the date of her superannuation.

c) The Respondent will be entitled to count the service from 2004 onwards for the purpose of computation of her pension, if any payable.”

8. With the aforesaid modification of the decree and judgment of the Trial Court, the Appeal is disposed of. No costs.