

2024:HHC:7675

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

RSA No. 178 of 2023

Decided on: 30.08.2024

Asha Sharma Appellant

Versus

Anglo Sanskrit Model
Senior Secondary School Nela & Ors. Respondents

Coram:

Hon'ble Mr. Justice Bipin Chander Negi, Judge

Whether approved for reporting? ¹

For the appellant : Mr. Subhash Sharma, Advocate.

For the respondents : Ms. Kiran Jeet Kaur Narula, Mr. Y. Paul & Mr. Lalit Kumar Sehgal, Advocates

Bipin Chander Negi, Judge

The present appellant was the plaintiff before the Trial Court. The present appeal has been preferred against the judgment and decree dated 02.05.2023 passed by the Learned District Judge, Mandi, District Mandi, H.P. in Civil Appeal No.09 of 2022 affirming the judgment and decree dated 20.09.2022 passed by the learned Civil Judge, Court No.II, Mandi, District Mandi, H.P. in Civil Suit 6748/2013, whereby, the suit filed by the present appellant for declaration and mandatory injunction has been dismissed by the Trial Court.

2. Heard the learned counsel for the parties perused the impugned judgments.

¹ Whether the reporters of the local papers may be allowed to see the judgment?

3. The present appellant had filed a suit before the Trial Court seeking therein a declaration that the alleged resignation dated 31.07.2010 be declared non est and the present appellant be reinstated to her original post from the date of her unlawful disengagement with all consequential service benefits.

4. Issues in the case were framed on 27.09.2016 and an additional issue was framed on 23.08.2022. The present appellant appeared as a witness in the case. No other witness appeared on behalf of the present appellant before the Trial Court. Insofar as the defendants are concerned, only one defence witness i.e. defendant No.2 had appeared.

5. The moot point which came up for consideration before the Courts below was with respect to the alleged forced resignation of the present appellant at the hands of respondents No.1 and 2. In this respect, mala fides were alleged against two teachers i.e. Manish and Vanita. As per the present appellant, it is the aforesaid two individuals who had fraudulently obtained the signatures of the appellant on the alleged resignation dated 31.07.2010.

6. In this respect, the First Appellate Court has correctly held that since mala fides were being alleged against Manish and Vanita, therefore, they were mandatorily required to be impleaded as necessary parties and in their absence, the Court cannot adjudicate on a plea of mala fides. Other than the aforesaid, it has been correctly held that fraud whether alleged in a criminal or

civil proceedings must be established beyond reasonable doubt. After appreciating the evidence on record, both the Courts below have correctly held that the allegation of fraud in the case at hand has not been proved beyond reasonable doubt by the present appellant.

7. Rather to the contrary, the explanation offered by the present respondents that the appellant had initially abandoned her job and thereafter resigned on 31.07.2010 stands substantiated from the material on record. The attendance register (Ex. PA) shows that the appellant was on casual leave w.e.f. 29th April till 7th May. Thereafter, the appellant is shown to be absent without leave from 15th May onwards. The attendance of the appellant is not marked in the month of June or July. The school had closed for summer vacation w.e.f. 12.07.2010 till 20.08.2010. Subsequent to the reopening, the name of the appellant is not mentioned in the attendance register.

8. On the reopening of the school, nothing has been placed on record to show that the appellant had submitted joining reports duly endorsed by the school and despite the same, the appellant had not been permitted to join duties. No complaint has been filed on record by the appellant pointing therein that on account of non-permitting of joining of the appellant, the appellant had complained to a higher authority.

9. In view of the aforesaid, I see no infirmity in the judgments of the Courts below. Other than the aforesaid, there

arises no question of law much less a substantial question of law in the present appeal. The present appeal is dismissed being devoid of any merit.

(Bipin Chander Negi)
Judge

August 30, 2024
(Ankit)