**IN THE HIGH COURT OF PUNJAB AND****HARYANA** **AT CHANDIGARH**

RSA No. 1248 of 2010

Decided On: 10.12.2010

Appellants: **Kamla Devi**
**Vs.**
Respondent: **Principal Chhotu Ram Memorial Public****School** **and Ors.**

**Hon'ble Judges/Coram:**
Rakesh Kumar Garg, J.

**JUDGMENT**

**Rakesh Kumar Garg, J.**

1. This is Plaintiff's second appeal challenging the judgments and decrees of the Courts below whereby her suit for declaration to the effect that the impugned order vide which the post against which she was employed has been abolished was illegal and not binding upon her rights and the Appellant was entitled to be treated in service with consequential relief of permanent injunction restraining the Respondents implementing the same against her in any manner, was dismissed.

2. In brief the case of the Appellant is that she was appointed as Junior Teacher in the Respondent school on 3.3.1997 and was confirmed on 29.9.1998. She was doing her duty with sincerity and full dedication. However, from the very beginning the principal of the schoolstarted exploiting her by paying less salary after obtaining her signatures for much more amount that was being paid to her. On protest being raised she was threatened to be thrown out. Her salary was also stopped. Feeling aggrieved the Plaintiff served a legal notice. In pursuance of that notice Respondent released some amount to her without any details. Still she was paid less salary and in this way the Respondent has withheld the amount of Rs. 94200/-from her salary. It is further the case of the Appellant that she was suspended on 20.12.2002 Thereafter, the Respondent abolished the posts of two Junior Teachers in theschool against the Rules applicable. Further case of the Appellant is that since she was working against the confirmed post she could not be removed from the said post by abolishing the post and further no show cause notice was ever issued to her, nor any inquiry was conducted. In this view of the matter, action of Respondent was malafide and hence, the present suit.

3. Upon notice, Defendants filed their written statement alleging therein that the institute being a private institution, the present suit was not maintainable. On merits, allegations levelled by the Appellant were denied and it was alleged that posts were abolished because strength of students was much less.

4. The trial Court after considering the evidence on record and hearing learned Counsel for the parties, dismissed the suit vide its judgment and decree dated 13.1.2007.

5. The appeal filed by the Appellant was also dismissed by the lower Appellate Court.

6. Still not satisfied the Appellant has filed the instant appeal challenging the judgments and decrees of the Courts below.

7. Learned Counsel appearing on behalf of the Appellant has vehemently argued that the lower Appellate Court while dismissing the appeal has held that the Respondent had not followed the provisions of Haryana School Education Act, 1995 and the Haryana School EducationRules 2003, still the relief prayed by the Appellant has not been granted to her and therefore, the judgment and decrees of the Courts below are liable to be set aside.

8. I have heard learned Counsel for the Appellant and has perused the impugned judgments and decrees. It is not in dispute that the service of the Plaintiff/Appellant was terminated on the ground that strength of students was decreeing and post was abolished. There is again no dispute about the fact that the Respondent-institution has a right and authority to abolish any post following conditions laid down under the aforesaid Rules. No doubt under Rule 167(2) of the aforesaid Rules, it was necessary on the part of the Respondents to give three month notice in writing or three months salary and the Respondent cannot escape their liability on the basis of the aforesaid rules.

9. However, admittedly the relationship between the parties is based on contract between two private parties and it is well settled that the private employment is to be governed by the terms of contract between the parties and the contract of personal service cannot be specifically enforced and a Court will not give a declaration that the contract subsists and the employee continues to be in service against the consent of employer.

10. In this view of the matter, no fault can be found with the findings of the Courts below as admittedly according to Rules 167(2), the Appellant was entitled to a notice of three months period or salary of three months in lieu of the aforesaid notice and the same has been granted to her by the lower Appellate Court.

11. In this view of the matter, I find no substantial question of law arises in the present appeal.

Dismissed.