

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL REVISIONAL JURISDICTION)

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO. 4277 OF 2015**

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Yasin Uddin Ahammad and others

... Petitioners

-Versus-

Afroza Sultana

... Opposite party

None appears

... For the petitioners.

Mr. Sultan Uddin, Advocate

... For the opposite party.

**Heard and Judgment on 18.06.2023**

This Rule at the instance of the defendant the Chairman, of the Managing Committee of Puran Payla Registered Non-government Primary School and others is directed against the judgment and decree dated 21.05.2015 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Manikganj, in Title Appeal No.04 of 2014 dismissing the same and affirming the judgment and decree dated 20.11.2013 passed by the learned Assistant Judge, Shibaloy, Manikgonj in Other Suit No.27 of 2010 decreeing the suit.

Facts in short are that the opposite party as plaintiff filed above suit for a declaration that she is the lawful Assistant Teacher of Puran Payla Registered Non-government Primary School alleging that she was appointed in above school as an Assistant Teacher on 01.01.2001. She became sick due to viral hepatitis and chronic liver disease on 16.07.2007 which made her unable to attend above school for the period from 17.07.2007 to 30.09.2007. After recovery she went to resume duty

on 01.10.2007 when defendant No.2 disclosed that her petition for leave was granted with full pay and advised her to join work after full recovery. After one month she again went to join work when defendant No.2 disclosed that the Management Committee had adopted a resolution against her and she cannot be allowed to join work unless she submits a petition for leave supported by a medical certificate.

The father-in-law of the plaintiff was a member of above School Managing Committee and defendant No.2 obtained his signatures on several papers on various pretexts. The issue of the absence of the petitioners was never discussed in the Managing Committee openly and transparently and a false resolution was adopted on 15.07.2008 after fraudulently obtaining the signatures of the members of the Managing Committee. The plaintiff sent letters on 15.07.2009, 14.09.2009 and 14.01.2010 to the Chairman of the Managing Committee seeking permission to join work but she did not receive any reply.

Defendant Nos.1-16 contested the suit by filing a joint written statement wherein they denied all material claims and allegations made in the plaint and stated that the claim of the plaintiff that she was sick for the period from 17.07.2007 to 30.09.2007 is false. It is not true that the plaintiff came to join her work on 01.10.2007 and defendant No.2 advised her to come after full recovery. The plaintiff did not submit any petition for leave and she abstained from coming to the school since 17.07.2002. The petitioner was given a notice for her suspension from service on 07.06.2008 but the plaintiff did not give any reply to that. In the meeting of the school Managing Committee dated 18.08.2009 a consensual decision was made for dismissal of the plaintiff from service of the school due to her continuous absence.

On 22.10.2013 an additional written statement was submitted by above defendants stating that above school has been nationalized by the Government on 01.01.2013 and the school has become a Government Primary School.

At trial plaintiff examined 5 witnesses and the defendants examined 6. Documents produced and proved by the plaintiff were marked as Exhibit-1-3 and those of the defendants were marked as Exhibit-Ka-Neo.

On consideration of the facts and circumstances of the case and evidence on record the learned Assistant Judge decreed the suit.

Being aggrieved by above Judgment and decree the defendants preferred Title Appeal No.04 of 2014 to the District Judge, Manikgonj which was transferred to the learned Joint District Judge. On consideration of submissions made by the learned Advocates for the respective party and materials on record the learned Joint District Judge dismissed the appeal and affirmed the judgment and decree of the Trial Court.

It was held by both the Courts below that since no enquiry committee was constituted and the petitioner was not given an opportunity of being heard the impugned order of dismissal of the plaintiff from the service was unlawful.

No one appears on behalf of the petitioners when the Civil Revision was taken up for hearing although it appeared in the list for hearing today.

Mr. Sultan Uddin, learned Advocate for the opposite party submits that above school has been nationalized by the Government and the school has become a Government school on 01.01.2013. Above fact has been stated in the additional written statement by the defendants but the plaintiff did not make any endeavor to amend the plaint nor took back the plaint for submission in the appropriate judicial forum. The learned Assistant Judge passed the impugned judgment and decree on 20.11.2013 without noticing the fact that the character of the subject matter of the suit has already been changed. As such the plaintiff may be given an opportunity so that he can present his case afresh to the appropriate judicial forum.

I have gone through the pleadings, evidence adduced by the parties to the suit and considered submissions made by the learned Advocate for the opposite part.

Undisputedly the plaintiff was appointed as an Assistant Teacher of Puran Payla Registered Non-government Primary School on 01.01.2001 and she remained absent without leave from attending above school from 17.07.2007 till date.

It has been alleged in the plaint that the plaintiff went to join her work on 01.10.2007 but on the advice of the defendant No.2 she did not join since she did not fully recover. After one month she again went to join her work but defendant No.1 informed her that due to her prolong absence the School Managing Committee had adopted a resolution against her and she could not be allowed to resume duty unless she submitted a petition for leave on medical ground supported by a medical certificate.

I have scrutinized the plaint very carefully but I did not find any statement mentioning that the plaintiff ever submitted any petition supported by a medical certificate for leave for her above mentioned long absence.

It has been alleged at Paragraph No.2 of the plaint that the plaintiff sent three letters dated 15.07.2009, 14.09.2009 and 14.01.2010 to defendant No.2 seeking permission to join her work. It is not understandable as to how without submission of a leave petition on medical ground supported by a medical certificate the plaintiff sent letters seeking permission to join work.

Undisputedly the father-in-law of the plaintiff was a member of above School Managing Committee. It has been alleged by the defendants that the show cause notice, letter of suspension of plaintiff from service due to absence and finally the letter of her dismissal from service dated 18.08.2009 were served upon the plaintiff by hand and by registered post at her permanent address. The copies of above

communication were allegedly received by Md. Afser Uddin, father-in-law of the plaintiff and a member of the School Managing Committee.

It has been held by both the Courts below that since above notice and order of the School Managing Committee were not served upon the plaintiff personally but those were served upon her father-in-law those cannot be accepted as proper service.

Above findings of the learned Judges of the Courts below are out of pleadings and not based on legal evidence. It has not been alleged by the plaintiff in the plaint that she did not reside with her father-in-law or her father-in-law did not receive and deliver to her above letters of the School Managing Committee.

In this case plaintiff has examined five witnesses but her father-in-law Afser Uddin was not examined as a plaintiff witness to give evidence in support of the allegations made in the plaint as to the back dating of the resolution of the School Managing Committee or non receipt of above notices and order of above Managing Committee or he did not receive and deliver above notices to the plaintiff.

The plaintiff claims that due to serious liver ailment she was unable to remain present at work. But no evidence was adduced at trial in support of above claim nor any medical document was produced and marked exhibited. The plaintiff remained absent from attending in above school since 17.07.2007 without any intimation to the School Managing Committee and she did not submit any leave petition supported by a medical certificate. Admittedly the plaintiff remained absent for a longer period of time without any cause. An admitted fact does not require further prove by evidence or enquiry and for the academic benefit the students of above school the Scholl Managing committee had no option but to remove the plaintiff and appoint another qualified person as an Assistant Teacher.

The defendants by submitting an additional written statement on 22.10.2013 stated that above school has been nationalized by the

Government and the same has become a Government Primary School since 01.01.2013. As such, there is no existence of No.11 Puran Payla Registered Non-government Primary School after above date of nationalization of the school and above suit became infructuous. But the plaintiff did not make any endeavor to overcome above deficiencies of the suit and the learned Assistant Judge failed to take into account above important aspect of the suit and most illegally passed the impugned judgment and decree on 20.11.2013.

The learned Joint District Judge as a Court of appeal was required to perform an independent assessment of the evidence on record and come up with the independent decision on the merit of the appeal. But it appears that the learned Joint District Judge has failed to appreciate the materials on record correctly and most illegally affirmed the flawed judgment and decree of the Trial Court which is not tenable in law.

In above view of the materials on record we find substance in this Civil Revision under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute.

The impugned judgment and decree dated 21.05.2015 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Manikganj, in Title Appeal No.04 of 2014 affirming the judgment and decree dated 20.11.2013, passed by the learned Assistant Judge, Shibaloy, Manikgonj in Other Suit No.27 of 2010 is hereby set aside and above suit is dismissed on contest against the defendant Nos.1-16.

However, there is no order as to costs.

Send down the lower Court's record immediately.