

MANAGEMENT OF THE GOODWILL
GIRLS HIGH SCHOOL AND ANR.

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v.

SMT. J. MARY SUSHEELA AND ORS.

APRIL 29, 2003

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[SHIVARAJ V. PATIL AND ARIJIT PASAYAT, JJ.]

Code of Civil Procedure, 1908—Order 12 Rule 6 and Order 14 Rule 2—Trial court disposing of suit on only one of the issues framed—High Court in appeal taking up all issues initially framed by trial court and rendering findings thereon—Justification of—Held: When the party has failed to pray for adjudication of all other issues before High Court and also no evidence is led, High Court not justified in expanding the scope of appeal by adjudicating on all issues.

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Respondent No.1-teacher filed a suit for mandatory injunction directing the appellants-management of the school and the principal to assign teaching work to her pursuant to the order of appointment. Trial court framed six issues, however took up only one issue and dismissed the suit as respondent No.1 failed to establish her entitlement for mandatory injunction directing to assign her work. Respondent No.1 filed an appeal. Single Judge decreed the suit and directed the management to pay back wages to respondent No.1. Hence the present appeal.

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This court passed various interim orders pursuant to which respondent No 1 has been rendering services. Subsequently, management appointed N on regular basis. Thereafter this Court directed her to be impleaded as party in the present appeal. State Government was also impleaded as party to ascertain its stand with regard to the approval of appointment of respondent No.1 by it.

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Partly allowing the appeal, the Court

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HELD: 1.1. The effect of alleged admission/concession by the Management if any, was required to be considered in the light of the stand taken by the Principal. High Court seems to have been completely lost sight of this aspect. As no evidence was led and even respondent No. 1 was not

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A examined, the High Court ought not to have considered all the issues; particularly when respondent No.1 herself had not prayed for adjudication of other issues by the High Court. On the contrary, her stand was that the trial court should have decided all the issues. It is of considerable importance that in the memorandum of appeal before the High Court there was no plea or ground taken that the suit ought to have been decreed on the basis of alleged admission/concession by the Management.

[1017-G, H; 1018-A]

C 1.2. High Court has made certain observations which have absolutely no bearing on the subject-matter of the issues and were not even remotely connected with the subject-matter of controversy. That being the position, the judgment of the High Court is indefensible and is set aside. The matter shall be considered by the trial court afresh. [1018-C]

D 1.3. The engagement of the respondent No.1 and N shall continue till disposal of the suit. N is not a party to the suit and so is the State. For effective adjudication they shall be impleaded as parties in the suit, in view of their implemation in the present appeal. [1018-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5228 of 2000.

E From the Judgment and Order dated 24.9.1998 of the Karnataka High Court in R.S.A. No. 565 of 1989.

S.S. Javali, P.R. Ramasesh, B.V. Sabrad and Ms. Vandana Jalan for the Appellant.

F R.S. Hegde, Chander Prakash, A. Nagabhushanam for P.P. Singh, Anil K. Mishra, Sanjay R. Hegde, Satya Mitra for N. Ganpathy and G.V. Chadrasekhar for K.R. Nagaraja for the Respondents.

The Judgment of the Court was delivered by

G **ARIJIT PASAYAT, J.** A controversy which could have been solved long back has been blown out of proportion, making the parties travel through the corridors of various courts and has finally landed in this Court. Whenever there is prolongation of litigation, ultimate sufferers are the litigating parties, and inevitably justice delivery system. Resultant is miscarriage of justice.

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It is painful to notice that the arduous journey of litigating parties started about two decades back in an educational institution, named Goodwill Girls' High School. Ironically, the controversy started because of alleged "ill will" amongst the parties. Helen Keller, the great humanist had once said: "The highest result of education is tolerance." But the foundation of the dispute was alleged intolerance by those who matter, in the concerned educational institution.

Steering clear of the red herrings, the factual scenario is as follows: Smt. J. Mary Susheela-respondent no.1 in this appeal filed a suit No. 10050 of 1985 in the Court of City Civil Judge, Bangalore seeking a mandatory injunction directing the defendants (the appellants in this appeal) to assign teaching work to her pursuant to the order of the appointment. Her claim essentially was that she was selected for appointment as a teacher in the appellant no.1 institution, but no order of appointment was issued by the then Principal who was also in the Selection Committee, primarily because she had not agreed to her appointment during the course of selection. The suit was dismissed. However, the trial Court observed that in the interest of the students community, which is of utmost importance, it was hoped that the Selection Committee will issue formal order of appointment without further delay. In view of this observation the Management of the School issued a letter of appointment directing the plaintiff to report for duties on or before 15.6.1985. Plaintiff claimed that though she reported for duty, the Principal (defendant No.2) did not allow her to function. That led to filing of the second suit to which this appeal relates, bearing OS.No. 10456/1985. By order dated 27.9.1988 the XIX Additional City Civil Judge passed an order purportedly under Order 14 Rule 2 of Code of Civil Procedure, 1908 (in short 'the CPC'). It is to be noted that though six issues were framed, the only issue which was taken up was as follows:

"(1) Whether the plaintiff proves that she is entitled for mandatory injunction directing the defendant to assign the work as claimed in the suit?"

The trial Court dismissed the suit, *inter alia*, observing as follows:

"In the result, in view of my foregoing discussions my finding on issue No.1 is that the plaintiff has failed to establish that she is entitled for mandatory injunction directing the defendant to assign the work as claimed in the suit. Consequently, the suit fails and the same is hereby dismissed."

A Plaintiff filed an appeal before the High Court of Karnataka at Bangalore. By the impugned judgment the learned Single Judge decreed the suit with costs and additionally directed that payment was to be made to the plaintiff by the 1st defendant w.e.f. 10.6.1985. Said judgment is assailed in this appeal by the two defendants i.e. Management of the School and the Principal.

B The basic ground for challenge is that learned Single Judge expanded the scope of the appeal and when one issue was taken up by the trial Court, it was not open to the High Court to take all the issues that were framed initially by the trial Court and render findings on those issues. The plaintiff was working in another institution and, therefore, the direction for paying salary right from 10.6.1985 is without any justification.

C Learned counsel appearing for the plaintiff-respondent in response, submitted that the present appeal was limited to the question of back wages and the appellant no.1 in this appeal having conceded to the position that the plaintiff-respondent was entitled to the benefits claimed, the suit has been D rightly decreed on the concessions and admissions made by defendant no.1. Though defendant no.2 (appellant no.2 herein) resisted the claim, the same was of no consequence because the appointment was made by the Management-appellant no.1 and being an employee of appellant-defendant no.1, the appellant no.2 could not have taken any stand at variance with the Management.

E With reference to Order 12 Rule 6 CPC, it is pointed out that on the basis of concessions made, part decree could have been passed. It is pointed out that pursuant to the various interim orders passed by this Court, plaintiff-respondent no.1 is rendering services and while passing the interim orders this Court has taken serious note of the conduct of Management in appointing F another person on regular basis. She was directed to be impleaded in the present appeal.

G At this juncture, it is to be noted that interim orders have been passed in this appeal earlier. With a view to ascertain the stand of the State of Karnataka as to whether the appointment of plaintiff was approved by the State Government notice was issued to the State. In an affidavit filed, the State has taken the stand that no approval was accorded to the appointment of the plaintiff and her post was an unaided one. It is to be noted that this Court had directed that the person who was appointed subsequently was to be treated against the unaided post, while the plaintiff-respondent was to be H adjusted against the aided post.

Learned counsel for the said employee submitted that she was not a party to the suit, and no direction has been given by the trial Court and the High Court so far as she is concerned, and there is nothing on record to show that she was appointed in respect of the post claimed by the plaintiff-respondent no.1. In this view, the orders so far as she is concerned, should be recalled. A

As the factual scenario goes to show, the controversy has remained unabated for nearly two decades. The trial Court decided only one issue in terms of Order 14 Rule 2 CPC though there is no specific reference to the provision made in the order. It has been only stated "Order on issue No.1." The High Court, however, treated it to be in terms of Order 14 Rule 2. It is significant to note that in the memorandum of appeal before the High Court, plaintiff took exceptions to disposal of the suit on one issue alone. It was specifically pleaded that the trial Court should have adjudicated all the issues and it having not done so she was prejudiced. The ground No.16 spells out the specific grievance of the plaintiff and reads as follows: B C

"(16)- That the learned Judge ought to have given his own findings on all the issues however without considering the other issues. The learned Judge has dismissed the suit basing his findings only on Issue No.1. The absence of finding on other issues has resulted in gross injustice." D

The points of law formulated in paras (3) and (4) were as follows: E

"(3)- Whether the Trial Court was required in law to try all the ISSUES and pronounce on all the issues arising in the suit?

(4) Whether the Trial Court was justified in trying Issue No.1 as a preliminary ISSUE and dismiss the suit as not maintainable without giving a finding on all the other ISSUES?" F

No evidence was led by the parties. Even the plaintiff was not examined. What is the effect of alleged admission/concession by the Management, if any, was required to be considered in the light of stand taken by the other defendant. That aspect seems to have been completely lost sight of by the High Court. As no evidence was led, the High Court ought not to have considered all the issues; particularly when plaintiff herself had not prayed for adjudication of other issues by the High Court. On the contrary, her stand was that the trial Court should have decided all the issues. It is of considerable importance that in the memorandum of appeal before the High Court there was no plea or ground taken that the suit ought to have been decreed on the G H

A basis of alleged admission/concession by defendant no. 1.

B One aspect needs to be clarified. Present appeal is not confined to the question of back wages as contended by plaintiff-respondent No.1. The plea in that regard was an alternative one. The primary stand related to legality of the judgment in dealing with several issues when trial Court had dealt with only one issue.

C It pains us to note that the High Court has made certain observations which have absolutely no bearing on the subject-matter of the issues and were not even remotely connected with the subject-matter of controversy. That being the position, the judgment of the High Court is indefensible and needs to be set aside, and we direct so. The matter shall be considered by the trial Court afresh.

D The engagement of the plaintiff-respondent no.1 and Ms. Nancy shall continue till disposal of the suit. We make it clear that we have not expressed any opinion on the respective stands. Ms. Nancy is not a party to the suit and so is the State. For effective adjudication they shall be impleaded as parties in the suit, in view of their impletion in the present appeal. They shall be permitted to file written statements by 15.6.2003. If they fail to do so, the effect thereof shall be considered by the trial Court. Since the suit was filed in 1985, it would be appropriate if the same is disposed of before 2004 sets in.

E The appeal is allowed to the extent indicated above with no order as to costs.

N.J.

Appeal partly allowed.