

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 180 of 2015
Date of Decision: 6.4.2015.

Dr. Gajinder Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Namit Gautam, Advocate
for the petitioner.

SABINA, J.

Petitioner has filed this petition under Article 227 of the Constitution of India challenging the order dated 23.8.2014 (Annexure P-6) whereby execution petition filed by the petitioner, was dismissed and the objections filed by the respondents, were allowed.

I have heard the learned counsel for the petitioner and have gone through the record available on the file carefully.

Petitioner had filed suit for declaration challenging his termination order dated 7.8.1991. The Trial Court vide judgment/decreed dated 22.5.2008 held as under:-

“28. In view of my findings on the above said issues, the suit of the plaintiff is decreed partly and punishment order dated 29.7.1991 is set aside and the defendants are directed to pass fresh order after considering the representation of the plaintiff against the findings of the

inquiry officer, if any, to be made by the plaintiff within one month from receipt of certified copies of the judgment and decree. The defendants are further directed to complete this process. The defendants are further directed to complete this process within four months from the date of receipt of representation, if any, made by the plaintiff. Rest of the prayer of the plaintiff is declined. Keeping in view the peculiar facts and circumstances of the present case, the parties are left to bear their own costs. Decree sheet be prepared and file be consigned to the record room.”

The said order was challenged by the petitioner in appeal and the Appellate Court held as under:-

“16. The contention of learned counsel for the appellant that in case the disciplinary authority failed to pass fresh order within the prescribed period, there is no direction that would be the effect of non passing of order by the Punishing Authority is considered. The perusal of judgment under appeal reveals that the order dated 9.7.91 has been set aside with a direction to pass fresh order after considering the representation of appellant against the findings of Inquiry Officer, if any. The trial court, while disposing off the judgment has laid the time frame for filing the representation and for completing the process by the department after receiving the representation. If the respondents failed to pass the fresh order after representation within the time given or

extended by the trial court, it would be deemed that there is no order dated 29.7.91, as the same has been set aside by the trial court.

17. Thus in the light of above discussion, there is no irregularity or illegality in the judgment and decree dated 22.5.2008 of the learned lower court. Resultantly, the appeal so filed by the appellant fails and the same is dismissed with costs. Decree sheet be prepared. Appeal file be consigned. Record of the lower court be returned.”

Thereafter, petitioner filed execution petition and the respondents filed objections in the said petition. The Executing Court while dismissing the execution petition, held as under:-

“After considering the contentions raised by Ld. Government Pleader and Ld. Counsel for the decree holder and going through the case file, I am of the view that the decree holder made a representation to the JDs on 26.7.2008 and the department after giving due opportunity of hearing to the decree holder has dismissed the representation and proper opportunity of representation was given to the decree holder and the said representation was dismissed on 20.7.2009. The contention of Ld. Counsel for the decree holder that representation was not decided within said period is not tenable as there are constraints in the working of the Government department and merely on the ground that the representation was not decided within the time framed provided does not entitle the decree holder for

retiral benefits. Moreover, the department vide order dated 20.7.2009 has again passed an order against the decree holder after giving due opportunity of representation and the principles of natural justice was followed. When the services of the Decree holder has been terminated, as such, no ground is made out to grant retirement benefits to the decree holder. As such, I am of the view that the objections are maintainable and no ground is made out to allow the execution application. Accordingly, the present execution application stands dismissed. File be consigned to the record room.”

The reasons given by the Executing Court while dismissing the execution petition, filed by the petitioner, are sound reasons and call for no interference.

Dismissed.

**(SABINA)
JUDGE**

April 06, 2015
Gurpreet