

In the High Court of Punjab and Haryana at Chandigarh.

**C R No. 7574 of 2011
Decided on Feb 10,2015**

Amarjit Jassal

--Petitioner

Vs.

The Punjab State Electricity Board, Patiala and others

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Whether Reporters of Local Newspapers may be allowed to see the judgment ?

To be referred to Reporters or not ?

Whether judgment should be reported in the Digest ?

Present: Mr. Aman Chaudhary, Advocate, for the petitioner

Mr.Amit Aggarwal,Advocate, for the respondents

Rakesh Kumar Jain,J: (Oral)

This revision petition is filed against the order dated 06.8.2011 by which application filed by the petitioner under Order 21 Rule 32 of the Code of Civil Procedure, 1908 (for short,'the CPC') has been dismissed.

In short, the suit filed by the petitioner was decreed by the District Judge, Hoshiarpur vide his order dated 21.7.1998 to the effect that

“suit of the plaintiff as regards declaration that he is entitled to be promoted in preference to Resham Singh defendant against scheduled caste vacancy stands decreed with cost throughout. It is directed that the Board authorities shall consider the cause of promotion viz-a viz between the plaintiff and Resham Singh by

ignoring the scheduled caste certificate produced by Resham Singh within a period of two months from today”.

Learned counsel for the petitioner has submitted that though the petitioner should have been promoted w.e.f. 01.9.1988 but he has been promoted in the year 1989 in complete disregard to the decree passed by the District Judge. It is further submitted that in view of the direction contained in the decree of the District Judge, the petitioner had earlier filed a contempt petition which was dismissed by the Court below against which he filed Civil Revision No. 2612 of 2005 which was also dismissed on 12.9.2006. Thereafter, the petitioner filed the present execution application under Order 21 Rule 32 of the CPC which has been dismissed by the Courts below and hence this revision petition.

Learned counsel for the petitioner has argued that the District Judge has made a categorical observation in his judgment that if the certificate tendered by Resham Singh is ignored, then the plaintiff/petitioner is entitled to be promoted because he was at serial No.1 in scheduled caste category when Resham Singh/defendant No.4 was promoted. He drew the attention of this Court to the observations made by the District Judge, wherein it has been observed that *“from the evidence available on record, it can be safely concluded that the certificate tendered by defendant No.4 has been procured by fraud”*. In this background, the suit was decreed and it was held that the petitioner is entitled to be promoted in preference to Resham Singh against scheduled caste category vacancy and direction was given to the Board to consider the case of promotion of the petitioner by ignoring the promotion of Resham Singh. It is further submitted that the Court below has erred in dismissing the application for execution in view of

the observation made by this Court in Civil Revision No.2612 of 2005 as the execution and contempt are two separate proceedings and can be filed simultaneously. In this regard, he has relied upon a judgment of this Court in the case of **M/s.Hari Ram Darshan Ram Vs. Hari Krishan Sharma** 1998 (2) P.L.R.854. It is also submitted that the Executing Court cannot go behind the decree and the finding of the Civil Court has to prevail until reversed by the Appellate Court. In this regard, he has relied upon a judgment of the Supreme Court in the case of **V.M.Shah Vs. State of Maharashtra and another** (1995) 5 Supreme Court Cases 767. It is also submitted that though the judgment and decree of the District Judge dated 21.7.1998 is under challenge in R.S.A No. 2048 of 1998 but there is no stay.

On the other hand, learned counsel for the respondents has argued that the order passed by this Court does not suffer from any illegality because there is a categorical finding recorded by this Court while deciding C.R.No.2612 of 2005 that “*there is no specific direction issued that plaintiff should be promoted with effect from the day Resham Singh was promoted*”. It is further submitted that the said finding is still in operation and has not been challenged by the petitioner in the higher forum and thus, in the absence of any direction, the execution application under order 21 Rule 32 of the CPC is not maintainable and has rightly been dismissed.

I have heard learned counsel for the parties and perused the available record with their able assistance.

The facts narrated here-in-above, are not in dispute and the only question is as to whether the decree passed by the District judge, Hoshiarpur, can be executed in view of the finding recorded by this Court in

Civil Revision No.2612 of 2005 ?

The judgment relied upon by learned counsel for the petitioner in the case of **M/s.Hari Ram Darshan Ram's Case** (Supra), is not at all applicable in this case because in that case, the suit was decreed on the basis of a compromise which was made a part of the decree. Since the statement-cum-decree was violated, therefore, the application for execution and contempt petition were filed. The application was filed by the other side in that case before the trial Court to direct the party initiating the proceedings under the Contempt of Courts Act and the execution application, to elect the proceedings. This application was dismissed and this Court has held that the proceedings under the Contempt of Courts Act are primarily the proceedings between the contemnor and the Court, whereas the execution proceeding is filed to reap the benefit of the decree and is in the personal interest of the decree holder. Thus, it was held that these are two independent proceedings which operate in a different and independent sphere and have a different object to achieve and as such, they cannot be termed as alternative proceedings. It was further held that the proceedings in the execution can continue during the pendency of the contempt proceedings.

Similarly, the judgment in the case of **V.M.Shah** (Supra) is also of no help to the petitioner because it is decided therein that the finding recorded by this Court would prevail until and unless it is reversed by the Appellate Court and mere pendency of appeal does not have the effect of suspending the operation of the decree of the Civil Court.

The position in this case is altogether different because there is a categoric finding recorded by this Court, may be in the contempt

proceedings, to the effect that there is no specific direction issued that plaintiff is to be promoted w.e.f the date Resham Singh was promoted.

In the presence of the finding recorded in C.R.No.2612 of 2005 decided on 12.9.2006 which has not been reversed, I do not find any scope for interference in this revision petition in order to set aside the order of the Executing Court dismissing the application for execution filed by the petitioner. Thus, the present petition is hereby dismissed.

Feb 10,2015
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(Rakesh Kumar Jain)
Judge