

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

C.W.P. No.9330 of 1990 (O&M)
DATE OF DECISION : 7.1.2015

Panna Lal Goyal

PETITIONER

VERSUS

State of Punjab and others

RESPONDENTS

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

1. Whether reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present:- Shri Vishal Sharma, Advocate for the petitioner.

Shri Nilesh Bhardwaj, D.A.G. Punjab.

MAHESH GROVER, J.

The petitioner impugns the order Annexure P-6 by which his services were terminated on the ground of absence from duty. This order was preceded by an enquiry where the allegations against him for remaining absent from duty with effect from 7.1.1970 to 5.2.1970, 6.2.1970 to 6.4.1970 and 7.4.1970 to 6.8.1970 were duly established.

The petitioner's grievance in short is that he had initially proceeded

on leave from 7.1.1970 to 5.2.1970. Subsequently, according to him, he fell ill and thus, was prevented from re-joining the duty.

It may be worthwhile to notice that the petitioner did not report for duty for an inordinate long period and was treated to be terminated from his services without any order to that effect. In effect, the facts would suggest that the petitioner was at one point of time transferred from Bhatinda Provincial Division vide order dated 29.7.1970 which place of posting the petitioner never joined. The petitioner, however, claims that he was transferred to Muktsar, but was not permitted to join and in this regard, he repeatedly approached the respondents to permit him to join at Rampura Phul which was not accepted. The petitioner continued to make efforts to join his duty, but was prevented from doing so.

Finally, the petitioner filed Civil Suit No.391 on 29.9.1984 making a grievance of the action of the respondents. The civil suit was decreed in the following terms :-

“Issue No.6

In view of my findings on the above issues, suit of the plaintiff stand decreed. Decree for declaration that plaintiff still continues to be in service as Clerk in P.W.D.(B&R) Department and is entitled to pay and allowances, leave and other benefits in accordance with rules applicable to him is ordered to be passed in favour of the plaintiff and against the defendants. Keeping in view the facts and circumstances of the case the parties are left to bear their own costs. Decree-sheet be prepared and file be consigned to record room.

Announced
14.10.1985

Sd/-
Sub Judge Ist Class, Bhatinda.”

The petitioner then filed an execution petition which was dismissed

resulting in filing of C.R. No.12380 of 1989 which was disposed of on 8.2.2013. In the Execution Petition preferred by the petitioner, the Executing Court observed that the decree was inexecutable. Apart from other grounds on which the application was dismissed, the Executing Court also observed that the petitioner already stood charge-sheeted for having remained absent from duty for as long as 14 to 15 years and thus, keeping in view the enquiry report as also the order of dismissal which of course, was subsequent to the passing of the decree, the Executing Court refused to grant relief to the petitioner.

The appeal preferred by the petitioner met the same fate primarily for the reasons noticed above. In revision, the petitioner was held entitled to the amount in lieu of the service rendered in terms of the decree and it would be essential to bring out the essence of the order passed by this Court in revisional proceedings :-

“I have seen the prayer in para 17, which specifically states that he was entitled to all the arrears of pay, allowances and increments etc. and the decree sheet also provide similarly that “he is entitled to continue in service as a Clerk and that he is entitled to pay allowances and other benefits in accordance with rules applicable to him. Therefore, it will be not appropriate or correct for the judgment debtor to plead that there is no valid decree. I must observe that the suit prayer itself was strange that he should treat himself as being in service and even without a specific amount to be quantified as his entitlement, he could apply for execution. However, I am prepared to see through the pleadings and make a reference that the decree must be taken as a decree for money from the date when the suit was instituted on 29.9.1984 till the date

when the decree was passed on 14.10.1985. On such a reckoning, the plaintiff would be entitled to a consideration at the rate of Rs.1015/- for three months from the order of the year 1984, which works out to Rs.3045/- and further amount of Rs.10,015/- for 10 months upto the date of decree aggregating Rs.13,060/-. There is no specific direction for interest and I will provide for interest only from the date of execution petition till the date of realization @ 6% per annum. The claim for 12% interest as sought is not available if the decree itself does not provide therefor. The plaintiff was not entitled also to give a calculation of arrear from the year 1970. If a suit itself could not have been instituted for recovery of amounts commencing from 1970, a *fortiori* the Executing Court cannot provide for computation of sums for arbitrary periods which are not stipulated specifically in the decree itself.

The order of the court below is set aside and the revision is allowed to above extent.”

Learned counsel for the petitioner contends that the impugned order of termination is unsustainable in view of the civil court decree already passed which was challenged by the State and since the decree has already been executed, the order of termination cannot stand. He has further stated that the chargesheet pertaining to the year 1970 could not have been issued to him after a long delay and this itself is sufficient to invalidate the entire departmental proceedings against him.

The respondents, on the other hand, would contend that despite the

decree in favour of the petitioner, the respondents were within their rights to proceed against the petitioner departmentally for such an inordinate long absence and after holding an enquiry and following a proper process of law, the order of termination was passed which is absolutely justified.

On due consideration of the matter, I am of the opinion that the case needs to be looked into from two perspectives. Earlier when there was no order of termination despite the fact that the petitioner had not served the respondents from 1970 to 1985, a civil suit was preferred by the petitioner which was decreed in the terms noticed above. This decree was executed when the Revisional Court exercised its jurisdiction in favour of the petitioner on the well established principle that the Executing Court could not have gone behind the decree to defeat it. This issue of civil suit, the resultant decree and the execution thereof is one part of the problem which stands extinguished upon its satisfaction.

This, however, would not deprive the respondents of their legitimate right to proceed against the respondents departmentally which they did resulting in an order of termination passed in the year 1987 which is now the subject matter of challenge. The writ petition was filed in the year 1990 after the limitation of filing of civil suit had expired. The facts would indicate the absence of the petitioner for an inordinate long period of 15 years. The petitioner filed a civil suit belatedly in the year 1984 and the solitary explanation given for approaching the Civil Court belatedly was his endeavours to join the duty which was resisted by the respondents. The Civil Court proceedings would however, show no such material on record by the petitioner. Be that as it may, it is not the intention of this Court to dissect the judgment of the Civil Court in the absence of any challenge to it more particularly when the same already stands satisfied. Suffice it to say that the petitioner legitimately derived the benefits of an unchallenged decree, but cannot escape the consequences of the departmental proceedings for the unexplained

absence of 15 years. He cannot be permitted to make a bounty of cumulative lapses on his own part by firstly not serving the respondents for as long as 15 years and then managing to extract a benefit largely due to the inaptitude and inefficient approach of the respondents in prosecuting the civil suit. No procedural error was pointed out by the petitioner leading to the impugned order. The solitary plea urged to project his case is on the basis of declaratory decree of the civil court which the petitioner intends to use as a spring board. If such a plea is accepted, then the petitioner would derive an undue advantage for himself at the cost of taxpayers' money and without discharging the obligations of public appointment.

The Civil Court decree essentially proceeded from a situation where departmental proceedings were in progress with no adverse order against the petitioner leading to a declaration of the petitioner's continued employment. The disciplinary proceedings culminated in 1987. The petitioner impugned this after a lapse of three years i.e. after limitation.

Thus, the respondents who have invoked their right to proceed against the petitioner departmentally resulting in the order of termination in 1987, cannot be faulted with particularly in view of a holistic view of the facts with no transgression on law.

The petition is dismissed.

January 7, 2015
GD

(MAHESH GROVER)
JUDGE