

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 5543 of 2003 (O&M)
Date of Decision: 22.4.2015.

Union of India and others

.....Petitioners

Versus

Punnu Ram

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. M.S.Cheema, Advocate
for the petitioners.

None for the respondent.

SABINA, J.

Petitioners have filed this petition challenging the order dated 8.8.2003.

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

Respondent had filed suit for declaration challenging the order dated 5.11.1993 whereby his services were terminated. Suit filed by the respondent was decreed by the Trial Court vide judgment/decreed dated 30.5.1998 and it was held as under:-

“15. In view of my findings on the above issues, the suit filed by the plaintiff partly succeeds. Consequently, I pass a decree for declaration to the effect that order dated 5.11.93, dismissing the plaintiff from service is null and void and not effecting the service of the plaintiff, in any manner what so ever. However, the defendants are at liberty to hold fresh enquiry, as per the law and rules

governing service conditions of the plaintiff, within a period of 6 months from the date of this judgment, failing which the plaintiff shall be entitled to be re-in-stated in service, with all service benefits, excluding the period of his absence, till expiry of normal period of his engagement. In the alternative, the plaintiff shall be entitled to all retiring benefits permissible under the rules, from the date of his joining the present department, till the date, he abstained from service alongwith simple interest, at the rate of 10% P.A. From due date of payment, till realisation of the decretal amount. In the facts and circumstances of the case, the parties are left to bear their own costs. Decree-sheet be prepared accordingly. File be consigned to the record room.”

Thereafter, respondent filed an application under Order 21 Rule 32 of the Code of Civil Procedure, 1908 ('CPC' for short) for taking against the judgment debtors as per law for not complying with the decree in question. Petitioners, in their written statement, pleaded that respondent was re-instated in service with effect from 5.11.998 after the passing of the decree and fresh enquiry was conducted against him. Thereafter, vide order dated 16.4.1999, respondent was again dismissed from service.

The Civil Judge while allowing the application has held as under:-

“6. To prove this issue, the applicant himself deposed as DHW-1, on solemn affirmation as to averments made in the application. The judgment and decree under reference are Ex. DHW/ 1 and DHW/2, a perusal of which

confirms the averments made by the applicant that order dated 5.11.93 dismissing plaintiff from service was held to be null and void and accordingly, this issue was decided in his favour while also holding that defendants will be at liberty to hold fresh enquiry within a period of 6 months from the date of passing of the judgment and decree and in the incident of their failure, plaintiff was entitled to be reinstated in service with all service benefits. It is clear from the decree sheet that an option was given to the defendants to hold fresh enquiry against the plaintiff. The JDs had held a fresh enquiry against the plaintiff accordingly which is clear from the averments of the applicant himself as also evidence led by him and the averments and evidence by the JDs/respondents. Therefore, the moot point requiring adjudication between the parties, is whether the JDs/respondents have complied with the decree or not. It is argued by the ld. Counsel for the applicant that a period of 6 months was given to the JDs for holding of fresh enquiry and in the incident of their failure, the applicant was entitled to be re-instated in the service but the JDs/respondents completed the enquiry much after the expiry of period of 6 months, rather they started the enquiry after the expiry of period of 6 months and thus they have failed to comply with the decree and thus rendered themselves liable under Order 21 Rule 32 CPC. On the other hand, it is argued by the ld. Counsel for the JDs/respondents that

fresh enquiry was held against the applicant in accordance with the directions of the Civil Court while passing the decree, but some delay happened in the same, because as per departmental rules, no enquiry could be conducted against a person who was no more in the service and therefore the applicant had to be re-instated first. Also the incident pertains to 23.2.93 and after that the witnesses had proceeded on retirement/transfer etc by virtue of duties of CRPF, which requires frequent movements of personnel from one place to other throughout the country and therefore, recording of the statements of these witnesses was delayed and the opportunities were granted to the applicant for defending himself but he did not submit any document or examine any witness in his favour. To prove these submissions, ld. Counsel for the respondents referred to the statement of JDW.1 and JDW.2. JDW-2 Durga Kumar Singh has deposed that the copy of judgment and decree sheet dated 30.5.98 was received on 20.7.98 and they had received the decision of Ministry of law on 5.10.98, whereby the applicant was re-instated on 12.11.98 and enquiry officer was appointed on 5.12.98. The letter No. 721/1998 dt. 29.7.98 of Ministry of Law is EXD. 2. The decision of the Ministry is EXD. 3 and copy of the judgment is EXD. 4. The letter calling upon Pannu Ram to join enquiry is EXD. 5 and the charge sheet served upon him is EXD. 6. JDW.1 deposed as to enquiry conducted

against the applicant being the enquiry officer. He also proved on record the enquiry file alongwith the report Ex. J.1. A perusal of this enquiry report and the evidence led on record by both the parties, reveals that there is no dispute, as far as the factual position of the controversy is concerned. The moot point to be decided between the parties is as to what is the effect of the enquiry held by the JDs against the applicant. There is no dispute that the enquiry was completed after the expiry of period of 6 months, rather it was started on 5.12.98 while the decree was passed on 30.5.98, meaning thereby that the enquiry was itself started after the period of 6 months. The JDs tried to explain the delay by referring to the above submissions i.e. to say the reinstatement of the applicant first and the witnesses being from different places, as the incident relates to 23.2.93 etc. No doubt there is truth in these submissions. However, if it was so, the JDs could have sought the extension of the period for holding that enquiry, from Civil court. They did not make any such move as is clear from their pleadings as well as evidence. There was clear decision by the civil court that enquiry was to be held within 6 months from the date of passing of judgment and decree and in the incidence of failure of the JDs for holding such inquiry, the applicant was entitled to be reinstated in the service, as the enquiry was neither initiated nor completed within the period of 6 months. Thus there is clear disobedience of the judgment

and decree by the JDs. Accordingly, this issue is decided in favour of the applicant and against the JDs/respondents.”

The Trial Court while passing the decree in favour of the respondent had held that the order whereby respondent was dismissed from service, was null and void. Petitioners were given liberty to hold fresh enquiry against the respondent within a period of six months from the date of the judgment, failing which it was held that the respondent would be entitled to be re-instated in service.

As per the written statement filed by the petitioners to the application under Order 21 Rule 32 CPC, petitioners had averred that in terms of the decree, respondent was re-instated in service with effect from 5.11.1998. In fact, the respondent was directed to report for duty vide letter dated 8.10.1998 and the respondent had reported for duty on 25.10.1998. Thus, respondent was re-instated in service as fresh enquiry was not concluded against the respondent within six months of the passing of the decree. Hence, it cannot be said that the decree dated 30.5.1998 had not been complied with. Thereafter, fresh enquiry was held against the respondent and he was ordered to be dismissed from service vide order dated 16.4.1999. Instead of challenging the order dated 16.4.1999, respondent filed the application in question on 21.5.1999. The Civil Judge while passing the impugned order held that there was truth in the submissions made by the petitioners but had erred in allowing the application moved by the respondent. In the facts and circumstances of the present case, the application moved by the respondent under Order 21 Rule 32 CPC was liable

to be dismissed.

Accordingly, this petition is allowed. Impugned order dated 8.8.2003 is set aside. Consequently, the application moved by the respondent under Order 21 Rule 32 CPC is dismissed.

**(SABINA)
JUDGE**

April 22, 2015
Gurpreet