

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Civil Revision No.7433 of 2014
Date of Decision: 28.09.2016**

Nafe Singh

.....Petitioner

Vs

**The Financial Commissioner and Principal Secretary to
Government of Haryana and others**

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Sumit Sangwan, Advocate
for the petitioner.

Mr. Ashwani Kumar Saini, D.A.G., Haryana.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 29.08.2014 (Annexure P-1) passed by Additional District Judge, Bhiwani and order dated 31.08.2012 passed by Civil Judge (Sr. Divn.) Bhiwani whereby execution appeal was dismissed by the lower Appellate Court while maintaining the order of dismissal of execution petition by the executing Court.

[2]. Brief facts as gathered from the record are that petitioner filed a suit for declaration challenging the action of the department/respondents on the premise that he was appointed

on 01.12.1974 on *ad hoc* basis and his services were regularised w.e.f. 07.03.1975. Plaintiff/petitioner alleged that he was falsely implicated in a criminal case and on account of that he was suspended w.e.f. 02.04.1992. Plaintiff/petitioner was acquitted by the trial Court on 15.06.2000 and the order of acquittal became final between the parties.

[3]. During suspension period plaintiff/petitioner filed a CWP No.300 of 2000 for re-fixation of his subsistence allowance taking into consideration the annual increments those would have been earned by him during that period. Before the disposal of the said writ petition, petitioner was acquitted by the trial Court. While disposing of the writ petition, this Court took into consideration the factum of acquittal of the plaintiff/petitioner and ordered that the respondents should pass necessary orders regarding pay and allowances of the petitioner within a period of two months from passing of the order. The State of Haryana remained unsuccessful in SLP before the Hon'ble Apex Court.

[4]. In the meanwhile, General Manager, Haryana Roadway, Bhiwani initiated departmental proceedings against the plaintiff/petitioner on the same charges as were levelled in criminal case. The services of the petitioner were terminated

vide order dated 21.03.2002. Further order of termination was set aside by the State Transport Controller, vide order dated 18.06.2002. The General Manager, Haryana Roadways, Bhiwani filed appeal before the Financial Commissioner, but the Financial Commissioner retired the plaintiff/petitioner on 21.03.2002. However, salary for the period of suspension was ordered to be paid. In the suit filed before the trial Court, following prayer was made:-

- “(a) The order No.13418/ECC - 2 dated 29.12.07 passed by the defendant No.3 may be declared unlawful and set aside.*
- (b) 1st H.S.S. of Rs.1200 – 2040 w.e.f. 01.01.1994 and 2nd H.S.S. of Rs.1400 – 2600 w.e.f. 01.04.95.*
- (c) Fixation of pay in the pay scales of Rs.5000 – 7850 w.e.f. 01.01.96.*
- (d) Annual increment due between 02.04.92 to 21.03.2002 and Bonus.*
- (e) Grant Credit of earned leave for the period 02.04.92 to 21.03.2002 and its encashment.*
- (f) Pensionary benefits on the basis of due basic pay.*
- (g) Difference of amount on account of encashment of earned leave already paid on less basic pay.*
- (h) Interest @ 12% p.a. on all the due benefits from the due date till payment date.*
- (i) Any other relief to which the plaintiff is found entitled to during the proceedings.”*

[5]. In the suit of the plaintiff/petitioner, issue Nos.1 and 2 were to the following effect:-

“1. Whether the plaintiff is entitled for declaration as prayed for? OPP

2. Whether the plaintiff is entitled for the relief of mandatory injunction as prayed for? OPP”

[6]. Trial Court discussed the issues collectively and returned the findings in the following manner:-

“12. After hearing Id. Counsel for the parties and having gone through the record carefully, I am of the considered view that the plaintiff is entitled for benefit sought by him. From the pleadings and evidence brought on record, it is proved and admitted that plaintiff joined the defendants on 01.12.1974 on ad hoc basis. His services were regularised on 07.03.1975. It is also admitted fact that a criminal case bearing FIR No.116 dated 02.04.1992, under Section 405/420/465/471 IPC was registered against the plaintiff at the instance of defendants and he was suspended from the services w.e.f. 02.04.1992. It is also admitted fact that the plaintiff was acquitted by the Trial Court vide judgment dated 15.06.2000 which has got finality and no appeal against the said judgment was filed. It is also admitted fact that a departmental inquiry was also conducted against the plaintiff by the defendants by which plaintiff was terminated from the services by the Appointing Authority. It is also admitted fact that plaintiff filed an appeal against the said dismissal order before the State Transport Commissioner which was allowed and he was ordered to be re-iterated. It is also admitted fact that the defendant

No.3 General Manager, Haryana Roadways, Bhiwani filed revision before the defendant No.1 and during the pendency of the said revision, the plaintiff made a request for his retirement which was allowed by the defendant No.1 and he was retired accordingly. It is also proved and admitted fact that the plaintiff filed a Civil Writ Petition No.300 of 2000 before the Hon'ble Punjab and Haryana High Court for the subsistence allowance for the suspension period and during the pendency of that Writ petition, the plaintiff was acquitted in the Criminal Case and defendants were ordered to pay all arrears on the basis of acquittal. It is also admitted fact that the defendants filed special leave petition before the Hon'ble Supreme Court bearing No.8335 of 2000 against the order dated 12.03.2001 passed by Hon'ble Punjab and Haryana High Court, which was also dismissed. It has come in the evidence of the plaintiff as well as defendants that the plaintiff has been given full salary for the suspension period being treated it as duty period. Once the defendants have treated the suspension period of the plaintiff as duty period then he is entitled for all the benefits including ACP and 2nd ACP as he admittedly completed his 10 years and 20 years upto 1995. Admittedly these benefits have been not regularized to the plaintiff by the defendants and thus he is entitled for the same.

13. *In view of above discussion, these issues were decided in favour of the plaintiff and against the defendants.”*

[7]. In the concluding part of the judgment following relief was given by the trial Court:-

“19. *In view of my abovesaid discussion, the*

suit of the plaintiff is decreed. It is ordered that the plaintiff be treated on duty in service during the period he remain suspended and thereafter all his benefits be calculated as per rules and be released within three month from the date of passing of the decree with further observations that the amount already paid for his service benefits for this period shall be deducted. However no order as to cost. Decree-sheet be prepared accordingly and file be consigned to record room after due compliance.”

[8]. Pursuant to judgment dated 29.08.2014 passed by the trial Court, following decree was drawn:-

“It is ordered that the suit of the plaintiff is decreed. It is ordered that the plaintiff be treated on duty in service during the period he remained suspended and thereafter all his benefits be calculated as per rules and be released within three months from the date of Passing the decree with further observations that the amount already paid for his service benefits for this period shall be deducted. However, no order as to cost.”

[9]. Thereafter, judgment and decree of the trial Court dated 31.08.2012 attained finality in the absence of any challenge made by the judgment-debtors.

[10]. Plaintiff/petitioner filed execution of judgment and decree before the executing Court. Executing Court dismissed the execution vide order dated 31.08.2012 on the ground that execution had already been complied with and the relief in

question was not sustainable. The said order was upheld by the Appellate Executing Court vide order dated 29.08.2014. That is how the present revision petition came to be filed in this Court.

[11]. The perusal of impugned orders revealed that the Courts below have declined the relief of Assured Career Progression (for short 'the ACP') benefit on the ground that in view of observations made by the Hon'ble Apex Court in **State of Tamil Nadu vs. Thiru K.S. Murugesan and others, 1995 (3) RSJ 271 Supreme Court**, the executing Court was required to see that even, if the employee is performing satisfactory service for the specified period, the benefit of promotion is not available to him, then benefit of ACP is to be granted. The grant of ACP is a relatable issue to the qualifying continuous service of 10 years meant for seeking promotion in ordinary course of channel. The person should be qualified for promotion, even if the promotional avenues are not available in hierarchy of promotion.

[12]. In the case of the petitioner, it was contended that in view of pending proceedings against the petitioner, he was not eligible for promotion (in ordinary course of hierarchy) even though the promotional avenues were not available to him. Therefore, the deemed qualification for promotion was missing

in the case of petitioner and, therefore, benefit of ACP grade was not available to him during currency of punishment based on record of the petitioner. Promotion was to be made in the hierarchy of promotion on the basis of merit and ability. The record of the petitioner was an impediment in the said course. Unless and until, the currency of punishment was expired by the efflux of time, the consideration could not be made on that premise. Retrospective promotion was not possible under the Rules as the same would have amounted to premium on the misconduct.

[13]. Learned counsel for the petitioner contended that the observations made by the executing Court in the impugned judgment are not in consonance with the relief granted by the trial Court in judgment and decree dated 29.08.2014 and the order dated 08.10.2004 passed by the General Manager, Haryana State Transport, Bhiwani (Ex.P-10) on record, wherein the following observations were made:-

“When the above opinion of office ADA was received the Section Officer gave his final opinion and told that Shri Nafe Singh Conductor No.36/171 in compliance to C.W.P. 300/2000 the total pay & allowance of suspended time be given and under C.S.R. Volume I Part I Rule 9.1 for the salary increment, ACP Scale & Bonus the suspended time be considered as duty time. In agreement to the

opinion of office ADA, Accounts Officer & Section Officer, I give orders that the suspended period of 2.4.1992 to 21.3.2002 of Shri Nafe Singh Conductor No.36/171 for Salary increment & Higher Scale/ACP Scale be considered as Duty time.

**GENERAL MANAGER
HARYANA STATE TRANSPORT
BHIWANI**

LETTER NO.807-09/ECC-2 DATED 8.10.2004”

[14]. Once the period of suspension was considered as duty period as it was ordered that the period from 02.04.1992 to 21.03.2002 of the petitioner towards salary increments and Higher Scale/ACP Scale be considered as duty time, there was no impediment in the way for granting the relief in question by the executing Court.

[15]. Learned counsel for the petitioner further emphasized that the executing Court was not supposed to go beyond the decree passed by the trial Court. Vide the impugned orders, a new case has been made by the executing Court while declining the relief to the petitioner.

[16]. Having considered the material on record, I am of the view that the executing Court and the Appellate Executing Court have not adverted to the relief granted vide judgment and decree dated 29.08.2014 passed by the trial Court. The Courts below have not specified the grounds on which the relief has

been declined viz.-a-viz. the inability of the petitioner to achieve qualified satisfactory service for the purposes of the hierarchical promotion (even if the avenues of the same were not attracted). The acquittal of the petitioner by the competent Court, grant of service benefits by order dated 08.10.2004 by the General Manager, have not been adequately met by the executing Court. It appears that the relief has been declined to the petitioner solely on the interpretation of **State of Tamil Nadu vs. Thiru K.S. Murugesan and others'** case (supra) for which period, he was disqualified in terms of deemed hierarchical promotion, even if, the avenues for the same were not applicable for granting ACP benefit.

[17]. It would be just and appropriate to remand this case to the executing Court with a direction to scrutinize the alleged disability of the petitioner for achieving qualified period of service for deemed promotion based on interpretation as given by the Hon'ble Apex Court in **State of Tamil Nadu vs. Thiru K.S. Murugesan and others'** case (supra).

[18]. With the aforesaid observation, the impugned orders dated 29.08.2014 and 31.08.2012 passed by Courts below are set aside. The case is remanded back to the executing Court to decide the execution afresh by adverting to the service record of

the petitioner in the context of his disqualification from achieving qualified service for promotion and for the grant of ACP benefit in accordance with law. Revision petition is disposed of accordingly.

September 28, 2016
Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned	Yes / No
Whether reportable	Yes / No