

229.

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

Civil Revision No.7761 of 2014 (O&M)

Date of decision:01.03.2016

Harinder Pal Singh

... Petitioner

versus

Chief Engineer-cum-Director, Irrigation & Power Research Institute,
Punjab, Amritsar, and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. D.D. Bansal, Advocate,
for the petitioner.

Ms. Vandana Malhotra, Additional Advocate General,
Punjab.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. The revision petition is against the order of dismissal of the execution petition claiming that the amounts due under the decree passed by the court on 21.11.2003 had not been fully given. Through the suit, the plaintiff was claiming that the proficiency step up that had to be provided on scales of pay that existed on 01.01.1986 after the completion of 8 and 18 years of service ought to be provided to him and the benefit of two increments ought to be

calculated and paid without interest. Originally, the judgment debtor filed an objection petition contending that the amounts drawn by him had been in excess and the calculation in the execution petition was not correct. The judgment debtor wanted to contend that there was a scheme for increment after completion of 24/32 years of service and that benefit had been later withdrawn. Consequently, the amount drawn in excess by the plaintiff was liable to be deducted. The court rejected this objection stating that the Executing Court cannot go behind the decree and the decree holder is entitled to obtain the benefit of two increments in the manner provided under the decree.

2. When the decree holder put the decree in execution seeking for the amounts claimable by making provision for two increments calculated after a period of 8 and 18 years respectively, the judgment debtor gave a statement that certain amounts drawn in excess of what was liable to be paid if the application of the proficiency step up was made must be adjusted and if such a reckoning was made, it would be seen that the amount paid by the defendant to the plaintiff had fully satisfied the plaintiff's claim. The Executing Court upheld the objection and dismissed the execution petition.

3. The learned counsel states that if there had been any amount paid in excess, it cannot be recovered in the light of law laid

down by the Supreme Court in **State of Punjab and others Versus Rafiq Masih (White Washer) etc.-2015(1) SCT 195**. I am afraid, I cannot find solace for the petitioner by the application of this judgment since it is not a case of recoveries effected by the government for excess payments. When the plaintiff was seeking for application of proficiency step up rule for claiming increments after completion of 8/18 years, he was entitled to secure the benefits which the decree secured to him. If in the manner of reckoning, it is seen that the plaintiff had been paid some other benefit wrongly of what he was not entitled to and the amount was periodically adjusted to show that there was no further amount which was due and payable, it must be perceived as the plaintiff's claim as having been fully satisfied. This is not a case where the State is asking for recovery of additional amount paid. It is, on the other hand, a plea in defence that the amount which is now being claimed is adjusted against the excess amounts paid by the plaintiff. So long as there is no claim for recovery by the State, the principle of law in **Rafiq Masih** (supra) does not apply.

4. I asked the State counsel to give a memo of calculation along with an affidavit to be submitted, on 17.12.2015 and a memo of calculation has been filed before this court along with affidavit as Annexures R3 and R4. Annexure R4 gives the respective dates when the increments were due as per the decree and also sets out the

details of the actual amounts which had been paid during the relevant period by the judgment debtor to the plaintiff. It would show that every amount of what is recoverable has been already recovered by the plaintiff through some other means which he was not entitled. The adjustment pleaded was perfectly tenable and the rejection of objection of the judgment debtor at the previous stage of execution by the Executing Court without actually adverting to the details shall come in the way.

5. The order already passed by the Executing Court dismissing the execution petition is upheld and the revision petition is dismissed. Annexures R3 and R4 giving the statement of account is made a part of the order. They will be treated as Annexures C1 and C2 to be annexed along with the order.

(K.KANNAN)
JUDGE

01.03.2016
sanjeev