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

**Civil Revision No.7363 of 2018 (O&M)
Date of Decision: 29.10.2018**

State of Punjab and another

.....Petitioners

Vs

Dr. Kanwaljit Singh

....Respondent

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

Present:Mr. Arun Kundal, D.A.G., Punjab.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 25.05.2018 passed by the executing Court, whereby application of the petitioners for filing additional objections and for review of the order dated 10.11.2017 under Section 114/151 read with Section 47 CPC was dismissed.

[2]. Petitioners sought to place on record letter No.Amla-1-94/729 dated 21.04.1994 and letter No.5221 dated 12.05.1994 which were issued by the office of Civil Surgeon, Jalandhar whereby respondent was intimated and informed that his joining was to be accepted by the head office being appointing and punishing authority.

[3]. Brief facts of the case are that the respondent filed a civil suit No.426/93 dated 29.10.1993 for declaration to the effect that the order dated 18.08.1993 dismissing the services of the respondent/plaintiff was illegal, without jurisdiction, null and void. Plaintiff sought declaration to the effect that he was entitled to reinstatement in service along with all consequential benefits of service including pay, allowances and seniority etc. Mandatory injunction was also sought for regularization of the period of the service of the petitioner from 02.11.1984 to 21.12.1989 as on leave of the kind due or as on leave extraordinary from 02.11.1989 to the date of re-joining the service as he was kept out of duty intentionally by the defendants inspite of submitting his joining regarding duty. Plaintiff also claimed full back wages along with interest.

[4]. The trial Court decreed the suit vide judgment and decree dated 09.04.1994 with the following relief:-

“16. In view of the premises written above, suit is decreed in favour of the plaintiff and against the defendants and a decrees, for declaration that the order dated 18.08.93, issued under the signatures of the Additional Secretary, Health, allegedly the order of the Rajpal, Punjab Endst. No.6/95/85-1 S.2/12.9.88 dated 1.6.1993 whereby the plaintiff was dismissed from service, is illegal and void and the plaintiff is entitled to reinstatement in service and all benefits of service including pay, allowances, seniority

etc. and also for mandatory injunction to regularize the period of service w.e.f. 2.11.84 to 21.12.89 as on leave of the kind due/extra ordinary leave, and from 2.11.89 to date/rejoin as on duty, having been kept out of duty intentionally by the defendants inspite of submitting joining report for duty with full back wages with interest 12% per annum for the deprivation of the emoluments by the defends illegally, be prepared in favour of the plaintiff and against the defendants. No order as to costs.”

[5]. An appeal was preferred before the lower Appellate Court. The judgment and decree of the trial Court was partly modified by the Addl. District Judge, Jalandhar vide judgment and decree dated 02.04.1997. The concluding part of the judgment and decree of the lower Appellate Court reads as under:-

“16. The appeal is therefore, partly allowed. The judgment and decree under appeal is accordingly modified. The suit of the plaintiff for declaration that the order dated 18.4.1993 issued under endorsement dated 1.6.1993 whereby the plaintiff was dismissed form service is null and void and not binding on the rights of the plaintiff with consequential relief of mandatory injunction directing the defendants to consider the period of absence of the plaintiff from duty as for leave rules applicable to the plaintiff from duty as per leave rules applicable to the plaintiff, with consequential benefits with interest at the rate of 12% p.a. from the due date till payment is decreed. Parties are left to bear their own costs. Decree-sheet be prepared accordingly. File be consigned. Record of lower court be

consigned.”

[6]. Regular Second Appeal No.2961 of 1997 was filed by the petitioners in the High Court and the same was dismissed vide order dated 10.12.2009.

[7]. At one point of time, the executing Court passed the order dated 20.08.2015 holding that the decree dated 02.04.1997 passed by the Addl. District Judge, Jalandhar was fully satisfied. The claim of the decree-holder was decreed by the Courts below and the plaintiff was held entitled for declaration that the order dated 18.04.1993 issued under endorsement dated 01.06.1993 dismissing the plaintiff from service was null and void and was not binding upon the rights of the plaintiff. Consequential relief was granted in the form of mandatory injunction directing the defendants to consider the period of absence of the petitioner from duty as leave under the Rules with consequential benefit of interest @ 12% per annum from due date till payment is made.

[8]. The order dated 20.08.2015 was assailed by the respondent in Civil Revision No.387 of 2016 which was decided by the High Court on 01.05.2017 after noticing the fact that the perusal of the decree dated 02.04.1997 would show that the absence period of the petitioner was to be treated as duty

period and as a consequence thereof, the plaintiff was to be paid his salary along with interest @ 12% per annum in accordance with law. The stand taken by the petitioners/ judgment debtors was totally ambiguous on the ground that the required amount had been paid to the plaintiff in a sum of Rs.10,477/- for the period from 01.01.1990 to 16.03.2012. The aforesaid figure did not appeal to reason that only such amount was due to the plaintiff after service of about 22 years. No calculation sheet was produced by the judgment-debtors before the executing Court, nor any such facts and figures were brought to the notice of the executing Court. The executing Court did not insist upon bringing complete facts and passed the order that the decree was satisfied. The High Court concluded that the executing Court misdirected itself while passing the said order. The High Court while considering the peculiar facts and circumstances of the case, found that the order dated 20.08.2015 was suffering from with patent illegality and was non-speaking. The said order was set aside and the executing Court was directed to re-consider the matter with reference to complete details. The Court was held entitled to insist upon judgment-debtors to provide facts and figures as to how the decree-holder was only entitled to Rs.10,477/- for his service from 22.12.1989 to 16.03.2012. The executing Court was

directed to pass fresh order in accordance with law.

[9]. Thereafter, the executing Court vide para nos.7 and 8 of its order dated 10.11.2017 held in the following manner:-

“7. The demeanour of judgment debtors in light of the discussion made herein above clearly shows that it was the judgment-debtors, who have denied the plaintiff from his work with effect from passing of judgment of trial court, which in light of the above referred discussion, cannot be treated as impediment upon the constitutional right of plaintiff regarding right to pay. Furthermore, the principle of 'No work-no- pay" cannot be applied mechanically in all the cases, especially where the employee is denied work at the hands of employer, without any justifiable reason. Whereas, the Ld. GP for defendants has vehemently argued that in light of Rule 8.121 of Chapter 8 of Punjab Civil Services Rules, Vol.I, Part-I, the decree holder is not entitled to any other relief. He further argued that the judgment debtors vide its letter bearing endorsement No.2/15/5622 dated 09.07.2015 has already explained its version regarding the payments already made to the Decree Holder. But the said contention of learned GP for judgment debtors is not permissible as the discussion made herein above and herein below would clearly reveal that it has been high handedness of Jds that did not allow decree holder to pursue his job.

8. In view of the facts delineated above, it is evident that the judgment-debtors under the garb of pendency of First Appeal and thereafter the pendency of regular second appeal did not allow the decree-holder to join his duty. More so, there is not even a single document on record in order

to show that before year 2012 the decree holder was ever ordered by judgment debtors to join his duty. The statement on record dt. 17.03.2012 of Dr. Mandeep Kaur, Medical Officer, Primary Health Center, Mehatpur, Jalandhar clearly provides decree holder was directed to join his duty on 16.03.2012 and in compliance joined his duty and later on got retired as reported by learned counsel for decree holder during the course of arguments. The service record of decree holder, copy of which was already placed on record from the office of judgment debtors clearly shows that no adverse order in the service record of decree holder has been passed whereby he has been ever directed to join his service after passing of the judgments as referred above. On the other hand, contemporary medical officers, copies of whose service record is on record in view of the orders of this court, who were working during the period the plaintiff was required to be given the relief of joining his service clearly shows that they were getting all the benefits and emoluments out of their service but only on account of not allowing the plaintiff due to high handedness of judgment debtors, decree holder has been deprived of his Constitutional as well as Human Right. More so, the judgment debtors have failed to explain as to what precluded them from issuing notice to decree holder for joining his service after the passing of judgment and decree dated 09.04.1994 passed by learned Civil Court, Jalandhar as well as Judgment and Decree dated 02.04.1997 of the then Learned Additional District Judge, Jalandhar. Even after the passing of order in RSA No.2961 of 1997 dated 10.12.2009, the judgment-debtors did not allow the decree holder to join his service and it was only after the intervention of executing court, the decree holder was allowed to join his service and he was then given a posting

in a far of place i.e. Jalalabad, Ferozepur and it can be very much observed that it was a punishment posting for decree holder. In the light of the judgment of first appellate court, this court has to determine the due date from which the arrears of pay and other benefits alongwith the interest as ordered by court are to be provided to the decree holder. Therefore, it is ordered that the period of service of decree holder from 02.01.1984 to 21.12.1989 is to be calculated as leave, as per rules. The due date for the purpose of calculation of arrears of pay and other benefits alongwith the interest as ordered by court is hereby affixed as 22.12.1989. The department/judgment debtors are directed to calculate the aforesaid benefits of decree holder from the said date i.e. 22.12.1989 till the date of his retirement and thereafter i.e. all his arrears including GPF, Gratuity, Leave Encashment, GiS etc. as accruing in favour of decree holder. The judgment debtors are directed to submit their fresh calculations in light of the aforesaid order passed by this court and any non-compliance or delay for submitting of calculations, shall be seen seriously as decree holder has been deprived of his service benefits for the last more than 25 years on account of high handedness of judgment debtors. Now to come up on 28.11.2017 for submission of calculations of service benefits of decree holder.”

[10]. The incriminating facts were noticed by the executing Court in the context of entitlement of the respondent/decreed-holder. Thereafter an application for filing additional objections and to review the order dated 10.11.2017 under Section 114/151 read with Section 47 CPC came to be filed. After noticing the incriminating facts on record, the executing Court dismissed the

application on the premise that the order dated 10.11.2017 passed by the executing Court was a well reasoned order and the same was passed in accordance with spirit of the judgments and decrees passed by the lower Appellate Court which had attained finality.

[11]. I have considered the submissions made by learned counsel for the petitioners.

[12]. The executing Court had no power to review the said order particularly when the judgment-debtors have woken up from deep slumber after letter dated 21.04.1994. A period of 24 years has gone by. The action of the petitioners in moving such application at the belated stage was perceived to be an effort to dislodge the decree-holder and to deprive him from the fruits of the decree which was granted by the lower Appellate Court on 02.04.1997. The facts and circumstances of the case did not warrant interference in the present revision petition for the simple reason that the judgment and decree of the trial Court was partly modified by the lower Appellate Court. The entitlement of the decree-holder was endorsed by the civil Courts in hierarchy.

[13]. The order dated 20.08.2015 passed by the executing Court making the execution to be fully satisfied was lawfully set

aside by the High Court in CR No.387 of 2016 and thereafter on re-assessment of facts with reference to the entitlement of the decree-holder, order dated 10.11.2017 came to be passed. The said order was sought to be reviewed by the petitioners with the help of letter dated 21.04.1994 which in my considered opinion is *mala fide* act at the instance of the petitioners. The cause of action in respect of letter dated 21.04.1994 cannot be espoused in the year 2018 that too during execution of judgment and decree which had already attained finality. Subject matter of letter dated 21.04.1994 was never raked up during substantial proceedings and even in the proceedings of earlier CR No.387 of 2016 which was decided by the High Court on 01.05.2017.

[14]. The conduct of the petitioners in putting hurdles in lawful execution of the judgment and decree of the lower Appellate Court is nothing, but an abuse of process of law which is liable to be deprecated in strong words. The filing of this revision petition on the issue of letter dated 21.04.1994 is nothing but an act of colourable exercise of power by the Authority/petitioners, who were supposed to honour the judgment and decree of the civil Court which was upheld by the lower Appellate Court on 02.04.1997 with some modification. The petitioners appears to be more interested in perpetuating the unfounded *lis* by denying rightful entitlement of the

plaintiff/decreed holder even after about 21 years passing of the decree by the lower Appellate Court.

[15]. In view of aforesaid, this revision petition is dismissed with an exemplary costs of Rs.1 lakh to be paid to the plaintiff/decreed holder for dragging him in unnecessary litigation and for depriving him his lawful entitlement even after passing of about 21 years from the date of decree of the lower Appellate Court. Liberty is granted to the petitioners to fix responsibility of the erring officials/officers and to recover the amount of costs in accordance with law. In the event of failure to pay the amount of costs to the plaintiff/decreed-holder, the same shall be recovered as arrears of land revenue.

October 29, 2018

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No