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

**Civil Revision No.1942 of 2018
Date of Decision: 22.01.2019**

**Punjab State Electricity Board, Patiala and Anr.
.....Petitioners**

Vs

**Manmohan Singh
....Respondent**

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

Present: Mr. Abhilaksh Grover, Advocate
for the petitioners.

Mr. G.S. Toor, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this revision petition against the order dated 06.11.2017 passed by the Civil Judge (Jr. Divn.) Patiala, whereby the executing Court has allegedly decided the entitlement of the respondent over and above the decree passed by the trial Court on 05.04.2013 which was affirmed by the lower Appellate Court on 16.03.2015.

[2]. Plaintiff filed a suit for declaration and mandatory injunction against the defendants/petitioners for the relief of granting 23 years promotional increments w.e.f. 10.05.1990.

Plaintiff sought the aforesaid relief with consequential benefits and interests.

[3]. Upon completion of pleadings, the trial Court framed the following issues:-

<i>“Issue No.1.</i>	<i>Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP</i>
<i>Issue No.2</i>	<i>Whether the plaintiff is entitled to the mandatory injunction as prayed for? OPP</i>
<i>Issue No.3</i>	<i>Whether the suit is not maintainable in the present form? OPD</i>
<i>Issue No.4</i>	<i>Whether the plaintiff has no cause of action to file the suit? OPD</i>
<i>Issue No.5</i>	<i>Whether the suit is hopelessly barred by limitation? OPD</i>
<i>Issue No.6</i>	<i>Whether the civil court has not jurisdiction to try and decide the present suit? OPD</i>
<i>Issue No.7</i>	<i>Whether the suit is totally false, frivolous, vexatious and liable to be dismissed? OPD</i>
<i>Issue No.8</i>	<i>Relief.”</i>

[4]. The trial Court considered the features of the Scheme in view of Finance Circular No.17/90 dated 23.04.1990 (Ex.P-4) which was prevalent at the relevant time. The trial Court also considered the Finance Circular No.62/92 (Ex.P-6) and ultimately found under issue Nos.2 and 5 that the suit was within limitation. It was held that wrong fixation of pay gives continuous cause of action to the employee so long he is in service and the cause of action continuous till the date of retirement. It is only after the date of retirement, the cause of action ceases to continue and period of limitation starts thereof. Plaintiff was

retired on 31.10.2004. The filing of suit on 16.08.2007 was held to be well within limitation of three years from the date of retirement.

[5]. During course of arguments before the trial Court, learned counsel for the plaintiff conceded that the service benefits in the form of arrears will be restricted for three years prior to the institution of the suit in view of law laid down by the Hon'ble Apex Court in ***Union of India and others vs. Tarsem Singh (2008) 8 SCC 648***. The trial Court after holding the suit well within limitation also considered that the suit of the plaintiff is to be decreed and the recovery of arrears of past period can be restricted only for the period of three years prior to the date of filing of the suit. The defendants were directed to grant 23 years promotional increments to the plaintiff w.e.f. 10.05.1990 with all consequential benefits with a clarification that though revised pay scale will be granted to the plaintiff from 10.05.1990, but he will be entitled to arrears of such revised pay scale in view of grant of 23 years promotional increments for from three years prior to the date of institution of the suit. Issues No.2 and 5 were decided with the aforesaid observations. While granting relief in the operative part of the judgment dated 05.04.2013, the trial Court passed the following relief in para No.24 of its judgment:-

“24. In view of my findings on the aforesaid issues, the case of the plaintiff succeeds and same is hereby decreed to the extent that the actions of the defendants in not granting 23 years promotional increments w.e.f. 10.5.1990 to the plaintiff are declared illegal, null and void, ultravires, unconstitutional, without jurisdiction, malafide, against the principles of natural justice and against the contrary to the express provisions of Departmental Rules, regulations and instructions in this regard. Notwithstanding the above actions and orders of the defendants the plaintiff is held entitled for 23 years promotional increments from the date of completion of 23 years of his regular service i.e. w.e.f. 10.5.1990 with consequential benefits. Furthermore, since 23 years promotional increments of the plaintiff have been withheld by defendants without any reason so the plaintiff is also held entitled to simple interest at the rate of 6% per annum on the amount of his arrears from the date of grant of such arrears to the plaintiff till their realization i.e. from the date i.e. three years prior to the date of institution of the suit till realization. Furthermore defendants are directed to grant 23 years promotional increments w.e.f. 10.5.1990 to the plaintiff with consequential benefits with simple interest at the rate of 6% per annum on the amount of his arrears from the date of grant of such arrears to the plaintiff till their realization i.e. from the date i.e. three year prior to the date of institution of the suit till realization.”

[6]. The decree drawn by the trial Court was fully in consonance with the aforesaid operative part of the judgment and the same reads as under:-

“This suit coming up today i.e. 05.04.2013 for final disposal before me (Neeraj Goyal, PCS, Civil Judge, Junior Division, Patiala), in the presence of Sh. S.K. Kaushal, Adv. Counsel for the plaintiff and Ms. Neena Kaushal, Counsel for

defendants. The suit of the plaintiff succeeds and same is hereby decreed to the extent that the actions of the defendants in not granting 23 years promotional increments w.e.f. 10.5.1990 to the plaintiff are declared illegal, null and void, ultravires, unconstitutional, without jurisdiction, malafide, against the principles of natural justice and against the contrary to the express provisions of Departmental Rules, regulations and instructions in this regard. Notwithstanding the above actions and orders of the defendants the plaintiff is held entitled for 23 years promotional increments from the date of completion of 23 years of his regular service i.e. w.e.f. 10.5.1990 with consequential benefits. Furthermore, since 23 years promotional increments of the plaintiff have been with-held by defendants without any reason so the plaintiff is also held entitled to simple interest at the rate of 6% per annum on the amount of his arrears from the date of grant of such arrears to the plaintiff till their realization i.e. from the date i.e. three years prior to the date of institution of the suit till realization. Furthermore defendants are directed to grant 23 years promotional increments w.e.f. 10.5.1990 to the plaintiff with consequential benefits with interest at the rate of 6% per annum on the amount of his arrears from the date of grant of such arrears to the plaintiff till their realization i.e. from the date i.e. three years prior to the date of institution of the suit till realization.”

[7]. Petitioners unsuccessfully challenged the aforesaid judgment and decree before the lower Appellate Court and the same was dismissed on 16.03.2015. The trial Court passed the impugned order in the objections filed by the judgment-debtors/petitioners under Section 47 CPC.

[8]. Petitioners contended before the executing Court that the decree holder is not entitled to any relief as he retired from

service w.e.f. 31.10.2004 i.e. prior to filing of the suit and the Court passed the order in routine manner to make the payment of arrears of three years prior to filing of the suit.

[9]. The executing Court vide order dated 06.11.2017 observed that the decree-holder is entitled to 23 years of promotional increments w.e.f. 10.05.1990 with consequential benefits with simple interest @ 6% per annum from the date of three years prior to the date of institution. The executing Court also observed that three years prior to the date of institution is relatable to the rate of interest only and the judgment-debtors/petitioners have misinterpreted the same. Since the decree holder stood retired w.e.f. 31.10.2004, so he was not entitled to pay for the period thereafter, but from 10.05.1990 till 31.10.2004, he was held entitled to promotional increments in view of the judgment of the trial Court.

[10]. I have considered the judgment passed by the trial Court. In the light of findings given in para nos.19, 20, 21 and concluding para no.24, I find that the observations recorded by the executing Court are contrary to the spirit of the judgment passed by the trial Court which was upheld by the lower Appellate Court.

[11]. In view of aforesaid, I deem it appropriate to set aside

the impugned order dated 06.11.2017 passed by the Civil Judge (Jr. Divn.) Patiala and direct the executing Court to revisit the issue and to pass appropriate order in accordance with law.

[12]. Petition stands disposed of accordingly.

January 22, 2019

Atik

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No