

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

CR No.284 of 2019

Date of Decision:17.01.2019

Ashok Kumar Sehgal

...Petitioner

Versus

The Punjab State Electricity Board through its Secretary & others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Bhim Sen Sehgal, Advocate for the petitioner.

ANIL KSHETARPAL, J.

Learned counsel for the petitioner, while challenging the order of executing court dated 3.11.2018 does not dispute the position that the petitioner did not pass the departmental examination which was cleared by his junior Tarsem Pal Mulla resulting in stepping up of pay. He has submitted that this issue could not be examined by the executing court in wake of the decree passed by the learned first appellate court. The order passed by the learned executing court is as under:-

“Arguments heard. Perusal of file shows that present execution has been filed by the D.H. of the judgment and decree in appeal dated 28.08.2015, passed by the Court of Sh. Kamaljit Lamba, the then Ld. Additional District Judge, Gurdaspur. The only bone of contention which remains between the parties is that the D.H. claims that his salary has not been fixed by the J.D. department as per directions issued by the Ld. Appellate Court and the same was required to be fixed at par with his immediate junior Tarsem Pal Mulla. The calculations have been submitted by the J.D. department on 21.08.2018, whereby it comes to light that the anomaly between pay of plaintiff and Tarsem Pal Mulla was fixed before 17.11.2003 at ₹9700/- each,

being basic pay. It has been stated by J.D. department that on 17.11.2003, Tarsem Pal Mulla was given benefit of 23 years of service on his clearing departmental examination. It is not disputed that the plaintiff never cleared the departmental examination. The plaintiff claims that his pay should have been fixed at parity with Tarsem Pal Mulla at the time when he got retired on 30.04.2006. It is necessary to revert back to the original averments of plaintiff in the suit whereby the plaintiff categorically stated that his pay on 01.03.2001 was ₹8500/- whereas basic pay of Tarsem Pal Mulla on 01.03.2001 was ₹9100/-. Whereas on 01.03.2002 the basic pay of plaintiff and Tarsem Pal Mulla was ₹8825/- & ₹9400/- respectively. The plaintiff never claimed any parity of pay with Tarsem Pal Mulla on completion of 23 years of service. As the said relief was not claimed by the plaintiff in the original suit he is not entitled for the same in the execution. Since his pay has been affixed at parity with the pay of his immediate junior, he cannot again claim the parity if the said junior cleared departmental examination and received a further pay increment on completion of 23 years of service, whereas the plaintiff failed to clear the departmental examination. As per calculations submitted by the J.D., the entire payment has already made by them to D.H. Therefore, the claim of the plaintiff that an amount is still pending to be paid by the J.D. to him is not tenable. Execution is dismissed as fully satisfied. File be consigned to the record room, Gurdaspur.”

Learned executing court has given cogent reasons to hold that the petitioner cannot claim parity with his immediate junior. The court has further noticed that at one point of time an anomaly between the pay of the petitioner and Tarsem Pal Mulla was removed before 17.11.2003 when their

salary was equated at Rs.9700/-, being basic pay. Thereafter, Tarsem Pal Mulla got step up in the salary although junior to the petitioner on account of clearing his examination after 23 years of service.

Learned counsel for the petitioner does not dispute that the petitioner has never cleared the examination.

The only argument of learned counsel for the petitioner is to the effect that the executing court cannot go behind the decree. However, the executing court cannot shut its eyes on the facts which have come on record. Still further, before 17.11.2003, pay of the petitioner and Tarsem Pal Mulla had been equated by the Department. Learned counsel has further submitted that the Department cannot be permitted to improve their case. In considered view of this Court, it is not an improvement over the case set up by the defendants. It is a question of distribution of public money which cannot be given by the Court by shutting its eyes.

Still further, this Court is exercising jurisdiction under Article 227 of the Constitution of India. While exercising the jurisdiction which is discretionary, the Court has to do substantive justice. In the present case, counsel for the decree holder did not dispute the facts, which have been noticed by the executing court. According to which, decree holder is not entitled to the amount.

In view thereof, there is no ground to interfere. The Civil Revision petition is dismissed.

17.01.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No