IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.6655 of 2018(O&M)
Date of Decision: 22.05.2019

The President Shri Mahavir Jain Girls High School
.....Petitioner

Versus

Tripat Kaur Chawla and others **.....Respondents**

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

Present: Mr. Amit Jain, Advocate
for the petitioner.

Mr. Ashwani Bakshi, Advocate
for the respondents.

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RAJ MOHAN SINGH, J.(ORAL)

[1]. Petitioner has preferred this revision petition against the order dated 12.09.2018 passed by the executing Court vide which evidence of the petitioner was closed by order of the Court and the petitioner was directed to pay the back wages to the tune of Rs.36,14,085/-, failing which coercive steps were ordered to be taken against the petitioner for recovery of the said amount.

[2]. Few facts are relevant to be noticed. Plaintiff/respondent was appointed as S.S. Teacher in the

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petitioner school which is Government aided institution. Plaintiff assailed the action of the petitioner school in a suit for declaration in converting the signed blank papers in two resignation letters and was relieved on 04.08.1991. Plaintiff/respondent challenged the validity of the said acceptance of resignation on number of grounds.

[3]. The suit was partly decreed by the trial Court vide judgment and decree dated 19.08.1986. Both the parties went in appeal before the Lower Appellate Court. Lower Appellate Court vide judgment and decree dated 07.01.1988 dismissed the appeal filed by the defendant/petitioner and allowed the appeal filed by the plaintiff/respondent. The termination of service of the plaintiff was declared to be illegal and she was held entitled to back wages at the due rate excluded the period during which she remained in any gainful employment. Plaintiff was also entitled to interest @ 6% per annum on the due amount.

[4]. Against the judgment and decree dated 07.01.1988 passed by the Additional District Judge, Jind, defendant/petitioner filed RSA No.441 of 1988 in the High Court. The appeal was dismissed vide order dated 03.05.2010. The operative part of the order reads as under:-

> *"Though there is some justification in what the learned counsel for the respondent/plaintiff states. As*

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per the counsel, the appellant would now be bound to pay the back wages, if RSA is dismissed, in terms of undertaking aforementioned. Right to get back wages, especially so when reinstatement is not being asked, would depend upon the gainful employment of the respondent plaintiff, which may have to be proved by the appellant if they intend to deny any back wages.

The Regular Second Appeal is, however, dismissed.

Sd/- (Ranjit Singh)
Judge"

[5]. Thereafter, execution was filed by the decree holder/respondent. Objections were filed by the judgment debtor and the same were disposed of by the executing Court vide order dated 12.03.2018 by passing the following order:-

"In view of discussion made above, the objections of judgment-debtors are disposed off with the directions to judgment-debtors to prove the period for which decree-holder remained employed as Supervisor in Distt. Adult Education Office and also to prove that the decree-holder as an Advocate has earned adequate remuneration in case they deny back wages to her.

Now to come up on 31.03.2018 for further proceedings."

[6]. Against the aforesaid order dated 12.03.2018, CR No.3469 of 2018 was filed by the petitioner school. The said revision petition was dismissed by the High Court vide order

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dated 10.07.2018 by observing that judgment debtor cannot merely state that since she has admitted her employment for some time as Supervisor and thereafter, enrollment as an Advocate, therefore, the judgment debtor stands absolved of the liability. It would always depend upon the evidence to be led by the parties. In view of aforesaid, the revision petition was dismissed.

[7]. Thereafter, the petitioner/judgment debtor filed an application before the executing Court, seeking direction against the decree holder/respondent to file income tax returns for the year 1985 till date or to give PAN card. On the said application, the executing Court passed the order dated 29.05.2018 to the following effect:-

> *"Learned counsel for JD No.1 has suffered a statement that JD No.1 will not furnish any evidence regarding the income earned by DH while practicing as an Advocate except of her income tax returns and thus he has prayed that DH be directed to furnish her Pan Card number on record. DH has suffered a statement that she shall furnish her Pan Card before the Court on the next date. Adjourned to 07.08.2018 for DH to furnish her Pan Card number.*
>
> Date of order:-29.05.2018 (Khatri Saurabh)
> RC/CJ(SD), Jind,
> (UID No.HR0253)"

[8]. Evidently, the decree holder has suffered a statement

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that she will furnish her pan card before the Court on the adjourned date. Judgment debtor also suffered a statement that judgment debtor will not furnish evidence regarding income earned by the decree holder while practicing as an Advocate except her income tax returns. No direction was issued to the decree holder for submitting her income tax returns by the respondent. Pan card submitted by the decree holder in the Court and it was so recorded in the order dated 07.08.2018 by the executing Court. Last opportunity was granted to the judgment debtor/petitioner to conclude evidence regarding income tax returns of the decree holder and the case was adjourned to 12.09.2018. Decree holder made a statement before the executing Court admitting that she had worked as Supervisor with District Adult Education Officer for about one year from 01.10.1982. She also stated that she has no objection if her back wages for the period 01.10.1982 to 30.09.1983 are not paid to her. The impugned order has been passed on the same day.

[9]. In view of aforesaid facts, it can be appreciated that the issue with regard to payment of back wages can only be decided on the basis of evidence to be brought on record by the workman to show that she was not gainfully employed during the period of termination. The initial onus was on the workman,

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but in the instant case, the onus was fastened upon the petitioner. Petitioner has also produced two documents viz. enrollment certificate of the Bar Council and judgment passed by the criminal Court. Judgment debtor has already confined its prayer only to the extent of producing income tax returns for which application for production of document was filed. It is nowhere claimed by the decree holder that the document sought to be produced was a privilege document in terms of Sections 122 to 124 of the Evidence Act.

[10]. Learned counsel for the decree holder/respondent stated that the document in question could have been summoned by the judgment debtor/petitioner in accordance with law.

[11]. Since evidence of the petitioner has been closed without adverting to the prayer for production of document vide the impugned order, I deem it appropriate that even this document is to be summoned through concerned quarter, therefore, an opportunity has to be given to the petitioner by setting aside the impugned order. Consequently, the impugned order is set aside. This revision petition is accepted to a limited extent that the executing Court shall give one effective opportunity to the petitioner for summoning the relevant income tax returns from concerned quarter with the process of the Court

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and thereafter permit the petitioner to lead evidence in accordance with law. The prayer made by learned counsel for the respondents for interim relief of payment to the extent of 50% of the total amount, shall also be considered by the executing Court in accordance with law.

[12]. Both the parties are directed to appear before the executing Court on 04.06.2019.

22.05.2019 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether reasoned/speaking **Yes/No**

Whether reportable **Yes/No**

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