

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

**CR No.1163 of 2019
Date of Decision : 27.02.2019**

Sanjay Kumar Mittal

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Darshan S. Malwai, Advocate
for the petitioner.

SUDIP AHLUWALIA, J. (ORAL)

The petitioner was originally dismissed from service by the respondent-Authorities. His order of dismissal was set aside by the Ld. Civil Judge (Senior Division), Sangrur in Civil Suit No.244 of 14th June, 2004/B.T. No.527 of 25th May, 2005, vide its Judgment and Decree dated 7th August, 2008 (Annexure P-1). The respondents were however granted liberty by the Ld. Trial Judge to proceed against him by conducting a Regular Departmental Inquiry under the Punjab Punishment and Appeal Rules, 1970.

2. The petitioner filed his application under Order 21 Rule 32 of the Civil Procedure Code (for short, 'the CPC') for Execution of the Decree on 7th December, 2013 (Annexure P-2), in which the prayer was for directing the respondents/Judgment Debtors *'to issue the posting*

order of the decree holder, so that he may be able to join his duties besides payment of salary right from 10.5.2001 till the decree holder is allowed to join his duty as medical officer by court process. The dismissal order dated 29.10.2010 conveyed to the decree holder vide letter dated 13.6.2012 has no effect on the right of the decree holder'.

3. It however transpires that in the interregnum the Disciplinary Proceedings against the petitioner had already been completed by the respondents in terms of the liberty granted to them by the Ld. Trial Court, and he was ordered to be dismissed from service on 29th October, 2010, which was long before filing of the aforesaid application.

4. Clearly therefore there was no scope for the Executing Court to direct issuance of his Appointment Order to enable him to join his duties when the application under Order 21 Rule 32 of the CPC was filed, since he had already been dismissed from service by that time, after completion of regular disciplinary proceedings. There was a very passing reference to the payment of the petitioner's salary w.e.f. 10th May, 2011, as can be seen in his prayer reproduced above, but undoubtedly he could not have been granted any such salary “till the date of his being permitted to join his duties” as there was no scope for the Executing Court to direct issuance of his Posting Order after he had already been dismissed again pursuant to the regular Enquiry Proceedings.

5. Faced with this, Ld. Counsel for the petitioner in all fairness submits that undoubtedly the application as framed could not have been allowed by the Ld. Executing Court, and that the petitioner appropriately only ought to have sought payment of his salary for the period he remained under illegal dismissal, till his actual dismissal after conducting of the Regular Disciplinary Proceedings. Ld. Counsel therefore seeks liberty from this Court to approach the Ld. Executing Court with a fresh corrected application.

6. Without making any comments on the likely outcome of the petitioner's efforts, at this stage the present Revision Petition is disposed off as withdrawn with liberty to him to file a fresh application for redressal of his grievances before the appropriate Forum, which shall be considered and decided by the Court concerned independently on its own merits, and without being influenced by any observations made in any part of this order.

February 27, 2019**Dpr****(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No