

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

CR No.4396 of 2016 (O&M)
Date of decision: 5th March, 2020

Balbir Singh Komal

... Petitioner

Versus

State of Punjab & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Ms. Jyoti Sareen, Advocate for the petitioner.

Mr. C.L. Pawar, Sr. Dy. Advocate General, Punjab
for the respondents/State.

FATEH DEEP SINGH, J.

This is a revision arising out of the impugned order dated 24.12.2015 (Annexure P9) whereby the Court of learned Civil Judge (Junior Division), Jalandhar accepting the objections filed by the respondents Punjab State and others dismissed the execution application.

Heard Ms. Jyoti Sareen, Advocate for the petitioner; Mr. C.L. Pawar, Sr. Dy. Advocate General, Punjab representing the respondents and perused the records of the case.

The background of this *lis* that is essential to be reproduced is that one Balbir Singh Komal, present revisionist, filed against the Punjab State and others a suit for declaration to the effect that he is entitled to regularization of his services in the capacity of Assistant Town Planner

with effect from 20.06.1989 when he was so promoted on ad-hoc basis and also entitled to the benefits of Assured Career Progression Scheme in accordance with the scheme and recommendations of Fourth pay commission and thus, re-fixation of his pay accordingly. The plaintiff has further sought decree for mandatory injunction directing the defendants to regularize his services in the post of Assistant Town Planner with effect from the date of his promotion to the said post on ad-hoc basis and that his pay be re-fixed and also sought arrears of pay and allowances including retiral benefits along with interest at the rate of 18% per annum.

The Court of Mrs. Jasbir Kaur, PCS, Civil Judge (Junior Division), Jalandhar through judgment and decree dated 29.03.2011 while partly decreeing the suit of the plaintiff made following observations:-

“In view of my findings on issues above, suit of the plaintiff is partly decreed in favour of the plaintiff to the effect that he is entitled to proficiency step increments on completion of 4, 9, 14 years service in accordance with recommendation of 4th pay commission, if he is not otherwise disentitled under rules. Regarding other relief claimed by the plaintiff, suit is dismissed. Decree sheet be prepared accordingly. File be consigned to the record room.”

The findings were subsequently upheld by the Court of learned Additional District Judge, Jalandhar through judgment and decree dated 13.05.2011. It is on the basis of the same, the plaintiff (present petitioner) had filed execution application in which the impugned findings were recorded.

It is the own stand of the plaintiff in the suit that he was granted ad-hoc promotion by way of provisional promotion which should be taken into account for the purpose of benefit of senior/selection grade/proficiency step up increments. It is argued with much vehemence and force by learned State counsel that the claim of the plaintiff earlier for regularization of his services stood dismissed and so his appeals against those findings. The Apex Court in **‘State of Punjab and others vs. Gurdeep Kumar Uppal and others’ (2003) 11 Supreme Court Cases 732**, considering whether the period of ad-hoc services rendered by an employee is to be included for calculating the period for giving higher pay-scale under the proficiency step-up scheme or not, and relying upon earlier view in **‘State of Haryana vs. Haryana Veterinary & AHTS Assn.’ (2000) 8 SCC 4**, has taken the view that for determination of seniority only regular service rendered by the employee is to be counted and not the ad-hoc service and further held that the judgments/orders passed by the High Court holding that ad-hoc service is

to be included in calculating the period of service for giving the higher scale of pay are unsustainable and have to be vacated.

More so, the claim of the petitioner's counsel is that at the time when the judgment and decree was passed in favour of the plaintiff, the Rules provided for such eventuality however, this Court seeks support from '**Garikapati v. Subbaiah Chowdhary**' AIR 1957 SC 540, wherein it was held that the golden rule of construction is that in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed. In '**Zile Singh v. State of Haryana**' (2004) 8 SCC 1, a Three-Judge Bench of the Supreme Court observed as under:-

“Maxwell states in his work on Interpretation of Statutes (12th Edn.) that the rule against retrospective operation is a presumption only, and as such it ‘may be overcome, not only by express words in the Act but also by circumstances sufficiently strong to displace it’ (p. 225). If the dominant intention of the legislature can be clearly and doubtlessly spelt out, the inhibition contained in the rule against perpetuity becomes of doubtful applicability as the ‘inhibition of the rule’ is a matter of degree which would ‘vary secundum materiam’ (p. 226). Sometimes, where the sense of the statute demands it or where there has been an obvious mistake in drafting, a Court will be prepared to

substitute another word or phrase for that which actually appears in the text of the Act (p. 231). ”

The claim of Ms. Jyoti Sareen, Advocate for the petitioner who has sought to cite the Constitutional Bench view in **‘V. Ramaswami Aiyengar and others vs. T.N.V. Kailasa Thevar’ 1951 AIR (SC) 189** is that the Executing Court cannot go beyond the terms of decree and that it has the power to interpret the decree. It is sad to observe that the judgment and decree in favour of the plaintiff was passed on 29.03.2011 quite in oblivion to the innumerable communications received by the plaintiff from the State declining such a prayer to the law laid down in **‘State of Punjab and others vs. Gurdeep Kumar Uppal’ (ibid)** which was way back on 20.03.2001 and has rather relied upon a letter (Annexure P8) which was issued on 11.05.1990 and therefore could not sustain the test of legal enforceability and sustainability and therefore its vires is also quite doubtful. In the light of such a situation and the fact that the Court below in the impugned findings had highlighted the Punjab Govt. letters dated 22.07.2011 and 06.02.2014 which provide that benefits of Assured Career Progression Scheme are available only to a regular employee from the date when his services were regularized in the cadre, and therefore, certainly decree could not be executed. To the very specific query of the Court, learned counsel for the petitioner could not

displace the same by any rules and regulations applicable to the case of the petitioner. This Court in the light of the same, does not find any illegality or perversity in the impugned findings. The same need to be upheld and the present petition being without any merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

March 5, 2020

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No