

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR 3818/2016(O&M)

Date of decision: 02.05.2023.

Punjabi University, Patiala and others

.....Petitioners.

Vs.

Mohinder Singh

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Kanwaljit Singh, Senior Advocate assisted by
 Mr. Robin Gill, Advocate for the petitioners.

 Mr. Ajay Pal Singh, Advocate for the respondent.

Nidhi Gupta, J.

CM 8481-CII/2019

Aforesaid application has been moved by the respondent u/s
151 for placing on record copy of resolution of Finance Committee dated
8.3.2011, endorsed vide Endst. No.680 dt. 11.4.2011 certified by the
Syndicate, Punjabi University, Patiala, as Annexure R-1.

Notice of the said application was given to petitioners on
14.10.2019.

Till date, no reply has been filed.

In view of the above, CM is allowed and Annexure R-1 is
taken on record.

Main Case.

This revision petition has been filed by the defendant/JD seeking setting aside of order dated 27.4.2016 (Annexure P-8) passed by the Id. Executing Court, whereby the objections filed by the petitioners have been dismissed.

Brief facts of the case are that plaintiff/respondent herein filed a civil suit seeking declaration to the effect that he is entitled to promotion as Foreman w.e.f. 29.11.1995 along with consequential reliefs and mandatory injunction was also sought for directing the petitioners/defendants to provide him the said benefits.

Upon notice petitioners filed written statement inter alia, submitting that the respondent had joined as Junior Machine Man on 27.3.1989 on adhoc basis. He was appointed on regular basis as machine operator on 29.11.1990. No person has been appointed as foreman and one defendant No. 5 in the suit namely Shiv Parshad Joshi was asked to look after the internal work of the Punjabi University Press without payment of any incentive. There was no promotion given to anyone.

Vide judgment and decree dated 19.8.2006 (Annexure P-1), the Id. Trial Court partly decreed the suit of the respondent holding that the respondent is entitled to be considered for promotion as a Foreman, and further directed the petitioner university to decide the case of the plaintiff for promotion as foreman within four months. No relief for consequential benefits was given.

Against the said judgment and decree petitioner filed appeal which was dismissed vide order dated 15.6.2009 (Annexure P-2). Learned Appellate Court held in Para 16 of its judgment that mere posting against a superior post with higher pay in itself does not amount to promotion in the absence of any process of promotion undertaken; and mere occurrence of vacancy gives no right to an employee to claim promotion.

The said judgment of the Appellate Court was further challenged by the petitioner by way of RSA No. 63 of 2010 which was also dismissed by this Court vide judgment dated 25.1.2010 (Annexure P-3).

Thereafter, respondent filed Execution Application dated 5.6.2010 (Annexure P-4) wherein he claimed promotion retrospectively, and all other reliefs emanating from such retrospective promotion. Petitioner filed reply (Annexure P-5) to the above said execution application of the respondent. It is these objections which have been dismissed by the Id. Executing Court vide impugned order. Hence, present revision petition.

It is vehemently submitted by Id. Senior Counsel for the petitioners that as per the judgment and decree dated 19.8.2006 (Annexure P-1) the petitioners had only been asked to “*consider* the respondent for promotion as Foreman”. It is submitted that the suit was only partly decreed in favour of the respondent and petitioners were only asked to *consider* the respondent for promotion as Foreman. It is submitted that even the lower Appellate Court held that the suit of the respondent was rightly decreed *in part*. It is submitted that even in the RSA this Court had held that “*The only direction given by the court is to consider the case of the respondent for*

promotion. I am, thus, not inclined to interfere in the finding of fact recorded by the courts below”.

It is submitted that accordingly, in compliance of the judgment and decree the petitioners had duly considered the case of the respondent and had granted him notional promotion from 29.11.1995 vide order dated 20.7.2010 (Annexure P-6) and Order dated 25.8.2011 (Annexure P-7). It is submitted that the said orders clearly show that notional promotion has been granted w.e.f. 29.11.1995, while monetary benefits have been granted w.e.f. 20.7.2010, which is in accordance with the law laid down by the Hon’ble Supreme Court in **Paluru Ramkrishnaiah v Union of India, AIR 1990 (SC) 166** in which it has been clearly held that a person will not be entitled to any pay and allowances during the period he did not perform the duties on higher post, although after due consideration he was given proper place in the gradation list having been deemed to be promoted to the higher post, therefore, no financial benefits can be granted retrospectively to such a person.

It is submitted that however, vide the impugned order the Id. Executing Court has held the respondent entitled to consequential benefits whereas, no such relief was ever granted vide judgment and decree under execution. It is submitted that while granting relief of consequential benefits to the respondent, the Id. Executing Court has wrongly relied upon judgment of this Court in **Ram Dass and others v State of Punjab and others, Law Finder Doc Id # 190084**, as the same is distinguishable. It is submitted that in the said case of **Ram Dass** (supra), the Court itself had specifically granted the relief of promotion and consequential benefits to the petitioner therein. It is submitted that it is not so in the present case as vide judgment

and decree the petitioners had only been asked to consider the respondent for promotion, and respondent herein had not been granted relief of promotion.

It is submitted that in actual fact, respondent is ineligible for promotion to the said post. It is further submitted that orders dated 20.7.2010 (Annexure P-6) and 25.8.2011 (Annexure P-7) whereby the respondent has been given notional promotion have not been challenged by the respondent.

In response, it is submitted by the ld. counsel for the respondent that prayer of the respondent/plaintiff in civil suit was for grant of promotion as Foreman w.e.f. 1995 along with all consequential benefits. It is submitted that no doubt the direction to the petitioners had only been to consider the respondent for said post, however, it is relevant to note that at the time of filing civil suit respondent was already officiating on the post of Foreman.

It is further submitted that the Execution Petition had been filed by the respondent on 5.6.2010, and order dated 20.7.2010 was passed by the petitioners after the filing of the Execution Petition. It is submitted that in the order dated 20.7.2010, petitioners have only stated that the respondent *“has been promoted as Foreman (Offset) from 29.11.1995.”* It is submitted that nowhere it was mentioned that the said promotion was notional in nature. It is submitted that it is only thereafter, vide order dated 25.8.2011 (Annexure P-7) the order dated 20.7.2010 (Annexure P-6) was improved upon and it was now stated that *“Vice Chancellor has given the approval of deemed benefits from the date of issuance of this order on 20.7.2010 by considering the promotion of Sh. Mahinder Singh son of Sh. Ram Ji Dass, Machine Operator as Foreman (Offset) from 29.11.1995 to*

19.7.2010 as notional". It is submitted that even copy of Annexure P-7 whereby promotion of the respondent was termed as notional was not supplied to the respondent, and therefore, civil rights of the respondent were affected. It is further submitted that it has been categorically recorded by both - the Trial Court as well as lower Appellate Court - that the respondent had worked as Officiating Foreman but had not been paid salary of the said higher post. It is submitted that accordingly, to dub the promotion of the respondent as notional at a belated stage vide order dated 25.8.2011 at Annexure P-7 had civil consequences, as a result of which the respondent was entitled to the relief granted. In support, Id. Counsel cites Division Bench judgments of this Court in **Baljit Singh v State of Haryana and another, 2002(2) SCT 331** and **Sanjay Gulati v State of Haryana 2002(2) SCT 331**.

It is further submitted by the Id. counsel for the respondent that as evident from Annexure R-1, that in actual fact, even the Senate/Syndicate of the petitioner University had approved the respondent's case for consequential benefits. It is submitted that in this view of the matter, there is no error whatsoever, in the impugned order which was equitable and had merely taken into account attendant factors of the case.

In rebuttal it is reiterated by the Id. Senior Counsel for the petitioners that Executing Court could not have gone beyond the decree. In support of his contentions, Id. Senior Counsel relies upon judgments of the Hon'ble Supreme Court in **Sneh Lata Goel vs. Pushplata & ors., Law Finder Doc Id # 1340492; Lekh Raj (dead) through LRs & ors. Vs. Ranjit Singh & ors., Law Finder Doc Id # 890595; Ram Shankar Bhattacharjee v Gauhati High Court, Law Finder Doc Id # 79553; and**

judgments of this Court in **UOI vs. Nirmal Singh & ors., Law Finder Doc Id # 1720721**; and **Gurdev Singh v Punjab National Bank, Mandi Dabwali, Law Finder Doc Id # 30600**.

No other argument has been advanced by ld. Counsel for the parties.

Heard ld. counsel for the parties.

Vide order dated 3.2.2004, ld. Trial Court had framed the following issues:-

- “1. Whether the plaintiff is entitled for promotion as Foreman w.e.f. 29.11.1995 along with consequential benefits with interest @ 18% p.a.? OPP
2. Whether the plaintiff is entitled to the mandatory injunction as prayed for? OPP
3. Whether the suit is not maintainable? OPD
4. Whether the plaintiff has no cause of action to file the present suit? OPD
5. Relief.”

Finding of the ld. Trial Court on the Issues no. 1 and 2 are contained in para 17 of the judgment and decree under execution dated 19.8.2006 (Annexure P-1), which is reproduced hereinbelow: -

“17. DW1 in his cross examination has admitted that the plaintiff can be considered for promotion. Suitability of a person for the post is a matter that has to be considered by the defendant University keeping in view the qualifications and experience possessed by the plaintiff. Since the plaintiff possesses the requisite qualifications and experience, as such he is entitled to be considered for promotion as a Foreman.

Accordingly, these issues are partly decided in favour of the plaintiff.” (Emphasis supplied)

Operative part of the decree sheet dated 19.8.2006 prepared by the Id. Trial Court reads as under:-

“It is hereby ordered that the suit of the plaintiff succeeds and is partly decreed to the effect that the defendants are directed to consider the case of the plaintiff for promotion Foreman within four months of the date of decree and pass a speaking order to that effect. Parties are left to bear their own costs”. (Emphasis supplied)

From a reading of the above, it is clear that the Id. Trial Court refrained from deciding Issues No. 1 and 2 entirely in favour of the respondent, and even though the Id. Trial Court opined/ observed that the respondent possessed the requisite qualifications, yet, it only decreed the suit in part and directed that the petitioner University consider the case of the respondent for promotion.

The lower Appellate Court upheld the judgment and decree vide order dated 15.6.2009 as follows:-

“In view of my foregoing discussion, it is held that the learned lower court has rightly decreed the suit of the appellant/ plaintiff in part. I do not find any illegality or infirmity in the judgment and decree of the learned lower court which is upheld and affirmed and resultantly the appeal is hereby dismissed, with costs. Decree sheet be drawn. Records of the lower Court be returned and appeal file be consigned to the record room”. (Emphasis supplied)

However, vide the impugned order dated 27.4.2016 (Annexure P-8), the Executing Court has directed that:-

“After hearing the submissions raised by the learned counsel for the parties and going through the material available on record, I am of the considered opinion that the arguments advanced by the learned counsel for the Decree Holder carries weightage and substance. From the perusal of the record, it reveals that civil suit bearing no. 395-T/04 of 10.9.2003 titled as Mohinder Singh Vs. Punjabi University was decided in favour of the Decree Holder and JDs/defendants were directed to consider the case of the Decree Holder, thereafter appeal filed before the appellate court as well as RSA filed before the Hon'ble High Court by the JD was dismissed. Thereafter, vide order dated 20.7.2010, office of JDs promoted the Decree Holder as Foreman offset w.e.f. 29.11.1995 as per the order No. 21484-87/Amla/S-13 dated 20.7.2010. Thereafter, the Decree Holder joined the services on 20.7.2010 as Foreman Offset and is working on the same post. Now the Decree Holder by way of present execution seeks the benefits/ arrears w.e.f. 29.11.1995 to 19.7.2010. It is contended by the learned counsel for the Decree Holder that since the Decree Holder has been promoted w.e.f. 29.11.1995, he is entitled for the entire arrears for the post of Foreman Offset. On the other hand, Learned counsel for the JD argued that since the Decree Holder has not worked on the post of Foreman Offset, therefore, by applying the principles of "No work, any No pay" he is not entitled to arrears. After hearing the rival submissions of both the parties, this court is of the considered view that Decree Holder is entitled to entire arrears w.e.f. 29.11.1995 to 19.7.2010 because the principle of "No work, no pay" is not applicable in the present case as Decree Holder was always ready and willing to work on the post of Foreman Offset, but it is the JDs, who have restrained him to work on the post of Foreman offset by not promoting him from the date of his entitlement i.e. w.e.f. 29.11.1995 and, as such, he is fully entitled to claim the arrears of pay w.e.f. 29.11.1995 to 19.7.2010. On this point, I place reliance upon the law laid down in case titled as **Ram Dass and others Vs. State of Punjab and others 2009 (3) RSJ 728**. It is further observed that vide order dated 8.3.2011 the JDS

have passed the order vide which, it was decided by the office of JDs that Decree Holder is entitled to the pay of Foreman Offset w.e.f 29.11.1995, but thereafter vide order dated 25.8.2011 it was decided by the JD that he is entitled of the benefit w.e.f. 20.7.2010 only. The contention raised by the learned counsel for the JDS that Decree Holder should have challenge the order dated 25.8.2011 by the way of fresh suit is concerned, the same is devoid of any merit because the abovesaid order has been passed by the department of JDS, in view of the judgment and decree dated 19.8.2006 and during the pendency of the present execution application. Therefore, it is not required for the Decree Holder to challenge the said order by way of fresh suit. With these observation, the objection cum reply filed by the JD are, hereby, declined and they are directed to release the arrears of pay to the Decree Holder along with interest as per rules till 18.5.2016. Objections disposed of accordingly. Now to come up on 18.5.2016 for payment to the decree Holder”.

In my considered view, in directing as above, the ld. Executing Court has traversed far beyond its domain, inasmuch as, ld. Executing Court has gone on to grant reliefs which were declined/ not granted by the ld. Trial Court/ Lower Appellate Court/ and this Court. It is well established position in law that the jurisdiction of the Executing Court is only restricted to execution of the decree, and the Executing Court cannot go behind and/or beyond the decree. Accordingly, for the Executing Court to grant relief of consequential benefits to the respondent as above, which were not included in the decree, is beyond the jurisdiction of the ld. Executing Court.

In holding as above, I draw support from judgment of the Hon’ble Supreme Court in **Vasudev Dhanjibhai Modi v. Rajabhai Abdul**

Rehman, (SC): Law Finder Doc Id # 31042, wherein it has been categorically held as follows:

“6. A Court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.

8. In the present case the question whether the Court of Small Causes had jurisdiction to entertain the suit against Munshi depended upon the interpretation of the terms of the agreement of lease, and the user to which the land was put at the date of the grant of the lease. These questions cannot be permitted to be raised in an execution proceeding so as to displace the jurisdiction of the Court which passed the decree. If the decree is on the face of the record without jurisdiction and the question does not relate to the territorial jurisdiction or under section 11 of the Suits Valuation Act, objection to the jurisdiction of the Court to make the decree may be raised; where it is necessary to investigate facts in order to determine whether the Court which had passed the decree had no jurisdiction to entertain and try the suit, the objection cannot be raised in the execution proceeding.” (emphasis supplied)

Support may also be drawn from judgment of this Court in **Gurdev Singh v Punjab National Bank, Mandi Dabwali, Law Finder Doc Id # 30600**, wherein it has been held as follows:

“A. Civil Procedure Code, 1908, Section 34 - Interest - Contract - Jurisdiction - Decree passed based on specific contract between parties - Relief of Interest granted at the rate of 12.5% P.A. - Execution filed - Plea of Petitioner was, being agricultural loan rate of interest in excess of 6% P.A. cannot be claimed - Respondent claimed contractual rate of interest - Petitioner could not prove agricultural loan - Held,

Executing Court would not be in its jurisdiction to come to the conclusion whether the rate of interest awarded by the court of competent jurisdiction - Executing Court cannot go behind the decree”.

Thus, it is the unanimous and undisputed position in law that the Executing Court cannot travel beyond the decree. In the case of **Vasudev Dhanjibhai Modi (supra)**, Hon’ble Supreme Court has held to the extent that even if the decree be erroneous, it is not open to the Executing Court to enter upon an enquiry into the correctness thereof. This position in law has been admitted by the Id. Counsel for the respondent as well, and no judgment to the contrary has been cited on behalf of the respondent.

Further, as regards contention on part of the respondent, that having worked on the post of Foreman (Offset), respondent was entitled to consequential benefits of holding said post, I am not inclined to agree with the said contention. In this regard reliance may be placed upon judgment of the Hon’ble Supreme Court in **Ram Shankar Bhattacharjee v Gauhati High Court**, Law Finder Doc Id # 79553, wherein it has been held as follows:

“Constitution of India, Articles 14 and 16 - Gauhati High Court (Appointment, Conditions of Service & Conduct) Rules, 1967, Schedule I Class- II(B) - Promotion - Posting - Mere posting against a superior post with higher pay in itself does not amount to promotion in the absence of any process of promotions undertaken and consideration of all eligible and competing claims - Such posting against a superior post does not confer any right to claim seniority in higher cadre especially when the establishment had different wings having independent administrative control of posting and transfers - Gauhati High Court having different additional benches posting Stenographers Grade I as Private Secretaries attached

to the Hon'ble Judges there being no such specific post in the Rules and involving no process of selection or promotion - Such posting will not give right to claim seniority in the higher cadre over the above those senior in the lower cadre.” (Emphasis supplied)

Thus, as per abovesaid judgment of the Hon’ble Supreme Court, even on merits, respondent was not entitled to consequential benefits. Judgments in case of **Baljit Singh (supra)** and **Sanjay Gulati (supra)**, relied upon by the respondent, do not advance his cause being distinguishable on facts, inasmuch as said case of **Baljit Singh (supra)** was a case of regularization with retrospective date, whereas present is case of promotion; and **Sanjay Gulati (supra)**, was regarding grant of opportunity of hearing. In any event, judgment of Hon’ble Supreme Court will have precedence over abovesaid judgments of this Court.

Even otherwise, it is reiterated that any enquiry or finding on the merits of the matter by the Executing Court is not permissible in law. These are all points and issues that could have been agitated by the respondent before the Id. Trial Court/ Lower Appellate Court/ this Court in RSA. Rights of the respondent already stood fully and finally adjudicated upon in terms of the judgment and decree under execution; and it is not open to the Executing Court to either improve upon, or denude the rights granted vide the said judgment and decree under execution. In the present case, the Executing Court *granted* rights which have been excluded by the judgment and decree, in other words, it has traversed beyond the dictum of the decree.

Before parting, I may refer to a 3-Judge Bench judgment of the Hon’ble Supreme Court in **Sneh Lata Goel v. Pushplata (SC): Law**

Finder Doc Id # 1340492 wherein it has been held as follows:

“Executing Court cannot go behind the decree to find whether Court passing decree had the territorial jurisdiction.

Civil Procedure Code, 1908 Sections 21(1) and 47 Execution of decree - Objection as to jurisdiction - In execution proceeding objection raised relating to jurisdiction of Court to pass decree - Objection in execution did not relate to subject matter of suit - It was objection to territorial jurisdiction which does not travel to root of or to inherent lack of jurisdiction of civil court to entertain suit - Executing court cannot go behind decree and must execute decree as it stands - High Court was manifestly in error in coming to conclusion that it was within jurisdiction of executing court to decide whether decree in suit for partition was passed in absence of territorial jurisdiction - Judgment of High Court set aside.”

It is therefore, clear that the view as taken by this Court is as per the law laid down by the Hon’ble Supreme Court in above said judgment.

Accordingly, in view of the above discussion, present Revision Petition is **allowed**, and impugned order dated 27.4.2016 is set aside.

Pending application(s), if any, stand disposed of.

02/05/2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No