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

CR-2952-2022 (O&M)

Date of Decision: 22.03.2023

Municipal Council, Nangal and others

....Petitioners

Versus

Aruna Saini

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. H.K. Aurora, Advocate
for petitioners.

Mr. Rajesh Gaur, Advocate
for respondent.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 02.05.2022 passed by Ld. Executing Court, Nangal, whereby it was held that petitioner department is liable to pay medical allowance and increments, if any, to respondent in compliance of order dated 28.02.2017 (Annexure P-2).

2. Succinct facts first, as pleaded in the instant petition.

2.1. Respondent filed a suit for mandatory injunction against petitioners seeking a direction for her reinstatement as a Social Studies teacher in the Shivalik NEC High School, Naya Nangal, which was decreed vide judgment and decree dated 16.11.2004. Order of termination dated 15.7.2003 was held to be violative of the principles of natural justice. Taking note of the fact that Shri Raj Verma, the

previous incumbent, had attained superannuation and retired from service on 31.8.2004 and that respondent had worked as a regular employee for a period of nine years, therefore she was held entitled to be reinstated with effect from 1.9.2004. Accordingly, the petitioners were directed to reinstate her as Social Studies teacher w.e.f.1.9.2004. She was also held entitled to all the consequential benefits attached to the said post with effect from 1.9.2004. It was further held that she would be entitled to all dues from 1.9.2004 with interest at the rate of 9% per annum.

2.2. Being aggrieved, petitioners filed an appeal. Ld. First Appellate Court while modifying the order of Ld. Trial Court held that respondent was not entitled to a direction of reinstatement but she only had a right to be considered for appointment. However, this Court reversed the judgment of Ld. First Appellate Court and upheld the judgment and decree of Ld. Trial Court. This Court held that respondent had worked for a period of 9 years as a regular teacher. She was granted annual increments and there were deductions from her salary towards the provident fund. Therefore, she should be adjusted in an available vacancy taking into account the long period of service rendered by her on regular basis. This Court found fault with the Judgment of Ld. First Appellate Court by holding that fresh consideration of the case for appointment of respondent would only lead to multiplication of litigation. Therefore, she is entitled to be reinstated with consequential benefits.

2.3. Still aggrieved, petitioners filed an SLP. The Supreme Court took notice of the fact that although the regular appointment of the respondent was on a condition that she would make way for Smt. Raj Verma in the event of her succeeding in the pending case but the fact remains that she worked on a regular basis for a period of 9 years before the termination of her services. Thereafter, she

made a representation to petitioners to appoint her in the vacancy that had arisen due to the superannuation of Smt. Raj Verma on 31.8.2004 which was not considered. The Supreme Court held that, in the normal course, if the termination is bad then she would be entitled to reinstatement from the date of termination with all consequential benefits as the termination under challenge is illegal but, in view of the condition of the appointment of respondent on 20.7.1994, the Supreme Court modified the judgment and decree of learned trial court vide judgment dated 28.02.2017 (Annexure P-2) as under:-

- a) The respondent is entitled for reinstatement with effect from 1.9.2004. She would be entitled to 50% of the back wages between 1.9.2004 and the date of her reinstatement.*
- b) The respondent is entitled for salary and other allowances from the date of her reinstatement till the date of her superannuation.*
- c) The respondent will be entitled to count the service from 2004 onwards for the purpose of computation of her pension if any payable.*

2.4. Thereafter, respondent filed a contempt petition vide COCP (C) No. 1828 of 2017 (Annexure P-3), before the Supreme Court of India and wrongly stated in para 12 of her petition as under-

"After the passing of the final order dated 28.2.2017 by this Hon'ble Court, petitioner herein approached the contemnor for the release of her back wages and arrears as directed by this Hon'ble Court but till date, the petitioner has not received any amount due at the end of the contemnors."

2.5. Petitioners filed reply dated 14.02.2018 (Annexure P-4) in contempt petition and stated that all the back wages and arrears have been paid in accordance with the directions given by the Supreme Court. So far as the deduction and contribution of provident fund is concerned, the matter is *sub judice* before the Ld. Executing Court. Respondent also filed a rejoinder to the reply of petitioners and reiterated her stand, as mentioned in the contempt petition. After hearing the

matter, the contempt petition of respondent was dismissed by the Supreme Court. Respondent then filed a miscellaneous application bearing No.27114 of 2017 before the Supreme court for clarification of judgment dated 28.02.2017, which was also dismissed vide order dated 30.03.2017.

2.6. Respondent made a statement before Ld. Executing Court that she has not been paid the medical allowance and increments in compliance with the judgment of the Supreme Court. On the other hand, petitioners have stated that respondent is not entitled to medical allowance and increments since she has not actually performed her duties between the date of her termination till the date of her reinstatement. Petitioners have relied upon Rule 5.1 of Chapter V relating to compensatory allowance and Rule 4.7 of Chapter IV relating to increments.

3. Heard.

4. What thus emerges before this Court for adjudication is as to whether the respondent having once invoked remedy under the Contempt of Courts Act and failed to convince the highest court of land for any relief by alleging that vide judgment dated 28.02.2017 rendered by the Apex Court, whereby the original decree stood modified, has not been complied with, can she subsequently seek the same relief from Ld. Executing Court under the garb of non-implementation of decree. In this context, one must have to necessarily look into the relief granted/modified by the Apex Court which was noted by a Coordinate Bench of this Court while issuing notice vide order dated 01.08.2022, which is extracted herein below:

“Learned counsel contends that original decree passed by the trial Court was finally modified by the Apex Court on 28.02.2017 (Annexure P-2) and the following relief was granted to the plaintiff:

“a) The respondent is entitled for reinstatement w.e.f. 01.09.2004. She would be entitled to fifty per cent of the

back wages between 01.09.2004 an the date of her reinstatement.

b) The respondent is entitled for salary and other allowances from the date of her reinstatement till the date of her superannuation.

c) The respondent will be entitled to count the service from 2004 onwards for the purpose of computation of her pension, if any payable.”

Learned counsel has pointed out that the petitioner-department has already complied with the said direction and paid the amount to the decree-holder, but being dissatisfied, she preferred execution and had later on, moved to Supreme Court seeking penal action under Contempt of Court Act against the official of the judgment debtor-department. He has drawn the attention of the court to the order dated 16.11.2018 (Annexure P-8), whereby contempt petition was dismissed, but the executing Court is still proceeding with the execution.

Notice of motion for 11.11.2022.

Meanwhile, the execution proceedings shall remain stayed.”

5. *Apropos*, on resumed hearing, on the question being put by the Court, Ld. counsel representing the decree-holder/respondent is unable to dispute that the contents of the contempt petition and the averments made therein were same as contained in the execution application filed subsequent to the dismissal of the contempt petition by the Apex Court. Being so, by her own conduct the respondent herein has clipped her own wings for seeking any further relief which stood barred on the principle of *res judicata*. Apart therefrom, Ld. Executing Court has committed manifest error in law as well as shown lack of judicial propriety by entertaining the execution petition on the same ground on which the contempt petition was preferred earlier and was dismissed. Ld. Executing Court ought to have been more cautious as it could not sit in appeal over the final appellate judgment and that too passed by the highest court of law.

6. Consequently, the revision is allowed and the impugned order is set aside.
7. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

March 22, 2023
ashish

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