

CR-3486 of 2021

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

CR-3486 of 2021
Reserved on: 15.09.2023
Pronounced on: 17.10.2023

Ishwar Chand

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Ms. Anita Balyan, Advocate,
for the petitioner.

Mr. Rajbir Singh, DAG, Haryana.

NAMIT KUMAR, J.

Challenge in the present petition

1. The petitioner-decree holder has approached this Court by way of filing the instant Revision Petition challenging the order dated 08.11.2021 passed by the Court of learned Civil Judge (Senior Division), Kurukshetra, whereby objections filed by the Superintendent of Police/judgment-debtor No.2 have been accepted and the execution petition filed by the petitioner has been held to be not maintainable and accordingly the same has been dismissed.

Brief facts

2. Brief facts leading to the filing of the present petition, as pleaded in the petition, are that petitioner-decree holder was recruited as a Constable on 30.09.1976 in Rohtak and was transferred to Kurukshetra in the same year. He submitted his resignation on

25.08.1991 through proper channel and thereafter he withdrew the same on 29.08.1991. However, his resignation was accepted by the defendants on 29.08.1991 and he was relieved from service. Thereafter, the petitioner submitted various requests to the defendants to treat him on duty and in continuous service, however, the said requests were not accepted and the plaintiff served a legal notice dated 31.10.1991 under Section 80 CPC and thereafter filed a suit for declaration with consequential relief of mandatory injunction to the effect that the plaintiff be treated to be in continuous service as Constable under the defendants without any break and acceptance of his resignation on 29.08.1991 by the defendants be declared as illegal, null and void and be set aside. As a consequential relief, plaintiff prayed for all incidental service benefits. The said suit was decreed vide judgment and decree dated 30.01.1997 by the Court of learned Civil Judge (Senior Division), Kurukshetra, and the order dated 29.08.1991 was declared null and void and was set aside and the plaintiff was held to be continuing in service. The concluding para of the said judgment reads as under: -

“In view of my findings on the foregoing issues, this suit succeed and hereby decreed with costs and order dated 29.08.1991 passed by Superintendent of Police, Kurukshetra is declared as null and void and is hereby set aside. The plaintiff is also held to be continuing in service.”

3. Thereafter, defendants/State of Haryana preferred an appeal before Lower Appellate Court challenging the judgment and decree dated 30.01.1997 and the same was dismissed by learned

Additional District Judge, Kurukshetra, vide judgment and decree dated 07.10.1997. Both these judgments/decrees passed by the Courts below were challenged before this Court in RSA-1815 of 1998 and vide order dated 31.08.1998, while issuing notice in the stay application and main appeal for 02.11.1998, operation of the impugned judgment was stayed till further orders and thereafter the Regular Second Appeal was admitted. The execution petition which was filed by the petitioner for implementation of the judgment and decree dated 30.01.1997 was adjourned *sine die* in view of order dated 31.08.1998 passed in RSA-1815 of 1998. While the Regular Second Appeal was pending before this Court, petitioner submitted a mercy petition before the then Director General of Police, Haryana, for taking him back in service and the same was accepted vide order dated 15.08.2003 by passing the following order: -

“This order shall dispose of the mercy petition submitted by ex.Constable Ishwar Singh No. 619/KKR for taking him back in service.

Whereas the brief facts of this case are that the revisionist was recruited as Constable in this department on 30.09.1976. His work and conduct was not found satisfactory for which he was awarded punishments on 5 different occasions. Thereafter, he submitted his resignation and the same was accepted by the competent authority. Accordingly, he was relieved from his duties on 29.08.1991. Later on, he submitted an application for withdrawal of his resignation, but his request was not accepted. Subsequently, he filed a Civil Suit for his reinstatement in service and the same was allowed in his favour on 30.01.1997. The department filed an appeal

against the order dated 30.01.1997, which was dismissed by the Addl. Session Judge, Kurukshetra on 07.10.1997. Thereafter, RSA against the order dated 07.10.1997 was also filed in the Hon'ble Punjab and Haryana High Court by the State on 21.05.1998. The Hon'ble High Court vide its order dated 31.08.1998 has stayed the order of Addl. Session Judge, Kurukshetra and the RSA is still pending for adjudication. He also preferred memorial to the State Govt., which was also filed by the Govt., vide their letter No. 8/140/99-6HGI dated 10.03.2000. Being dissatisfied with the above orders, the revisionist has preferred the instant mercy petition.

And whereas, I have carefully examined the mercy petition and all other relevant records. Keeping in view the family circumstances of this case and after taking a lenient view, the petitioner is hereby taken back in service with the condition that he will not claim any other benefits on the basis of order passed by the lower courts. However, the period from the date of resignation i.e. from 29.08.1997 to date i.e. rejoining the service shall be treated as leave without pay. He will not be paid any service/monetary benefits for the period he remained out of service."

A copy of this order may be supplied to the revisionist, free of cost"

4. Consequently, petitioner was taken back in service by the judgment-debtors/defendants on the condition that petitioner-plaintiff shall not claim any other benefit under the garb of decree passed by the learned trial Court and intervening period from the date of resignation i.e. 29.08.1991 to date of his joining as was ordered to be treated leave without pay and he was not held entitled to any service/monetary benefits for the said period.

5. Petitioner rejoined his service in August, 2003. Thereafter, petitioner was issued show-cause notice dated 05.07.2006 by the successor DGP, Haryana, for reviewing the order dated 15.08.2003 whereby mercy petition of the petitioner was partly accepted. Petitioner filed reply to the said show-cause notice and vide order dated 19.09.2006 passed by the then Director General of Police, earlier order dated 15.08.2003 was withdrawn and services of the petitioner were dispensed with immediate effect. Order dated 19.09.2006 reads as under: -

“The order shall dispose of the show cause notice dated 05.07.2006 served upon Const. Ishwer Singh No. 619/KKR (Now EHC NO. 637/KKR) to review the illegal/unauthorized order dated 15.08.2003 passed by Sh. M.S. Malik, IPS, the then DGP.

The brief facts of this case are that Constable Ishwar Singh No. 619/KKR (now EHC 637/KKR) had submitted his resignation which was accepted by the competent authority and accordingly, he was relieved from service on 29.08.1991. Later on, he submitted an application for withdrawal of his resignation, but his request was not accepted. Subsequently, he filed a civil suit for reinstatement in service and the same was allowed in his favour on 30.01.1997. The department filed an appeal against the order dated 30.01.1997, which was dismissed by the Addl. Session Judge, Kurukshetra on 07.10.1997. Thereafter, R.S.A. against the order dated 07.10.1997 was also filed in the Hon’ble Punjab and Haryana High Court by the State on 21.05.1998. The Hon’ble High Court vide its order dated 31.08.1998 had stayed the order of Additional Session Judge, Kurukshetra. Thereafter, a memorial was also preferred by Constable Ishwar Singh

No. 619/KKR (now EHC No. 637/KKR) to the State Govt., which was also filed by the State Govt. vide their letter No. 8/140/99-6 HG-1 dated 10.03.2000. Thereafter, he was taken back in service by Sh. M.S. Malik, IPS, the then DGP vide order dated 15.08.2003.

There is no provision under rules for entertaining mercy petition by D.G.P. after the decision of Govt. The matter was therefore referred to the State Govt. for taking a decision. The State Govt. vide its memo 8/115/2005-6HG-I dated 25.04.2006 has accorded approval to withdrawal of undue benefits given to Const. Ishwer Singh No. 619/KKR (Now EHC NO. 637/KKR) by Sh. M.S. Malik, IPS, the then DGP after issuing a show cause notice. Accordingly, Const. Ishwer Singh No. 619/KKR (Now EHC No. 637/KKR) was served with a show cause notice to withdraw the undue benefits given by him by Sh. M.S. Malik, IPS, the then DGP. Const. Ishwer Singh No. 619/KKR (Now EHC No. 637/KKR) was given 15 days time to submit his reply to show cause notice.

I have gone through the reply to show cause notice submitted by Const. Ishwer Singh No. 619/KKR (Now EHC No. 637/KKR) and other relevant record. The pleas taken in reply is not tenable because he got undue benefits against the rules/instructions.

Keeping in view the above facts, the undue benefit given to Const. Ishwer Singh No. 619/KKR (Now EHC No. 637/KKR) by Sh. M.S. Malik, IPS, the then DGP vide order dated 15.08.2003, is hereby withdrawn. Services of Const. Ishwer Singh No. 619/KKR (Now EHC No. 637/KKR) are hereby dispensed with immediate effect. A copy of this order shall be supplied to Const. Ishwer Singh No. 619/KKR (Now EHC/637/KKR), free of cost.”

6. Thereafter, Regular Second Appeal filed by the State of Haryana was dismissed by this Court vide judgment dated 19.05.2016 by upholding the orders passed by the Courts below. Thereafter, petitioner filed an application before the Executing Court for revival of his execution petition which was adjourned *sine die*. Respondent-State filed objections dated 02.03.2021. The said objections have been accepted by the Court of learned Civil Judge (Senior Division), Kurukshetra and the execution petition No.59 of 1997 filed by the petitioner has been dismissed vide order dated 08.11.2021. The said order has been impugned in the present petition.

Contentions

7. Learned counsel for the petitioner contended that the objections filed by the defendants/judgment-debtors have wrongly been accepted by the learned Executing Court and the execution petition filed by the petitioner has wrongly been rejected as admittedly order dated 29.08.1991 whereby resignation of the petitioner was accepted and he was relieved from service has been declared as null and void and has been set aside and the petitioner has been held to be continuing in service and, therefore, petitioner is entitled for all service benefits. Learned counsel for the petitioner contended that the Executing Court cannot go beyond the decree and has wrongly dismissed the execution petition. In support of her contention, learned counsel placed reliance on the judgment of the Supreme Court in ***Haryana Vidyut Parsaran Nigam Limited and another v. Gulshan Lal and others, 2009(13) SCC 354.***

8. On the other hand, learned State counsel has filed reply in the registry which is taken on record and has argued that impugned order dated 08.11.2021 passed by the learned Executing Court while accepting the objections filed by defendants/judgment-debtor No.2 and dismissing the execution application is perfectly legal and valid and his notional pay has already been fixed and he has been given the pensionary benefits such as GPF, GIS and leave encashment till his date of retirement i.e. 30.06.2011, when he attained the age of superannuation of 58 years by the judgment-debtors during the pendency of the execution petition, therefore, the petitioner is not entitled for any other benefits except the one which have already been paid to him. He further submits that for the intervening period, when the petitioner remained out of service, he is not entitled for the pay and allowances etc.

Assessment

9. I have heard learned counsel for the parties and with their able-assistance perused the relevant record.

10. The question which arises for consideration of this Court is as to whether the petitioner who has retired from service on 30.06.2011 is entitled to all the benefits in terms of the trial Court judgment and decree dated 30.01.1997, which has been upheld upto this Court and what is the effect of orders dated 15.08.2003 and 19.09.2006?

11. The facts which have emerged from the above discussion are that the petitioner was recruited as Constable on 30.09.1976 and he

CR-3486 of 2021

submitted his resignation on 25.08.1991, which he withdrew on 29.08.1991, however, the same was accepted by the defendants on 29.08.1991 and he was relieved from service. Petitioner filed a suit for declaration with consequential relief of mandatory injunction to the effect that the plaintiff be treated to be in continuous service as Constable under the defendants without any break and acceptance of his resignation on 29.08.1991 by the defendants be declared as illegal and be set aside and as a consequential relief, plaintiff prayed for all incidental service benefits. The said suit was decreed vide judgment and decree dated 30.01.1997 and order dated 29.08.1991 passed by the Superintendent of Police, Kurukshetra, accepting his resignation and relieving him from service, was declared to be null and void and was set aside and the plaintiff was held entitled to be continuing in service. The said judgment and decree has become final upto this Court in RSA-1815 of 1998. During the interregnum when the Regular Second Appeal was pending before this Court, a mercy petition preferred by the petitioner was accepted by the then Director General of Police, Haryana, vide order dated 15.08.2003 and petitioner was ordered to be taken back in service with the condition that he will not claim benefits on the basis of the orders passed by the lower Courts and the period from the date of resignation i.e. 29.08.1991 to the date of rejoining the service shall be treated as 'leave without pay' and he will not be paid any service/monetary benefits for the period he remained out of service. In pursuance to the said order, petitioner joined service in the month of August, 2003. Thereafter, the said order was withdrawn by the

successor Director General of Police vide order dated 19.09.2006 and the petitioner was again relieved from service. Thereafter, Regular Second Appeal preferred by the State having been dismissed by this Court vide judgment dated 19.05.2016, the petitioner preferred application for revival of his execution petition in which the State preferred objections, which have been accepted and his execution petition has been dismissed vide impugned order dated 08.11.2021. The Executing Court while accepting the objections filed by the respondent-State has firstly observed that vide order dated 19.09.2006 the services of the petitioner-plaintiff were dispensed with and a fresh cause of action had arisen in favour of the plaintiff/decreed-holder to challenge the said order and secondly, at the time of rejoining the service plaintiff/decreed-holder had given up all the benefits under the orders passed by the learned lower Court and as per terms and conditions of the said order dated 15.08.2003, the plaintiff had accepted that he shall not claim any service/monetary benefits for the period he remained out of service, therefore, he is not entitled for any benefit during the period he remained out of service. It has also been observed that the remaining monetary benefits such as pension, gratuity, GPF, GIS and leave encashment have already been released to the petitioner. His claim for the earlier service has mainly been rejected by the learned Executing Court by stating that he had already given up his claim which was granted to him by the trial Court vide judgment dated 30.01.1997 and, therefore, he is not entitled for the remaining benefits whereas the said order has already been reviewed by the successor in

office and the petitioner was shown the door. Once the order dated 15.08.2003 has already been reviewed by the successor in office, the same has become redundant and cannot be made basis for denying any benefit to the petitioner. The Executing Court is duty-bound to execute the decree as it is as has been held by the Hon'ble Supreme Court in **Gulshan Lal's** case (supra). Relevant portion of the said judgment reads as under: -

“20. As indicated hereinbefore, for the purpose of allowing an objection filed on behalf of a judgment debtor under Section 47 of the Code of Civil Procedure, it was incumbent on him to show that the decree was ex facie nullity. For the said purpose, the court is precluded from making an indepth scrutiny as regards the entitlement of the plaintiff with reference to not only his claim made in the plaint but also the defence set up by the judgment - debtor. As the judgment of the Trial Court could not have been reopened, the correctness thereof could not have been put to question.

It is also well-known that an Executing Court cannot go behind the decree. If on a fair interpretation of the judgment, Order and decree passed by a court having appropriate jurisdiction in that behalf, the reliefs sought for by the plaintiff appear to have been granted, there is no reason as to why the Executing Court shall deprive him from obtaining the fruits of the decree.

In Deepa Bhargava v. Mahesh Bhargava, 2009(1) RCR (Civil) 507 : 2009(1) RAJ 202 : [2008 (16) SCALE 305], this Court held as under:

"11...An executing court, it is well known, cannot go behind the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is. A default

clause contained in a compromise decree even otherwise would not be considered to be penal in nature so as to attract the provisions of Section 74 of the Indian Contract Act."

21. It is also not a case where this Court can exercise its jurisdiction under Article 142 of the Constitution of India to mould an order. The decree passed by the learned Trial Court has attained finality. Whether rightly or wrongly, the judgment of the learned Trial Judge has been affirmed by this Court. It is one thing to say that no right having crystalised in favour of a party to the lis, this Court can mould the relief appropriately, but it is another thing to say that despite the decree being found to be an executable one, this Court will refuse to direct execution thereof.

22. We are not oblivious of the fact that the respondents legally would not have been entitled to the reliefs prayed for by them. However, as a decree has been passed, we do not intend to go behind the same. The Executing Court shall, it goes without saying, execute the decree strictly in terms thereof."

12. Therefore, in this view of the matter, petitioner has been made victim of circumstances as firstly he was taken back in service and thereafter had been thrown out by the successive order of the department. The judgment and decree dated 30.01.1997 whereby suit of the petitioner was decreed and upheld upto this Court in RSA-1815 of 1998 cannot be brushed aside and has to be given effect in its letter and spirit and all the benefits, including monetary benefits flowing from the said judgment and decree are required to be disbursed to the petitioner. There can be no effect of administrative orders upon the judgment and decree of the Court and the judgments/decrees cannot be

annulled by administrative orders. Those have already been withdrawn/annulled.

Conclusion

13. Consequently, instant revision petition is allowed. Impugned order dated 08.11.2021 passed by the Executing Court is hereby set aside and the petitioner is held entitled for all the service benefits arising out of the said judgment and decree dated 30.01.1997, by deducting the benefits which have already been paid to the petitioner in the shape of pension, gratuity, GPF, GIS and leave encashment by treating the service of the petitioner continuous. The petitioner is also entitled for grant of interest @ 6% per annum from the date of accrual till the date of payment. This exercise shall be completed and necessary payments shall be made to the petitioner within a period of three months from the date of receipt of certified copy of this order.

17.10.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No