

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-473-2024 (O&M)
Decided on: 12.03.2024

Medical Superintendent, Guru Gobind Singh Medical College
and Hospital, Faridkot

...Petitioners

Versus

Dharam Raj Garg and others

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Nitin Kaushal, Advocate
for the petitioners.

Mr. Ritesh Aggarwal, Advocate
for respondent No.1.

RITU TAGORE, J. (Oral)

1. Challenge in this revision is to the order dated 04.01.2024 (Annexure P-5) and order dated 15.01.2024 (Annexure P-6) passed by learned Additional Civil Judge (Senior Division), Faridkot in Execution Petition No.206 of 2015 titled 'Dharam Raj Garg Vs. State of Punjab and others' directing the JD-petitioner to comply with the judgment and decree dated 15.07.2015 (Annexure P-1) regarding payment of interest on benefits of increment, promotion and commuted pension of respondent No.1.
2. Learned counsel for the petitioner contended that respondent No.1 filed a suit for declaration that he is entitled to interest on the delayed amount of retiral benefits paid by the petitioner from the date of its entitlement till the date of payment with interest @ 12% per annum. The said suit was decreed and appeal preferred against judgment dated

15.07.2015 (Annexure P-1) by the petitioner was dismissed vide judgment dated 30.11.2018 (Annexure P-2). The respondent No.1 thereafter filed an Execution Petition No.206 of 2015 before Additional Civil Judge (Senior Division), Faridkot.

3. Learned counsel submitted that the petitioner has paid Rs.3,61,750/- to respondent No.1 and has fully complied with the decree dated 15.07.2015 affirmed by judgment and decree dated 30.11.2018.

4. It is submitted by the learned counsel that calculation provided by respondent No.1, claiming Rs.42,49,546/-, is altogether wrong and learned Executing Court exceeded its jurisdiction by directing the petitioner to pay interest on benefits such as increment, promotion and commuted pension, which were not granted by the Court in its judgment dated 15.07.2015. The learned counsel stated that learned trial Court in its judgment dated 15.07.2015 has clearly recorded two different reliefs; i) relief of grant of interest on delayed retiral benefits, and ii) grant of relief of increment, promotion and commuted pension with no interest on the said benefits. In support of his plea, learned counsel referred to the reliefs granted by the learned trial Court in judgment dated 15.07.2015.

5. Learned counsel by placing reliance on the observations made by Hon'ble the Apex Court in case titled **Meenakshi Saxena and another v. ECGC Ltd. and another, 2018 (3) RCR (Civil) 4** and **Topanmal Chhotamal v. Kundomal Gangaram and Others AIR 1960 SC 388**, stated that it is settled position of law that Executing Court cannot go beyond the decree. Reiterating his submissions, learned counsel stated that Executing Court wrongly interpreted the judgment of learned trial Court and made a prayer to set aside the impugned orders.

6. Contra, learned counsel for respondent No.1 submitted that

orders under challenge are valid and justified. Learned Executing Court has rightly interpreted the judgments of learned trial Court dated 15.07.2015, affirmed by learned Appellate Court vide judgment dated 30.11.2018. The learned counsel stated that both the Courts below, granted interest on all the reliefs given to the respondent No.1 and Director Health and Family Welfare Punjab, Chandigarh, Smt. Adarsh Pal Kaur in para No.3 of her affidavit dated 24.05.2023 has admitted that interest @ 9% per annum has been calculated on each delayed payment, and further admitted that Rs.34,96,359/- calculated by concerned quarter has not been paid to respondent No.1. The learned counsel contended that this admission leaves no shred of doubt that respondent No.1 is entitled for the interest on all the reliefs and department is purposely not releasing the due amount to the respondent no.1 and is harassing him.

7. By referring to judgment and decree dated 15.07.2015, learned counsel urged that learned trial Court has clearly granted interest @ 9% per annum from the due date of decree and further interest @ 6% per annum till actual realization. The interest has been granted on all the benefits ruled in favour of respondent No.1. Learned Executing Court has not breached its jurisdiction while giving the directions to the petitioner and others (JDs) to give interest on due benefits. A prayer is made to dismiss the petition. Reliance is placed on the authority titled **Bhavan Vaja and others v. Solanki Hanuji Khodaji Mansang and another, (1973) 2 SCC 40.**

8. I have heard learned counsel for the parties and have gone through the paper book and the documents placed on record (affidavit of Dr.Adarsh Pal Kaur and grounds of appeal).

9. It is not in dispute that respondent No.1 filed a civil suit for declaration seeking interest @ 12% per annum compound on delayed

payments of his retiral benefit and benefits of two remaining increments on acquiring higher education, step up increments (ACP) commuted pension against State of Punjab through Secretary, Department of Health and Family Welfare; Director, Health and Family Welfare, Punjab, Chandigarh; Director Research and Medical Education, Punjab, Chandigarh; Medical Superintendent, G.G.S Medical College and Hospital, Faridkot and Accountant General, Punjab, Chandigarh (defendants before the learned trial Court). After contest, the suit was decreed vide judgment and decree dated 15.07.2015 (Annexure P-1) and appeal preferred by Medical Superintendent GGS Medical College and Hospital, Faridkot was dismissed vide judgment dated 30.11.2018 (Annexure P-2). Admittedly, no second appeal was filed against the judgment and decree dated 30.11.2018. It is also a matter of record that respondent No.1 filed execution petition (Annexure P-5) that led to passing of impugned orders (Annexure P-5 and P-6).

10. It is apposite here to reproduce the relief sought by respondent No.1 in the suit filed by him, which reads as under:-

“Suit for declaration to the effect that the plaintiff is entitled to get interest on the delayed payment amount of retiral benefits paid by the defendants to the plaintiff from the date of its entitlement till the date of payment @ 12% per annum compound and the plaintiff is also entitled to get the benefit of two remaining increments on acquiring higher education (Diploma in Orthopaedics and M.S General Surgery) in addition to four increment already paid by the department in lieu of the above and the plaintiff is also entitled to get the benefit of step up increment (A.C.P) after completion of 4, 9 and 14 years of service or completion of 8, 18 years of service in the department and the plaintiff is also entitled to get promotion after getting the benefits of step up increments (A.C.P) from his due date and plaintiff is also entitled to get benefit of revised grade w.e.f 01.10.1986 instead of 01.10.1987

and plaintiff is also entitled to get the benefit of commuted pension @ 10.46% instead of 6.21 which was released to the plaintiff by the department and plaintiff is also entitled to get the entire consequential arrears with interest @ 12 % per annum compound from the date of its actual accrual till realization in all AND for issuing mandatory injunction issuing the directions to the defendants to pay interest @ 12 % per annum compound on delayed payment of entire retiral benefits paid by the defendants to the plaintiff and directions may also be issued to release the benefit of remaining two increments on acquiring higher education (Diploma in Orthopaedics and M.S General Surgery) and direction may also be issued to release the benefit of step up increment (ACP) on completion of 4,9 and 14 years of service in the department and also to promote the plaintiff after giving benefit of ACP from the date of its actual entitlement of promotion and directions may also be issued to the defendants to commute pension of the plaintiff @ 10.46 instead of 6.21 which was earlier released by the defendants to the plaintiff and directions may also be issued to the defendants to pay revised grade to the plaintiff w.e.f 01.01.1986 instead of 01.10.1987 and finally the directions may also be issued to the defendants to pay entire consequent arrears with interest @ 12% per annum compound from the date of its actual accrual till realization, in the interest of justice.”

11. From the pleadings of the parties, learned trial Court framed the following issues:-

“1.Whether the plaintiff is entitled to the relief of declaration and mandatory injunction, as prayed for? OPP

2. XXXXX

3. XXXXX

4. XXXXX

5. Relief”

12. While answering issue No.1, learned trial Court observed as under:-

“XXXX

However, the rate of interest prayed by the plaintiff to my view appears to be exorbitant. I deem it appropriate to grant interest @ 9% per annum from the due date till the date of decree and future interest at the rate of 6% per annum till actual realization. Consequently, issue No.1 is decided in favour of the plaintiff and against the defendants.”

13. While answering issue No.5 the Court observed as under:-

“Issue No. 5 (Relief)

15. In view of my findings on the aforesaid issues, suit of the plaintiff is decreed with costs to the effect that he is held entitled to get interest on the delayed payment of the retiral benefits paid by the defendants to the plaintiff @ Rs.9% per annum from the date of its due till date of decree and @ 6% per annum future interest till its realization. He is further held entitled to get benefit of two remaining increments on acquiring of higher education and he is also entitled to get benefits of step up increments after completion of 4, 9 and 14 or 8, 18 years of service, promotion in cadre after getting step up increments, benefits of revised grade w.e.f 01.10.1986 instead of 01.10.1987, benefit of computed pension @ 10.46 instead of 6.02. Decree sheet be prepared accordingly and file be consigned to record room.”

14. Perusal of judgment of the Appellate Court (Annexure P-2) does not indicate that any specific plea or objections were raised by the appellants regarding grant of interest on the benefits granted by learned trial Court nor the grounds of appeal indicate so. The learned Appellate Court affirmed the findings of the learned trial Court by observing as under:

“23. In view of above discussion and evidence adduced on file, it is clear that it has been rightly held by learned lower Court that all the defendants-respondents including appellant-defendant No.4, are responsible for making payment of retiral benefits to the respondent-plaintiff and it shows that the impugned judgment and decree has been passed by learned lower Court after appreciating evidence adduced on file by both the parties, in correct manner and it does not require any interference of this court, therefore, findings of learned lower Court on all the issues are affirmed.

24. *As there is no illegality or impropriety in the impugned judgment and decree dated 15.07.2015 passed by the learned Trial Court, consequently, appeal filed by the appellant-defendant No.4 Medical Superintendent, GGS Medical College & Hospital, Faridkot fails and the same is hereby dismissed with costs. Decree sheet be prepared accordingly. Trial Court file be returned alongwith a copy of this judgment and appeal file be consigned."*

15. It is settled legal doctrine that learned Executing Court cannot go behind the decree under execution. Nonetheless, for construing a decree, the learned Executing Court can and in appropriate cases take into consideration the pleadings, the circumstances and the words employed in the judgment, leading up to the decree. In **Bhavan Vaja and others (supra)**, Hon'ble the Supreme Court of India observed that:-

"It is true that an executing court cannot go behind the decree under execution. But that does not mean that it has no duty to find out the true effect of that decree. For construing a decree it can and in appropriate cases, it ought to take into consideration the pleadings as well as the proceedings leading upto the decree. In order to find out the meaning of the words employed in a decree the Court, often has to ascertain the circumstances under which those words came to be used. That is the plain duty of the execution Court and if that Court fails to discharge that duty it has plainly failed to exercise the jurisdiction vested in it. The jurisdiction of execution Court does not began and end with merely looking at the decree as it was finally drafted."

16. Reverting to the prayer clause (set up in the suit), it shows that respondent No.1 sought (i) declaration that he is entitled to get interest on the delayed payments of retiral benefits paid by the defendants from the date of its entitlement till the date of payment @ 12% per annum compound (ii) further declaration that he is entitled to get the benefits of 2 remaining increments on acquiring higher education in addition to four increments already paid by the defendant department in lieu of the above and also

entitled to the benefit of step up increment (ACP) after completion of requisite years of service in the department and entitled to get promotion after getting the benefits of step up increments from due date and is also entitled to get the benefit of commuted pension along with entire consequential arrears with interest @ 12% per annum compound from the date of accrual till realization and, iii) decree for mandatory injunction directing the defendants to pay interest @ 12% per annum compound on all the benefits to which he is entitled and to pay entire consequent arrears with interest @ 12% per annum compound from the date of accrual till realization.

17. As evident and explicit from the relief clause, learned trial Court decreed the suit of the respondent No.1 (plaintiff before the trial Court) with cost.

18. As noticed and reproduced in preceding paragraphs, the learned trial Court, while deliberating on the issue of interest, held respondent No.1 entitled to @ 9% and 6% interest, respectively. This conclusion arises when the relief clause is read in its entirety, in the light of relief asked for. Moreover, considering the fact that suit of the plaintiff- respondent No.1 was decreed, entitling him to all the reliefs, it is fallacious to suggest that the plaintiff-respondent No.1 was not given the benefit of interest on those reliefs.

19. Once benefits are given, a natural fall out is the grant of interest on the granted reliefs. Here in present case, the learned trial Court has dealt with the issue of interest separately. The learned Executing Court has rightly interpreted the use of word 'further' after dealing with grant of interest on one component of the benefit i.e. on delayed payment of retiral benefits, by observing that interest on other benefits has also been granted in the same

manner. The department through Director, Health and Family Welfare (defendant No.2 before the learned trial Court) has admitted that Rs.34,96,359/- so calculated by department has not been released to the respondent No.1. The contention so raised by learned counsel for the petitioner that affidavit of Dr Adarsh Pal Kaur, Director, Health and family Welfare, Punjab, Chandigarh has been given under wrong impression or that said affidavit is not binding on the department, cannot be countenanced. It is no case that any such clarification was ever given by the department or by the deponent at any point of time.

20. The dictionary meaning of the word 'further' is 'in addition'. As an adjective, the word 'further' means 'additional thing'. Here in the present case, learned trial Court used word 'further' as an adjective to 'add' on further reliefs which already stand granted in previous sentence of the judgment. By reading the judgment of the learned trial Court in entirety in the context of the pleadings of the parties, the relief sought by the plaintiff in the suit, deliberations made by the learned trial Court on the issue of interest in the light of prayer made by the plaintiff to grant him interest on all the benefits prayed for, the grant of the reliefs by the learned trial Court and use of the word 'further' in the context of the reliefs granted, all leading to make up the decree, leaves no manner of doubt that learned Executing Court rightly construed and interpreted the judgment and decree passed by Courts below.

21. As an upshot of the aforesaid discussion, there is no merit in the revision and same is hereby dismissed.

22. Pending applications, if any, also stands disposed of accordingly.

23. Copy of this order be sent to the learned trial Court for

compliance. Trial Court be notified that there is no stay in the present execution.

(RITU TAGORE)
JUDGE

12.03.2024
Rimpal

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