

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****129****CR-6153-2024 (O&M)****Date of Decision : 17.12.2024**

Punjab Mandi Board

....Petitioner

VERSUS

Karamjit Kaur and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sanjeev Sharma, Advocate for the petitioner.

ALKA SARIN, J. (Oral)

1. Present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 24.05.2024 whereby the objections filed by the petitioner-Board against the judgment and decree dated 09.11.2022 have been dismissed.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 herein filed a suit for declaration to the effect that the act of withholding due promotion of the plaintiff-respondent No.1 upto the post of clerk and earlier non-mentioning of the name of the plaintiff-respondent No.1 in the seniority list of peons and thereafter in the list of clerks as per their seniority and non-grant of the pay and salary with due benefits attached to the post of clerk by the department i.e. defendant Nos.1 to 6 (petitioner and proforma respondent Nos.2 to 6 herein) was illegal, null, void and non-operative and further prayed that she be promoted to the post of clerk in the department of defendant Nos.1 to 6 prior to the date of promotion of defendant-respondent Nos.7 to 13, who were her juniors. The suit was

contested by the petitioner and defendant-respondent Nos.2 to 5 herein by filing their joint written statement. Vide judgment and decree dated 09.11.2022 the suit was decreed holding as under :

“ It is ordered that the suit of plaintiff succeed and same is hereby decreed with cost to the effect that the impugned act of withholding the due promotion of the plaintiff on the post of clerk and earlier non-mentioning of the name of the plaintiff in the seniority list of peons, thereafter in the list of clerks as per their seniority and non-grant of pay and salary and the due benefits attached to the post of clerk by the department i.e. defendants no.1 to 6 is illegal, unlawful and the plaintiff is held entitled to be promoted to the post of clerk in the department of defendants no.1 to 6 prior to the date of promotion of the defendants no.7 to 13 who are juniors to the plaintiff. Defendants no.1 to 6 are further directed to grant the promotion to the plaintiff earlier to the date of promotion of the defendant no.7 to 13 and also to make the payment of the pay and salary after affixing the pay scale of the plaintiff of the post of clerk and also to pay other due benefits attached to the post of the clerk with effect from the due date till the realization of the same with interest thereon @ 6% P.A.”

3. Since the judgment and decree dated 09.11.2022 was not complied with, an execution petition was filed. In the execution petition objections were filed by the petitioner herein raising various pleas on merits. It was stated in the objections that as per the rules, notification and amended act of the Department for the purposes of promotion, it was mandatory that an English type test was to be passed by the plaintiff-respondent No.1. However, the test was not passed by her and she ultimately retired on 28.02.2023. It was further averred that as per notification, it was mandatory for the employees to clear both Punjab and English type test but the plaintiff-respondent No.1 had not cleared the English type test and that the said fact was deliberately withheld by the plaintiff-respondent No.1. Reply was filed to the said application/objections. It is apt to note that no such objection was raised in the written statement filed on behalf of the petitioner and defendant-respondents Nos.2 to 5 in the main suit, copy whereof has been attached as Annexure P-2 with the present petition. Admittedly, no appeal was preferred challenging the judgment and decree dated 09.11.2022. Vide the impugned order dated 24.05.2024 the objections were dismissed. Aggrieved by the same the present revision petition has been filed.

4. Learned counsel for the petitioner would contend that the judgment and decree itself was a nullity inasmuch as it is against the settled principles of law. Learned counsel for the petitioner would further contend that as per notification, the plaintiff-respondent No.1 was mandatorily required to clear the English type test, which was not cleared by her and hence she could not have been promoted and that no one junior to her has

been promoted. Learned counsel for the petitioner has relied upon judgments of the Hon'ble Supreme Court in the case of **The Deputy Inspector General of Police & Anr. vs. R. Mookan** [1999 AIR (SCW) 4716] and those of this Court in the cases of **The State of Punjab vs. S.I. Sarup Singh** [1992 (2) SCT 539], **L.D. Gupta vs. The Life Insurance Corporation of India & Ors.** [2013 (4) SCT 846], **Union Territory, Chandigarh Administration & Ors. vs. Tarlochan Singh & Ors.** [2014 (3) SCT 330] and **Travel Star Hotel India Ltd. vs. S.K. Trehan** [2011(25) RCR (Civil) 391]. Learned counsel for the petitioner has further contended that the decree, which was a nullity, can be interfered with even by the Executing Court.

5. Heard.

6. The judgments relied upon by learned counsel for the petitioner in the cases of **R. Mookan** (*supra*), **S.I. Sarup Singh** (*supra*), **L.D. Gupta** (*supra*) and **Tarlochan Singh** (*supra*) would be of no avail inasmuch as in the said judgments the orders under challenge were on merits and not the orders passed by the Executing Court dismissing the objections. What infact learned counsel for the petitioner is wanting is that the Executing Court should reappraise the evidence on the record even though the petitioner herein chose not to challenge the judgment and decree dated 09.11.2022 in appeal. The argument of learned counsel for the petitioner that if the judgment is a nullity the Executing Court can interfere also deserves to be rejected. The judgment relied upon by learned counsel for the petitioner in case of **Travel Star Hotel India** (*supra*) would not come to the aid of the

petitioner inasmuch as the same is totally distinguishable on facts. In the said case the Court had awarded interest @ 12% per annum. This Court held that in view of the statutory provisions of sub Section 1 of Section 34 of the Code of Civil Procedure, 1908 prohibiting award of rate of interest over and above 6% per annum, the interest awarded @ 12% per annum could not be sustained. In the present case, the objections which have been raised before the Executing Court were not even objections which were raised before the Court where the matter was duly contested by the petitioner herein. Infact it has been observed by the Executing Court that neither any objections were raised by the petitioner herein nor any evidence was led in this regard. The plea has been taken up for the first time before the Executing Court virtually wanting a *de novo* trial, which could not be permitted in law. A Constitution Bench of the Hon'ble Supreme Court in case of **V. Ramaswami Aiyangar & Ors. Vs. T.N.V. Kailasa Thevar [AIR 1951 SC 189]** held as under :

“ 8. The learned Judges appear to have overlooked the fact that they were sitting only as an executing court and their duty was to give effect to the terms of the decree that was already passed and beyond which they could not go. It is true that they were to interpret the decree, but under the guise of interpretation they could not make a new decree for the parties.”

7. The petitioner's plea that the case be virtually reopened and *de novo* trial be carried out before the Executing Court has rightly been rejected by the Executing Court.

8. In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

17.12.2024

jk

(ALKA SARIN)

JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO