



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

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CR-1653-2017 (O&M)
Date of Decision: 05.03.2025

Tara Chand

...Petitioner

V/s

The Cantonment Board, Ferozepur Cantt

...Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Puneet Kumar Bansal, Advocate, for the petitioner.

VIKRAM AGGARWAL, J (ORAL)

The present revision petition is directed against the order dated 29.10.2016 (Annexure P-7), vide which the Court of learned Civil Judge (Jr. Divn.), Ferozepur dismissed the execution petition filed by the petitioner.

2. The facts, as emanating from the revision petition, are that a suit for declaration was filed by the petitioner-plaintiff to the effect that he was entitled to be appointed as a Sweeper (Safaiwala) with the respondent (Cantonment Board, Ferozepur Cantt.) on compassionate grounds on account of death of his father (Mandha). The said suit was decided vide judgment dated 14.08.2013 (Annexure P-3) passed by the Court of learned Civil Judge (Jr. Divn.), Ferozepur and it was directed that the case of the petitioner-plaintiff be considered for appointment as a Safaiwala. For, the directions were not complied with, an execution petition (Annexure P-4) was filed. However, vide order dated 15.02.2016 (Annexure P-6), the claim of the petitioner-plaintiff was rejected by the respondent-Board. Accordingly, the execution petition was dismissed vide the impugned order dated 29.10.2016 (Annexure P-7) leading to filing of the present revision petition.

3. No one appeared on behalf of the respondent despite service.



4. I have heard learned counsel for the petitioner.

5. Learned counsel for the petitioner has submitted that the executing Court gravely erred in dismissing the execution petition. Referring to the judgment and decree dated 14.08.2013 (Annexure P-3), learned counsel submitted that in one part of the judgment (paragraph 12) there was a positive finding that the petitioner-plaintiff was entitled for appointment on compassionate grounds but in the concluding part of the judgment, it was ordered that the case of the petitioner-plaintiff be considered for appointment. Learned counsel submits that the respondent took undue advantage of the said direction and erroneously rejected the case of the petitioner. Learned counsel submits that the executing Court also did not consider the matter from the right perspective and dismissed the execution petition. Learned counsel submits that the executing Court should have considered the intention of the Court and the real intent of the judgment and should have ordered the execution of the decree rather than dismissing the execution petition. In support of his contentions, learned counsel has placed reliance upon a judgment of a coordinate Bench of this Court in the case of ***Jodh Singh vs. State of Punjab and another***, (CWP-2674-1997, decided on 15.12.1998).

6. I have considered the submissions made by learned counsel for the petitioner but find the same to be devoid of merit.

7. Nowhere did the Court concerned hold that the petitioner was entitled to be appointed as a Safaiwala on compassionate grounds. In paragraph 12 of the judgment and decree, it was held as under:-

“12....This defence upon the vacant vacancy the case of the plaintiff has been approved by the department and thus the plaintiff is entitled to claim the relief of appointment on the basis of compassionate ground. The case of the plaintiff is accrued by the competent authority, but simply the appointment letter was not issued to the plaintiff by the defendant whereas appointment letter has issued to one Suresh Kumar Mishra his name is also



mentioned in the letter dated 30.04.2004 and even the witness of defendant admitted in his cross-examination that Suresh Kumar Mishra mentioned in the letter dated 30.04.2004 and if so that why the plaintiff was deployed of his legal right. DW-1 further admitted in his cross-examination that claim of the plaintiff for appointment on the compassionate ground was sent to Principal, Director of Defence Estate, Ministry of Defence Western Command, Kendriya Sadan, 5th Floor, Sector 9-A, Chandigarh after commending the same by the defendant Board. He further admitted that defendant Board has not issued any letter till today rejecting the claim of the plaintiff of the plaintiff for appointment of the plaintiff on compassionate grounds....”

8. Further, in paragraph 18, which was the operative part of the judgment, it was held as under:-

“18. In view of my findings given on the aforesaid issues, the suit of the plaintiff succeeds and the same is decreed with costs to the effect that case of the plaintiff be considered for appointment as Safaiwala with the defendant on compassionate ground on account of death of his father. Decree sheet be prepared. File be consigned to the record room.”

9. A perusal of the contents of paragraphs 12 and 18 shows that it had only been observed by the Court that the petitioner-plaintiff was entitled to claim the relief of appointment and not that he was entitled for appointment on compassionate grounds. Merely because it was observed by the Court concerned that the case of the petitioner-plaintiff had been approved by the competent authority but simply the appointment letter had not been issued to the petitioner-plaintiff, whereas it had been issued to similarly situated persons would not enure to the advantage of the petitioner-plaintiff because finally the only direction that was issued to the respondent-defendant was to consider the case of the petitioner-plaintiff.

10. The respondent-defendant duly considered the case of the petitioner-plaintiff and rejected the same vide order dated 15.02.2016 (Annexure P-6). Under the circumstances, no illegality can be said to have been committed by the executing Court in dismissing the execution petition.



It is well settled that an executing Court cannot go beyond the decree and carve out a new case. I have perused the judgment relied upon by learned counsel for the petitioner. In the said case, a civil suit had been filed for declaration that the petitioners were entitled to be promoted above their juniors and that the action of the State of Punjab for not considering them for promotion as Junior Engineers was illegal, null and void. The suit was decreed and the appeal filed by the State of Punjab was dismissed. An execution petition was filed. The State of Punjab filed objections. It was submitted before the executing Court by the State of Punjab that two persons namely Jodh Singh and Swaran Singh had been promoted to the post of Junior Engineer in compliance of the directions of the Court subject to the condition that they would have to pass the qualifying examination within three years from promotion, failing which they would be reverted. The name of Jaswant Singh was also considered but his name did not find mention in the consolidated seniority list for Work Mistris and was thus not promoted. Further, the name of Krishan Gopal was much below in the seniority-list and, therefore, he was also not promoted. Issues were framed in the execution petition and thereafter the executing Court held that no date, month and year of promotion of Road Inspectors beyond the quota had been given and the declaration was only qua consideration for promotion in the order of seniority and against the quota reserved and no declaration was granted that it was to be retrospective. The objection was, therefore, allowed and the execution was dismissed which led the petitioner to approach this Court. A coordinate Bench, while considering the directions issued by the Court of learned District Judge in appeal, held that a specific direction had been issued that the case of the petitioners was to be considered on similar terms on the basis of their seniority as Work Mistris and their promotion could be done as had been done



in other cases. Under the circumstances, the coordinate Bench held that the directions were to promote the petitioners from the date that their juniors had been promoted and, therefore, the decision of the executing Court was set aside. This judgment, in the considered opinion of this Court, would not come to the aid of the petitioner, for, in the present case, as has been stated in the preceding paragraphs, the only direction that had been issued was to consider the case of the petitioner for appointment on compassionate basis. Such appointment, of course, had to be in accordance with the rules operative at the relevant time. The only remedy with the petitioner was to challenge the order vide which his claim had been rejected instead of preferring the present revision petition. In the considered opinion of this Court, the executing Court did not commit any illegality in dismissing the execution petition once the order rejecting the claim of the petitioner had been passed.

11. In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed.

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

(VIKRAM AGGARWAL)
JUDGE

March 05, 2025
vcgarg

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