



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-313-2020

Date of decision : 14.05.2026

The President, Shri Mahavir Jain Girls High School, Jind, District Jind,
Haryana

... Petitioner

Versus

Tripat Kaur Chawla and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Amit Jain, Senior Advocate with
Mr.Parit Aggarwal, Advocate
for the petitioner.

Mr.Ashwani Bakshi, Advocate and
Ms.Jaswinder Kaur Bakshi, Advocate
for respondent no.1.

Mr. Raj Partap Singh Brar, AAG, Haryana
for respondents no.2 to 4.

VIKAS BAHL, J.(ORAL)

CHALLENGE IN THE PRESENT REVISION PETITION

1. This is a Civil Revision Petition filed under Article 227 of the
Constitution of India for setting aside the impugned order dated 06.01.2020
passed by the Executing Court, vide which the petitioner/judgment debtor
has been directed to make payment of Rs.24,77,570/- by the next date of
hearing.

**ARGUMENTS ON BEHALF OF THE PETITIONER**

2. Learned senior counsel for the petitioner has submitted that in the present case, the Co-ordinate Bench of this Court while deciding the regular second appeal no.441 of 1988 in its judgment dated 03.05.2010 had kept the point of back wages open and had observed that the same would depend upon the gainful employment of respondent no.1-plaintiff. It is submitted that a perusal of the execution application filed by respondent no.1 would show that there was no reference made by respondent no.1 of her having worked during the period in dispute. It is submitted that, after much effort, it was the petitioner who was able to get the relevant documents to show that respondent no.1-plaintiff / decree holder had initially worked from 01.10.1982 to 30.09.1983 as she was employed as Supervisor in the District Adult Education Centre. It is further submitted that the petitioner-judgment debtor was also able to get the income tax returns for the years 2002-2010 and thus, the said facts clearly showed that respondent no.1 was gainfully employed. It is submitted that in addition to the same, the petitioner had also produced on record the enrolment certificate of respondent no.1 which showed that respondent no.1 was enrolled as an Advocate by the Delhi Bar Council in 1985. It is submitted that in the said circumstances, the execution filed by respondent no.1 should have been dismissed on the ground of concealment as it was the duty of respondent no.1-plaintiff to have disclosed all facts.

3. It is further submitted that although the initial onus was on the



petitioner to show that respondent no.1 was gainfully employed but once the said documents were produced on record, the onus shifted on respondent no.1-plaintiff to rebut the fact that almost for the entire period, respondent no.1 was gainfully employed. It is prayed that the impugned order be set aside and the execution proceedings be dismissed. Learned senior counsel for the petitioner has argued that at any rate, the amount which is reflected in the income tax returns of respondent no.1-plaintiff, which after great effort the petitioner has been able to prove on record, should be deducted from the amount to which the petitioner is held liable to pay to respondent no.1.

ARGUMENTS ON BEHALF OF RESPONDENT NO.1

4. Learned counsel for respondent no.1, on the other hand, has submitted that a perusal of the judgment dated 03.05.2010 would show that it has been specifically recorded by the Co-ordinate Bench of this Court, while passing the said judgment, that issue no.3 was decided in favour of respondent no.1-plaintiff and thus, the plaintiff was held entitled to her pay and other arrears since 30.04.1981. It is further argued that the Co-ordinate Bench of this Court had not found any question of law arising in the appeal and had further taken note of the fact that the petitioner, who was the appellant in the said regular second appeal, had given an undertaking that the entire arrears of salary and allowances admissible to respondent no.1 in the eventuality of the regular second appeal being dismissed from the date of her dismissal till the date of her reinstatement, irrespective of the fact that



as to whether respondent no.1-plaintiff was employed during the said period or not would be paid.

5. It is submitted that at any rate even while finally adjudicating the regular second appeal, the onus was put on the appellant therein/present petitioner to prove that respondent no.1 was gainfully employed in case the back wages were to be denied and thus, the onus was on the present petitioner to prove the said fact. It is further submitted that at any rate, respondent no.1 had very fairly stated that respondent no.1 was an employee from 01.10.1982 to 30.09.1983 and the said period has not been taken into consideration for the purpose of assessing the amount due to respondent no.1- plaintiff. It is argued that the chart submitted by respondent no.1 showed that respondent no.1 was entitled to a much higher amount i.e. Rs.23,43,780/- on account of principal amount and Rs.12,79,544/- on account of interest total being Rs.36,43,715/-. It is submitted that the Executing Court had however taken into consideration the calculation made by the petitioner against which respondent no.1 had not filed revision petition which also showed fair conduct of respondent no.1. It is argued that merely earning some amount for livelihood would not bring the employment within the definition of gainful employment as every person has to survive during the pendency of the case and since an undertaking had already been given on behalf of the appellant-petitioner at the time when the application for vacation of stay was decided in the regular second appeal, thus, the meager amount earned by respondent no.1 in the said facts and



circumstances cannot be stated to be gainful employment. It is submitted that at any rate, at least the amount after deducting the said income shown in the income tax returns should be paid to respondent no.1 and the said amount should be paid along with interest at the rate of 6% per annum.

ARGUMENTS ON BEHALF OF THE PETITIONER IN REBUTTAL

6. Learned senior counsel for the petitioner in rebuttal has submitted that the calculation as given by respondent no.1 was not accepted by the Executing Court and no challenge has been made to the same and thus, the calculation submitted by the petitioner is required to be taken as the basis for determining the amount due.

ANALYSIS AND FINDINGS

7. This Court has heard learned senior counsel for the petitioner as well as learned counsel for respondent no.1 and has perused the paper book.

8. A perusal of the judgment dated 03.05.2010 (Annexure P-1) which was passed in the regular second appeal no.441 of 1988 shows that respondent no.1-plaintiff was appointed as S.S. Teacher in the petitioner's school which was a government aided institution and that it was the case of the respondent no.1-plaintiff that her signatures were obtained on a blank paper and the said paper was converted into the resignation letter to show that respondent no.1-plaintiff had resigned from her job and she was relieved on 04.08.1991. Respondent no.1-plaintiff had challenged the same by filing the present suit. It was noticed in the judgment dated 03.05.2010



that as many as 13 issues were framed in the said suit, which issues, are reproduced hereinbelow:-

- “1. Whether the order dated 4.8.1981 terminating the service of the plaintiff is liable to be set-aside on the grounds mentioned in the paragraph no. 5 of the plaint? OPP***
- 2. Whether the plaintiff submitted her resignation on 30.4.81 as alleged in paragraph no. 3 of the written statement filed by defendant No. 3? OPP*
- 3. Whether the plaintiff is still in service of the defendant No. 3 and she is entitled for her pay and other arrears since 30.4.1981? OPP***
- 4. Whether the suit for mere declaration is not maintainable? OPD*
- 5. Whether the plaint is vague and indefinite? OPD*
- 6. Whether the suit is bad on account of non-joinder of necessary parties? OPD*
- 7. Whether the suit should have been for cancellation of order dated 4.8.81? If so, to what effect? OPD*
- 8. Whether the suit is barred by limitation? OPD*
- 9. Whether any notice was required to be given to the defendant No. 3, as alleged in paragraph no. 6 in the written statement? If so, to what effect? OPD*
- 10. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? If so, to what effect? OPD*
- 11. Whether the plaintiff is estopped from filing the present suit by her act and conduct? OPD*
- 12. Whether the plaintiff has not come to the court with clean hands and has concealed the real facts. If so, to what effect? OPD*
- 13. Relief.”*

It was also noticed that issues no.1, 2, 3, 4, 6, 7, 9 and 11 were decided in favour of respondent no1-plaintiff and issue no.5, 8, 10 and 12 were disposed of as not pressed. The said observation has not been shown to be perverse or against the record before this Court. A perusal of issue



no.3 would show that under the said issue, it was to be determined as to whether the plaintiff was still in service or not and as to whether she was entitled for her pay and other arrears since 30.04.1981 or not and, as is apparent from the judgment dated 03.05.2010, the said issue was ultimately decided in favour of respondent no.1-plaintiff and respondent no.1-plaintiff was held entitled to the said amount. In the said judgment it was further noticed that no substantial question of law arose in the second appeal and thus, the finding of fact was upheld.

9. Then in the subsequent part of the judgment dated 03.05.2010 certain aspects were noticed on the basis of which submissions have been made on behalf of both the parties. The relevant part of the said order is reproduced hereinbelow:-

“Though the counsel today submits that the respondent-plaintiff would not be interested in joining in service as she has already attained the age of superannuation but would submit that her right to have the back wages would be available, especially so, in view of the undertaking given on behalf of the appellant on 28.02.1989.

While admitting the Regular Second Appeal, the operation of the judgment and decree of the impugned order was ordered to be stayed till further orders. It appears that the respondent-plaintiff had filed an application for vacation of this stay, when the following order was passed:-

"Counsel for the appellant undertakes to pay the entire arrears of salary and allowances admissible to the respondents in the eventuality of RSA being dismissed from the date of her dismissal till the date of her reinstatement, in spite of the fact that she might remain employed during the pendency of the appeal. The undertaking may be filed within three weeks. If no undertaking is filed within the stipulated period, the stay order shall stand



vacated."

Though there is some justification in what the learned counsel for the respondent-plaintiff states. As per the counsel, the appellant would now be bound to pay the back wages, if RSA is dismissed, in terms of undertaking aforementioned. Right to get back wages, especially so when reinstatement is not being asked, would depend upon the gainful employment of the respondent plaintiff, which may have to be proved by the appellant if they intend to deny any back wages.

The Regular Second Appeal is, however, dismissed."

A perusal of the above order would show that in addition to the issues which were already decided in favour of the respondent no.1-plaintiff, another aspect which was in favour of the respondent no.1-plaintiff was to the effect that the petitioner, who was the appellant in the regular second appeal, had undertaken on 28.02.1989 to pay the entire arrears of pay and allowances admissible to respondent no.1 herein, in case the regular second appeal is dismissed, from the date of her dismissal till the date of reinstatement, irrespective of the fact that she might remain employed during the pendency of the appeal. Considering the abovesaid fact and also that the appeal was finally decided on 03.05.2010, the argument on behalf of respondent no.1 to the effect that during the pendency of the appeal, the fact that respondent no.1 had made efforts to earn her livelihood and had earned some amount would not completely disentitle her to claim back wages for the said period, cannot be stated to be meritless.

10. While finally adjudicating the regular second appeal, the Co-ordinate Bench had observed that it is the petitioner, who was the appellant therein, who had to prove gainful employment of the respondent no.1 in



case they intended to deny any back wages and the said observation is also in favour of respondent no.1-plaintiff, inasmuch as, the onus of proving gainful employment was thus on the appellant-petitioner and in case the said onus was not discharged then they could not deny the back wages to respondent no.1-plaintiff. In the said facts and circumstances since the onus was on the petitioner, thus, the plea raised on behalf of the petitioner before this court to the effect that, the respondent no.1-plaintiff should not be entitled to any amount as she was guilty of concealing her income cannot be accepted. It would be further relevant to note that respondent no.1 had fairly stated before the Executing Court that she was in service from 01.10.1982 to 30.09.1983 and thus, the said period was excluded by the Executing Court while granting relief to the plaintiff-respondent no.1. Moreover, the execution cannot be dismissed on the plea of lack of complete disclosure on behalf of any party, moreso, when the onus of proving the said aspect is not on that party.

11. That a perusal of the impugned order would show that the petitioner has been able to produce on record the income tax return of respondent no.1-plaintiff from the years 2002 to 2010. A perusal of the impugned order would further show that the specific amount which respondent no.1-plaintiff had earned from 2002 to 2010, during the operation of the undertaking dated 28.02.1989, which was her professional income, was specifically mentioned. The Executing Court has observed that the said income which was earned was lesser than the back wages which she



would have earned, had she been reinstated and in view of the said observations held respondent no.1 entitled to back wages even for the period from 2002 to 2010 and did not even deduct the income earned by her during the said period from the said back wages. The same has led to vehement submissions made on both sides. Learned senior counsel for the petitioner has submitted that at any rate the entire period from 2002 to 2010 should be treated as gainful employment, whereas, learned counsel for respondent no.1 has submitted that in view of the undertaking given in the regular second appeal which was in operation when respondent no.1 had been earning a non substantial amount of professional income and also the fact that the said income was not as substantial so as to say that respondent no.1 was gainfully employed and moreover, the earning during the said years was lesser than the back wages, and thus, the back wages for the said period should not be excluded.

12. This Court is of the opinion that taking into consideration all the facts and circumstances, the ends of justice would be met in case the back wages for the period in question, including the period from 2002 to 2010 as held by the executing court is paid to the respondent no.1 but the amount which was earned by respondent no.1 and was reflected in her income tax returns from the year 2002 to 2010, which return, has been duly exhibited on record by the petitioner, is deducted from the said amount. Accordingly, this Court had requested both the counsel to prepare a calculation sheet by taking the calculation which has been accepted by the

2026:PHHC:076136



Executing Court as the base calculation and then to deduct the amount which respondent no.1-plaintiff had earned and was reflected in the income tax return from the year 2002 to 2010 and in pursuance of the same, the said calculation sheet had been submitted before this Court which reads as under:-

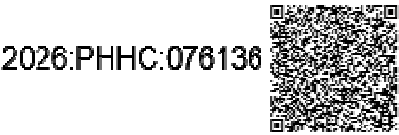
“CALCULATION SHEET				
Year	Basic Pay	Deductible Amount ITR	Adjusted Basic Pay	Interest @ 6% p.a.
1981-82	5,610	N/A	5,610	9,761
1982-83	6,300	N/A	6,300	10,584
1983-84	6,480	N/A	6,480	10,498
1984-85	6,660	N/A	6,660	10,390
1985-86	8,910	N/A	8,910	13,365
1986-87	15,480	N/A	15,480	22,291
1987-88	15,840	N/A	15,840	21,859
1988-89	16,200	N/A	16,200	21,384
1989-90	16,560	N/A	16,560	20,866
1990-91	16,920	N/A	16,920	20,304
1991-92	17,280	N/A	17,280	19,699
1992-93	17,640	N/A	17,640	19,051
1993-94	18,000	N/A	18,000	18,360
1994-95	18,360	N/A	18,360	17,706
1995-96	29,040	N/A	29,040	26,136
1996-97	61,500	N/A	61,500	51,660
1997-98	63,000	N/A	63,000	49,140
1998-99	64,500	N/A	64,500	46,440
1999-00	66,000	N/A	66,000	43,560
2000-01	67,500	N/A	67,500	40,500
2001-02	69,000	52,342	16,658	8,995
2002-03	70,500	81,670	-11,170	-
2003-04	72,000	81,746	-9,746	-
2004-05	73,500	93,264	-19,764	-

2026:PHHC:076136



2005-06	1,04,430	1,41,262	-36,832	-
2006-07	1,97,130	1,38,314	58,816	14,116
2007-08	2,03,100	1,48,360	54,740	9,853
2008-09	2,09,280	1,89,310	19,970	2,396
2009-10	2,15,610	1,92,410	23,200	1,392
Total	17,52,330		6,33,652	5,30,306
FINAL PAYABLE AMOUNT				11,63,958”

A perusal of the said calculation sheet would show that the specific amount earned by respondent no.1-plaintiff, which was reflected in the income tax return from the year 2001-2002 to 2009-2010 had been deducted from the amount of back wages to which respondent no.1 would have been entitled in pursuance of the decree in her favour and also in pursuance of the undertaking given at the time of the decision of the application for vacation of stay in the regular second appeal. The amount would stand crystallized as Rs.11,63,958/-. The same would avoid any unjust enrichment in favour of respondent no.1-plaintiff and would also balance the equities and would be the final step towards executing the judgment and decree dated 03.05.2010. It is not in dispute that the decree in favour of respondent no.1 entitles the respondent no.1 to interest at the rate of 6% per annum. The amount of Rs.11,63,958/- which has been crystallized is admittedly upto April 2010. Thus, the amount to which respondent no.1-plaintiff would be entitled to is Rs.11,63,958/- along with interest at the rate of 6% per annum from April, 2010 till the date of payment.



the impugned order dated 06.01.2020 is modified and respondent no.1-
plaintiff is held entitled to an amount of Rs.11,63,958/- along with interest
at the rate of 6% per annum from April 2010 till the date of payment. Since
the execution has been pending since the year 2010, the Executing Court is
directed to decide the execution as expeditiously as possible.

(VIKAS BAHL)
JUDGE

May 14, 2026.
Davinder Kumar

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