
(2013) 08 P&H CK 0589
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 835 of 2005

Haryana Vidyut Parsaran Nigam and Others	APPELLANT
Vs	
Vasdev	RESPONDENT

Date of Decision : 14-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2013) 08 P&H CK 0589

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : Alok Jain, for the Appellant; Naveen Daryal, for the Respondent

Final Decision : Disposed Off

Judgement

L.N. Mittal, J.—Judgment debtors (JDs) - Haryana Vidyut Parsaran Nigam and its officers have filed this revision petition u/s 115 of the CPC (in short-CPC) impugning order dated 06.10.2004 (Annexure P-1) passed by the Executing Court thereby directing the JDs to pay the amount of two special increments to decree-holder (DH) -respondent Vasdev, on completion of 8 and 18 years of service. Suit filed by respondent against petitioners was partly decreed by the trial court vide judgment dated 29.08.1996 (Annexure P-2). In appeal preferred by the plaintiff-respondent against judgment and decree of the trial court, learned lower appellate court, vide judgment dated 02.06.1997 (Annexure P-3), granted additional relief to the respondent. Concluding paragraph no. 11 of the judgment (Annexure P-3) is reproduced hereunder:-

11. Resultantly, thus, the judgment and decree under challenge are modified to the extent that apart from the relief granted to the Plaintiff by the trial court, the Plaintiff shall also be entitled to two special increments payable after 8 years and 18 years of service as per rules of the department. He shall also be entitled to leave encashment in lieu of the period of leave deducted w.e.f. 16.08.1991 to 11.03.1992. It is needless to mention here that if, any other dispute is pending with regard to stoppage of increment, that would be dealt with in the appropriate

proceedings and thus judgment would have no bearing on those proceedings. The appeal stands disposed of accordingly. Parties are left to bear their own costs. Decree sheet be prepared and accordingly and file be consigned to the record room.

2. Respondent DH filed execution petition, wherein he claimed the benefit of two special increments on completion of 8 and 18 years of service. JDs resisted the said claim alleging that grant of special increments to the DH was declined vide order dated 09.01.1996 (Annexure P-4) and order dated 27.03.1996 (Annexure P-5) by the competent authority. Learned Executing Court, however, did not accept the said plea of the JDs and accordingly directed the JDs to pay the amount of the said special increments. Feeling aggrieved, JDs have filed this revision petition to challenge the order (Annexure P-1) passed by the Executing Court.

3. I have heard counsel for the parties perused the case file.

4. Counsel for the petitioners contended that the learned lower appellate court, in judgment Annexure P-3, granted the benefit of two special increments to the DH, "as per rules of the department". It was pointed out that the DH was found not entitled to the said special increments as per rules of the department (JDs) because of his unsatisfactory record of service, as mentioned in orders Annexures P-4 and P-5, his integrity being doubtful, and therefore, DH is not entitled to special increments in the execution proceedings. It was also pointed out that the DH, in the suit, had not even claimed the benefit of special increments, as is evident from the prayer made by the DH in his suit, as reproduced in paragraph 2 of the revision petition.

5. On the other hand, counsel for respondent-DH contended that the lower appellate court, vide judgment Annexure P-3, has specifically granted the benefit of two special increments to the DH and Regular Second Appeal filed by the JDs was dismissed by this Court, and therefore, DH has been rightly granted benefit of two special increments by the Executing Court. It was also submitted that the DH specifically claimed the benefit of two special increments in the first appeal, as mentioned in paragraph 7 of the judgment Annexure P-3.

6. I have carefully considered the rival contentions.

7. Perusal of relief claimed by respondent-DH in his suit, as mentioned in paragraph 2 of the revision petition, reveals that he had not claimed the benefit of two special increments in the suit. Consequently, the said benefit could not have been claimed or granted in first appeal.

8. In addition to the aforesaid, the lower appellate court, vide judgment Annexure P-3, did not grant the benefit of two special increments to the plaintiff unconditionally. On the contrary, the plaintiff was held entitled to the said benefit as per service rules of the department and not otherwise. According to the service rules of the department, for getting benefit of special increments, there

had to be satisfactory service during the period under assessment. However, as per order Annexure P-4, the DH was not having satisfactory service during the period under assessment as he had not earned good reports up to the mark and also he had earned doubtful integrity for the year 1990-91. Similarly, according to order Annexure P-5 also, claim of DH for special increments was rejected on account of his unsatisfactory record of service. Consequently, even according to the judgment of the lower appellate court, the DH could not be granted the benefit of special increments by the Executing Court because he was found to be not entitled to the said special increments, as per rules of department. Orders Annexures P-4 and P-5 were not challenged by the DH in the suit because the same were passed during pendency of the suit. However, the plaintiff could have challenged the same either by amending the plaint or by filing separate suit. Since the orders Annexures P-4 and P-5 declining the benefit of special increments to the plaintiff have not been set aside by any Court or competent authority, respondent-DH is not entitled to benefit of special increments in view of said orders.

9. For the reasons aforesaid, I find that the impugned order passed by the Executing Court holding the DH entitled to special increments is illegal and suffers from jurisdictional error. Accordingly, the instant revision petition is allowed. Impugned order (Annexure P-1) passed by the Executing Court is set aside, holding that the respondent - DH is not entitled to the benefit of special increments on completion of 8 and 18 years of service, in view of orders Annexures P-4 and P-5 passed by the competent authority, due to unsatisfactory service record of the DH. Civil Miscellaneous applications, if any pending, stand disposed of as infructuous.