
(2004) 03 P&H CK 0059
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1415 of 2003

Medical Supdt. E.S.I. Hospital

APPELLANT

Vs

Prem Lala and Another

RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32

Citation : (2004) 2 CivCC 619 : (2004) 137 PLR 670 : (2004) 2 RCR(Civil) 693

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Advocate : Anil Chawla, for the Appellant; B.R. Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

Viney Mittal, J.—The judgment-debtor/objector is the petitioner before this Court.

2. The suit filed by the plaintiff was dismissed by the learned trial Court. The matter was taken up in appeal. The learned first appellate Court accepted the aforesaid appeal filed by the plaintiff and made the following observations:

"So far as the first proficiency step up increment is concerned, that has been allowed to the plaintiff and the plaintiff has not raised any objection in this regard. The dispute is in respect of the grant of increment on account of second proficiency step up. The employer cannot postpone the decision in respect of the grant of second proficiency step up. The plaintiff has completed 18 years of her service on 16.7.1986. So far as the instructions No. 7/14/88-5PPI/2269/18527 dated 1.12.88 regarding the second proficiency step up wherein it is mentioned that only regular service has to be considered for the grant of second proficiency step up is concerned, vide notification No. 71/14/88-5 PPI 16200 dated 1.9.1989, it has been held that the above said instructions cannot be made retrospectively. The said instructions are based upon the authority of Beant Singh Bedi's case (supra). So the defendants are bound to consider her case for the grant of second proficiency step up. In these circumstances, directions to be

given to the defendants to consider her case for the grant of second proficiency step up from 16.7.1986. The case of the plaintiff is squarely covered by the notification No. 588 dated 1.12.88. Since the instructions imparted in the notification dated 1.9.1989 are prospective in nature and as per the said notification the authority of Pritam Singh's case (supra) is not applicable to the facts of the present case as it is not the case of the defendants that the plaintiff is not entitled to the increment on account of the second proficiency step up on account of her bad service record. In the said authority only proposition has been laid down that it is derogative of the employer to allow efficiency bar to the employee, in view of the service record. In the said authority itself it has been observed that the discretion of the employer cannot be exercised arbitrarily. So far as the facts of the present case are concerned, the defendants have slept over the matter for years together."

3. Later on when the decree holder sought the execution of the decree, the judgment debtor still persisted with the pleas which had already been adjudicated upon by the learned first appellate Court. The learned trial Court has rightly rejected the aforesaid objections of the petitioner by holding that the executing court could not have been gone beyond the decree and since the objection raised by the petitioner had already been adjudicated upon by the learned first appellate Court, the learned executing court was bound in law to execute the decree.

4. In view of the aforesaid facts, the present revision petition is without any merit and the same is, accordingly, dismissed.