

(1990) 04 P&H CK 0052
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2544 of 1988

Punjab State and Another	Vs	APPELLANT
Rohini Kumar		RESPONDENT

Date of Decision : 11-04-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1990) 98 PLR 42

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Advocate : Charu Tuli, A.A.G, for the Appellant; B.R. Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sodhi, J.—The matter here concerns the execution of a declaratory decree granted in favour of Rohini Kumar. On October 19, 1981, Rohini Kumar filed a suit for declaration that he was entitled to seniority in the clerical cadre of the Transport Department of the State of Punjab with effect from September 20, 1961 and all consequential benefits acting therefrom. The Suit was dismissed on July 31, 1982, but, was decreed on appeal by the Additional District Judge, Amritsar Shri M. S. Sehme on September 4, 1984. The second appeal filed against this judgment and decree was later dismissed by (his Court).

2. It, was sometime thereafter that Rohini Kumar filed a petition u/s 3 of the Contempt of Courts Act alleging that the decree passed in his favour was not being implemented by the Director, State Transport, Chandigarh.

3. The trial court dismissed this application under the Contempt of Courts Act holding that the decree passed in favour of the petitioner-Rohini Kumar had been fully implemented as the decree granted (to him) was with regard to his seniority in the cadre of clerks and not seniority and promotion to the post of Assistant and therefore, there was no violation of the decree by the Director.

4. Further, it was held that as regards consequential benefits, the petitioner had failed to show that precisely these were. It was stated in this behalf that only a vague figure of Rs. 39,000/- by way of arrears had been mentioned, but the petitioner had failed to show by way of any calculations how he was entitled to this sum.

5. Besides seeking to challenge this order in revision, in this Court, the petitioner Rohini Kumar also filed another suit on July 17, 1987 seeking a declaration that he was senior to Tarsem Kumar. Consequential benefits were also claimed. This suit was decreed in favour of the petitioner-Rohini Kumar on February 10, 1988, whereby, it was held that he was senior to Tarsem Kumar and was entitled to promotion as Assistant from the date when the said Tarsem Kumar was promoted, namely; November 1, 1966 and further that the petitioner was entitled to all consequential benefits of pay and allowances. This decree was upheld in appeal, both by the lower appellate court as also by this Court in Regular Second Appeal.

6. Later, when Rohini Kumar took out, execution of this subsequent decree, an objection was raised on behalf of the State of Punjab that the decree being merely a declaratory decree was not executable. This plea was, however, negatived by the executing court, by its impugned order of August 24, 1988.

7. The law is well-settled that once a declaratory decree has been passed in favour of an employee holding that he continues to be in service, he can realise all the arrears of pay due to him in execution of the decree. It has been so held by the Full Bench of this Court in *Gurpreet Singh Sidhu and Ors. v. The Panjab University, Chandigarh* (1983) 85 P.L.R. 46 which was later followed in *Ram Sarup Bhalla v. The State Punjab* 1985 (1) S.L.R. 433 and *Darshaan Kumar v. The State of Haryana* 1987 (4) S.L.R. 503. No exception can thus be taken to the impugned order of the executing court holding the decree obtained by the petitioner-Rohini Kumar, to be executable.

8. As regards the application filed by Rohini Kumar, under the Contempt of Courts Act, this is clearly rendered infructuous by the subsequent decree obtained by the petitioner and the relief claimed being covered by it.

9. In the result, the application under the Contempt of Courts Act is hereby dismissed as infructuous while the impugned order holding the decree to be executable is upheld and affirmed. Both the revision petitions are disposed of accordingly. There will, however, be no order as to costs,