
(2002) 08 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1475 of 2002

Sham Sunder

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 07-08-2002

Acts Referred:

Citation : (2003) 2 ICC 546 : (2003) 2 LJR 745 : (2003) 1 RCR(Civil) 164

Hon'ble Judges : M.M.Kumar, J

Advocate : Mr. W.R. Dua, Advocate., Advocates for appearing Parties

Judgement

M.M. Kumar, J.—This revision petition filed under Section 115 of the Code of Civil Procedure, 1908 (for brevity, `the Code") is directed

against order dated 4.2.2002 passed by the Additional Civil Judge (Senior Division), Jind dismissing the execution application of the

decreeholderpetitioner (for brevity, `DHpetitioner") in which the DHpetitioner claimed that he was entitled to an amount of Rs. 1,89,000/ on

account of interest. The reason given by the learned executing Court in its order is that the DHpetitioner was not entitled to the aforesaid amount as

the same has been specifically declined by this Court on 28.9.2001 while deciding Regular Second Appeal No. 1656 of 1985. The petitioner had

not placed on record the copy of the order dated 28.9.2001 and when the case came up for hearing on 3.4.2002, it was directed that the

petitioner shall place on record a copy of the order dated 28.9.2001 which constituted the basis for declining the relief by the impugned order

dated 4.2.2002. Accordingly, the petitioner has placed on record a copy of the judgment dated 28.9.2001 passed by this Court. A perusal of the

aforementioned judgment makes it abundantly clear that Regular Second Appeal

No. 1656 of 1985 filed by the judgment debtors respondents (for brevity, 'JD respondents') i.e. State of Haryana was allowed and the decree passed by the lower Appellate Court was set aside. Consequently, Civil Suit No. 185/513 dated 3.10.1980/26.3.1982 of the DH petitioner seeking declaration that the order dated 2.8.1974 discharging him from service was illegal, was dismissed. Another suit registered as Civil Suit No. 434 of 8.11.1989 for rendition of accounts was also dismissed and Regular Second Appeal No. 1707 of 1998 filed by the JD respondents was allowed. The judgment and decree of the Courts below was set aside.

The operative part of the order dated 28.9.2001 reads as under :

Accordingly, Regular Second Appeal No. 1656 of 1985 is allowed and the decree passed by the lower Appellate Court is set aside and the suit filed by the plaintiff for declaration is dismissed with a direction to the defendants to treat the period in dispute as leave of the kind due for the purpose of grant of pension only. It is, however, made clear that the plaintiff shall not be entitled to any other monetary benefit accruing because of regularisation of period of absence. Parties are left to bear their own costs.

As a result of reversal of judgment and decree passed by the first Appellate Court in R.S.A No. 1656 of 1985, CWP No. 16754 of 1998 has been rendered infructuous and is disposed of as such.

Since the judgment and decree passed by the lower Appellate Court whereby termination order dated 2.8.1979 was held to be illegal, has been set aside in R.S.A. No. 1656 of 1985, plaintiff is not entitled to the benefit claimed in R.S.A. No. 1707 of 1998. Accordingly, R.S.A. No. 1707 of 1998 filed by the State is allowed and judgment and decree of the Courts below set aside and the suit is dismissed with no order as to costs.

It is made clear that the decree granted in favour of plaintiff in regard to treating his absence period as leave of the kind due being based on equity as well as on facts and circumstances of present case, shall not be taken as a precedent in any other case.

2. Brief facts of the case as disclosed in the revision petition are that the DH petitioner was appointed as Road Inspector in the Public Works Department (B and R) Branch, Jind in 1964 on permanent basis. He proceeded on leave somewhere in 1974 and overstayed. Consequently, he was discharged from service vide order dated 2.8.1979 passed by the

Superintending Engineer, Jind Circle, Public Works Department (B and R)

Beach. He filed Civil Suit No. 185/513 dated 3.10.1980/26.3.1982 for declaration challenging the validity of the order dated 2.8.1979 primarily

on the plea that order was passed because of mala fide of the then Executive Engineer Mr. S.C. Saluja. It was also alleged that before terminating

the services, the procedure as laid down under the law and the rules was not followed. He alleged that before passing the order on 2.8.1979, the

punishing authority failed to take into consideration the medical certificate and the leave application sent by the DHpetitioner to the concerned

officer. The suit was contested by raising preliminary objection that the same was timebarred and pleading estoppel on the basis of the act and

conduct of the DHpetitioner. The allegations of mala fide against the Executive Engineer Mr. S.C. Saluja were denied defending the impugned

order to be fair and proper. The trial Court dismissed the suit and upheld the validity of the order dated 2.8.1979. Holding that the suit was barred

by limitation as it was filed after the expiry of period of more than one year; the principle of estoppel was also found applicable and the suit was

dismissed. However, the Additional District Judge, Jind held that the suit was within limitation on the ground that the period of 60 days postulated

by Section 80 of the Code was to be excluded as is provided by Article 100 of the Schedule appended to Limitation Act, 1963. The Additional

District Judge further held that the order suffers from the legal infirmity of failure to issue second show cause notice as contemplated by Rule 7(1)

of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 and, thus, the suit was decreed. Opportunity was given to the JDrespondents

for instituting fresh enquiry or taking decision with regard to the period for which the DH petitioner remained absent from duty without getting the

leave sanctioned. Regular Second Appeal No. 1656 of 1985 filed by the JDrespondents i.e. State of Haryana against the judgment of the

Additional District Judge was allowed. The DHpetitioner was reinstated in service but he was not paid salary and other benefits w.e.f. 1.7.1974.

3. The DHpetitioner filed another suit being Civil Suit No. 434 of 8.11.1989 for rendition of accounts stating that an amount of Rs. 1,65,782/

representing the salary for the period from 1.7.1974 to 31.8.1988 has not been paid. However, he claimed that he has not been paid Rs.

1,76,727/ which was transferred to his General Provident Fund nor any Medical Allowance from 1974 to 1989 was paid. He also claimed interest

on the amount of arrears of pay and other benefits asserting that he was not paid salary and other benefits w.e.f. 1.5.1989 till 8.11.1989. The

JD respondents i.e. State of Haryana in its written statement pleaded that an amount of Rs. 1,76,427/ was paid and he was not eligible for fixed

Medical Allowance for the period from 1982 to 31.11.1988 as he was not in service. It was further pleaded that the petitioner was not entitled to

any salary as he remained absent from duty because his leave was never sanctioned. The suit of the DH petitioner was dismissed. However, on

appeal, an additional issue was framed and the trial Court returned the findings on the additional issue in favour of the DH petitioner and the

Additional District Judge allowed the appeal and granted he relief of medical allowance and interest vide her judgment dated 3.3.1998 rendered in

Civil Appeal No. 126 of 6.6.1992. It was in these circumstances that this Court dismissed both the suits of the DH petitioner and set aside the

judgment of the Additional District Judge in which the relief of interest and medical allowance was granted.

4. I have heard Mr. W.R. Dua, Advocate for the DH petitioner who has argued that the executing Court has committed grave error by dismissing

the execution application of the DH petitioner because the execution was filed on 2.5.1998 when the judgment of the Additional District Judge

dated 3.3.1998 was in operation. According to Mr. Dua, the execution application was filed seeking execution of the decree as drawn by the

learned Additional District Judge in her decision dated 3.3.1998. He has further pointed out that review petition against order dated 28.9.2001 is

pending and, therefore, order dated 4.2.2002 passed by the Additional Civil Judge is liable to be set aside.

5. The submission made by Mr. Dua has to be rejected outrightly as no legal acumen would be required to do so. Such a submission is imaginary

because once the judgment and decree passed by the learned Additional District Judge on 3.3.1998 has been set aside in an appeal filed by the

State of Haryana being Regular Second Appeal No. 1707 of 1998 and also in Regular Second Appeal No. 1656 of 1985, then there is no room

to doubt that such an argument would be absolutely frivolous and no execution of a judgment and decree which is set aside could ever be

undertaken. The second submission made by Mr. Dua also deserves to be rejected because there is no order reviewing the judgment and decree

dated 28.9.2001. Therefore, the revision petition is liable to be dismissed.

6. For the reasons recorded above, this revision petition fails and the same is dismissed. For the frivolous revision petition filed in this Court, the

DHpetitioner is saddled with a cost of Rs. 5,000/. The costs shall be deposited by him with the Legal Services Authority, Haryana within a period

of one month. A copy of this order be sent to the Secretary, Legal Services Authority, Haryana who shall send his report if the costs is not paid on

or before 30.9.2002. If any such report is received, the case shall be relisted.

Revision dismissed.