
(2005) 04 P&H CK 0066
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2569 of 1996

The State of Punjab

APPELLANT

Vs

S. Darshan Singh

RESPONDENT

Date of Decision : 08-04-2005

Acts Referred:

Citation : (2005) 140 PLR 853

Hon'ble Judges : Adarsh Kumar Goel, J

Bench : Single Bench

Advocate : Ashish Sharma, A.A.G, for the Appellant; A.M. Punchi, for the Respondent

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—The respondent filed a suit for declaration to the effect that he was entitled to full pay and allowances for the period from 25.5.1965 to 28.4.1978. He was entitled to cross efficiency bar with effect from 1.9.1981 and entitled to arrears on account of difference of increased pay after giving revised grade and after allowing crossing of efficiency bar. Further claim was to proficiency step up, increments, increase to leave encashment, pension, gratuity etc. His case is that he was employed in P.W.D. department on 2.2.1953 and retired as Superintendent, Grade IV on 28.2.1989. A case of embezzlement was registered against him in the year 1965 and he was placed under suspension on 14.5.1965. He was acquitted after trial. On 2.4.1978, he was ordered to be reinstated and period of suspension was regularised. He was given perma promotion. A bill for payment of Rs. 44748.50 towards dues was forwarded to the concerned authority but the same was not being paid to him. Income tax was so directed to be recovered out of the said amount. He was given gratuity and pension but certain dues still remained.

2. The suit was contested. It was admitted that the plaintiff was reinstated on 12.4.1978 and his earlier services was allowed to be regularised. He had been ordered to be dismissed from service on 21.1.1967 and a proposal for his dues

was under objections since the claim for arrears for the period he did not remain in service, was disputed. He had been given pensionary benefits.

3. The trial court decreed the suit filed on 9.12.1992 for Rs. 60586.75 with interest at the rate of 12% PA from the date, the amount became due, till realisation. Operative part of the decree is as under:-

"In view of my findings on the above issues, the suit of the plaintiff for declaration that the plaintiff is entitled to the recovery of Rs. 60586.75 with a consequential relief of mandatory injunction directing the defendants to pay the amount of Rs. 60586.75 with interest @ 12% PA from the date the amount became due and payable till realisation is decreed. The parties are left to bear their own costs. Decree sheet be prepared and the file be consigned."

4. On appeal, the plaintiff was given further relief of being considered for crossing efficiency bar w.e.f. 1.9.1981 with consequential benefit.

5. The respondent then applied for execution claiming that the decretal amount of Rs. 60,586.75 became Rs. 11,3,362.88 with interest. This claim was contested. According to the judgment-debtor, the amount payable was Rs. 1,20,002/- as on 31.10.1994 and not Rs. 7,70,748/- as claimed by the decree-holder. The plaintiff had still not been considered for proficiency step up.

6. The executing court allowed the claim of the judgment-debtor which also included claim for interest at the rate of 12% p.a. with yearly rests and also allowed the claims for arrears of pay, after taking into account efficiency bar, proficiency step up etc.

7. Aggrieved by the said order, this revision petition has been filed. This court stayed the execution proceedings vide order dated 14.6.1996.

8. Referring to para 7 in the grounds of revision, learned counsel for the petitioner submitted that a sum of Rs. 1,93,235/- had already been paid which has not been taken into account. He further referred to para 6 of the grounds of revision to the effect that interest could not be granted from 25.5.1965 as has been claimed. The executing court has also erred in granting interest at yearly rests for which there was no provision in the decree.

9. Learned counsel for the plaintiff decree-holder supported the impugned order.

10. After hearing learned counsel for the parties, I find that order of the executing court suffers from patent errors. There is no provision in the decree for calculating interest at yearly rests. The interest awarded was simple interest. The amount was clearly quantified. Entitlement of the plaintiff to the amount of Rs. 60586.75 was declared only on the date of decree i.e. 9.12.1992 and the interest became due only after that date. There is no provision in the decree that the amount became due in the year 1965 when the plaintiff was suspended or that this amount became due on the date of his reinstatement on 12.4.1978. Benefit of crossing efficiency bar had not been quantified in the decree as the same was

dependent on consideration of the case of the plaintiff for the said purpose. If the said case was not considered, direction could only be to force the judgment debtor to consider the case and take a decision. The executing court could not in absence of the said amount being quantified, award any amount.

11. For the above reasons, this petition is allowed. The order of the executing court is set aside. The plaintiff is held entitled to an amount of Rs. 60,586.75 which is decretal amount with 12% simple interest from 9.12.1992 till the date of payment. As regards the benefit of crossing efficiency bar with effect from 1.9.1981, the plaintiff is held entitled only to a direction for consideration for the purpose and if his claim is rejected, he will at liberty to take his remedies. If his claim is accepted, the department will calculate and pay the amount as per decision taken. If consideration does not take place within a reasonable time, the plaintiff will be entitled to take his legal remedies in accordance with law. Any amount already paid will be adjusted. The decree holder will be at liberty to file fresh execution, if his claim survives as per this order, in accordance with law.