

## IN THE SUPRE COURT OF INDIA

## CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3538 OF 2014  
(Arising out of S.L.P. (Civil) No. 32637 of 2010)

State of Punjab and another

... Appellants

Versus

Satpal

...Respondent

## O R D E R

Leave granted.

This appeal is directed against the order dated 17.2.2010 passed by the High Court of Punjab and Haryana at Chandigarh in Civil Revision No. 2078 of 2009 whereby the learned single Judge interpreting the judgment and decree dated 4.1.2002 by the learned Additional District Judge has held that the respondent-employee was entitled to full back wages. By virtue of this order passed by the High Court, the order passed by the executing court holding that the decree holder could not be denied the back wages, stood affirmed.

The learned counsel for the State has drawn our attention to the judgment and decree passed by the learned appellate Judge who has reversed the judgment and decree passed by the learned trial Judge. It is urged by him that as per the judgment and decree passed by the appellate court the employee is not entitled to back wages. To appreciate the said submission, we think it apt to reproduce the relevant part of the judgment: -

"Order of discharge which in fact is punitive in nature cannot be passed without affording opportunity envisaged under the rules. In 1994 (4) SLR 18, it was held that temporary employee - order of dismissal - Civil Suit Court competent to lift the veil and find out the cause for termination the temporary employment even if the order is innocuous. In the case in hand appellate earlier joined the PAP department but without acceptance of resignation and disclosing about the earlier employment, appellant got second employment. Impugned order was passed on the allegations that appellant cheated the department. But in view of the above cited authorities order of discharge should have been passed by holding enquiry, so finding of the Trial Court on the issue No. 1 is set aside.

Learned G.P. for the respondents cited 1996 (3) RSJ

82 wherein Hon'ble Supreme Court held that disciplinary enquiry - found to be faulty - could not be proper to direct reinstatement with consequential benefit - Matter requires to be remitted to disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action as per law.

So in view of the above cited authority by learned G.P. for the respondents, respondents are directed to hold fresh regular enquiry as per rule 16.24. Regular enquiry is to be preferably completed within 3 months from the date of receipt of this judgment. As per regular enquiry, respondents would be at liberty to pass fresh appropriate order."

After the judgment was passed, a decree had been drawn which reads as follows: -

"This appeal coming for final hearing today i.e. 4th day of January, 2002 before me (Jora Singh, Addl. District Judge, Kapurthala) in the presence of counsel for the appellant and Government pleader for the respondents, it is hereby ordered that the appeal is accepted. Parties are left with their own costs."

It is not disputed that the said judgment and decree was accepted by both the parties and remained unassailed. In fact, as the factual matrix would evince, on 25.3.2002 the SSP Kapurthala, in accordance with the aforesaid judgment directed for reinstatement in service from the date of his discharge, i.e., 22.3.1991. A fresh enquiry was directed and during the enquiry the respondent was kept under suspension. On 19.8.2002 after completion of departmental enquiry, an order of censure was passed and the period of suspension was treated as period of suspension.

As the factual matrix would unfurl, the respondent filed Execution Application No. 7 of 2003 for compliance of the judgment and decree dated 4.1.2002 and the application was basically for grant of back wages. The employer filed its objections contending, inter alia, that as per the appellate court judgment a fresh enquiry was directed to be held and there was no order for reinstatement and grant of back wages. The executing court referred to the effect of setting aside the order of termination and on that ground opined as follows: -

"The decree holder remained out of service in the wake of order of termination and that order was set aside with the direction to hold fresh enquiry and after fresh enquiry the punishment of censure was granted to the decree holder. As per the law discussed above the decree holder is entitled to all the service benefits. The contention of learned counsel for the GP is that the JD has already received the suspension allowance of the period when the enquiry was conducted, therefore, he is not entitled as he has already received the amount to which he was entitled. But this contention of learned GP is not tenable as the DH has filed the execution for his arrears of pay and other service benefits, which have not been paid to the DH. As per law discussed above, the DH is entitled to all the benefits once the order is set aside till the fresh order is passed. Accordingly the objections are misconceived and are hereby dismissed."

The aforesaid order being challenged, the learned single Judge proceeded on the ground that once minor punishment of censure was inflicted, denial of back wages was inappropriate. Ultimately he held thus: -

"In view of the settled proposition of law order passed by the Senior Superintendent of Police, therefore, could not be interpreted to mean that the back wages were denied to the decree holder as contended by the learned counsel for the petitioner."

On a close scrutiny of the judgment and decree of the appellate court we find that there was no direction for grant of back wages. On the contrary, the decision relied upon by the employer was accepted as is perceivable from the last paragraph of the judgment. Apart from directions for holding a regular enquiry, no further order was passed. The department, however, thought it appropriate to direct reinstatement and to continue the enquiry and, accordingly put him under suspension, which, in our considered opinion, is absolutely correct. While imposing the punishment of censure the disciplinary authority has directed that the period of suspension would be treated as such. The grievance, as we see, relates to the period from the first order of dismissal till the order of reinstatement. We may repeat at the cost of repetition that in the absence of any direction in a decree by the learned first appellate Judge for grant of back wages and only to hold a fresh enquiry, it cannot be construed that there was no denial of back wages. Such an inference from a decree for the purpose of execution is impermissible. In fact, we notice that the executing court has not adverted to the judgment and decree of the appellate court and the High Court has dealt with the matter as if it was dealing with the matter afresh, but not in exercise of revisional jurisdiction arising from an execution proceeding. The approach being entirely erroneous, we have no hesitation in overturning the order passed by the executing court as well as that of the High Court and we do so.

In the result, the appeal is allowed and the order passed by the High Court in Civil Revision No. 2078 of 2009 as well as the order passed by the executing court is set aside. There shall be no order as to costs.

.....J.  
[Dipak Misra]

.....J.  
[J. Chelameswar]

New Delhi;  
March 07, 2014.

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).32637/2010

(From the judgement and order dated 17/02/2010 in CR No.2078/2009 of The  
HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

STATE OF PUNJAB & ANR

Petitioner(s)

VERSUS

SATPAL

Respondent(s)

(With appln(s) for permission to file rejoinder affidavit, stay and office  
report)

(For Final Disposal)

Date: 07/03/2014 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA

HON'BLE MR. JUSTICE J. CHELAMESWAR

For Petitioner(s)

Mr. Sanchar Anand, AAG.

Mr. Kuldip Singh, Adv.

For Respondent(s)

Mr. R. K. Talwar, Adv.

Mr. Harikase, Adv.

Mr. Chander Shekhar Ashri, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The civil appeal is allowed in terms of the signed order.

[Nidhi Ahuja]  
Court Master

[M. S. Negi]  
Assistant Registrar

[Signed order is placed on the file.]