

CASE NO.:
Appeal (civil) 6421 of 2003

PETITIONER:
Punjab State & Others

RESPONDENT:
Harvinder Singh

DATE OF JUDGMENT: 22/02/2008

BENCH:
S.B. Sinha & V.S. Sirpurkar

JUDGMENT:
J U D G M E N T

I.A. NO.1 OF 2007
IN
CIVIL APPEAL NO.6421 OF 2003

V.S. SIRPURKAR, J.

1. This is an Interlocutory Application in Civil Appeal No.6421 of 2003 which was earlier disposed of by this Court consisting of Justice S. Rajendra Babu (As His Lordship then was) and Justice G.P. Mathur. This Court passed the following order in that appeal which was filed by the State of Punjab:
"Leave granted

In the light of decision of this Court in Rameshwar Dass Gupta vs. State of U.P. & Anr. [(1996) 5 SCC 728], order made by the Executing Court granting interest shall stand deleted and in other respects the order made by the Executing Court, as affirmed by the High Court is maintained. The appeal is disposed of accordingly."

This appeal was filed against the order of the Punjab and Haryana High Court, wherein the High Court in its revisional jurisdiction had dismissed the revision filed by the State and its three other officers against the order passed by the Civil Judge (Junior Division), Ludhiana. By its order the Trial Court had allowed the application filed by the applicant herein, Harvinder Singh. In his application, which was filed during the execution, the applicant had pointed out that the net amount due to him as a decree-holder was Rs.4550/- and he was also entitled to the interest from the date of decree till the amount was paid. Learned Trial Judge observed that the decree was passed on 27.11.1990 but there was no mention of interest in the relief clause. The Trial Court relied on a decision reported in State of Punjab v. Radha Ram & Ors [1990 (2) SLR 588] and held on the basis thereof that the executing court had power to award interest from the date of decree till the amount is realized, though there is no such mention of interest in the decree. In the result the Trial Court awarded 12% interest from the date of decree till the date of realization. Thus the execution application was allowed.

2. As has been stated earlier, the Revision Petition against this order was dismissed in limine by the Punjab and Haryana High Court.

3. When the matter came up before this Court at the instance of the State and its three other officers, the same was disposed by the order which we have quoted above. The applicant herein, therefore, filed the present application on the ground that before passing the order no reasonable opportunity was given to the applicant-respondent of being

heard and the order was not correct as there were other arguable points in connection with the interest on the arrears. It was stated that though the applicant was respondent in Civil Appeal No.6421 of 2003, he did not/could not appear on account of certain illness. It is on this basis that the aforementioned order dated 14.8.2003, passed by this Court, came to be assailed. A notice was issued to the State Government on the application and the parties were heard by us.

4. The applicant-respondent argued himself and contended before us that on some earlier occasions this Court had granted interest during the execution. Some orders have been filed before us by the applicant-respondent, passed by this Court in CMP No.270 of 1979 dated 6.2.1979 (Krishna Murari Lal Sehgal vs. State of Punjab), CMP Nos.19534-35 of 1981 in CA Nos.1298-99 of 1969 dated 9.11.1981 (Krishna Murari Lal Sehgal vs. State of Punjab) as also the orders passed in CMP No.36232 of 1983 in Civil Appeal No.1390 of 1978 dated 13.9.1984 (Baldev Raj Chadha vs. Union of India & Ors.), in support of the contention that the interest can be granted by the executing court even if the decree does not suggest grant of any interest. We have carefully seen all the orders. None of the orders is applicable to the controversy involved regarding the interest. It cannot be said from any of the orders that this Court had taken a view that the interest can be so granted by the executing court even if the same has not been granted by the court passing the decree. On the other hand it has been held by this Court in Rameshwar Dass Gupta v. State of U.P. & Anr. [(1996) 5 SCC 728] that such grant of interest is not possible. The Court observed:

"It is a well settled legal position that an executing court cannot travel beyond the order or decree under execution. It gets jurisdiction only to execute the order in accordance with the procedure laid down under Order 21 CPC. In view of the fact that it is a money claim, what was to be computed is the arrears of the salary, gratuity and pension after computation of his promotional benefits in accordance with the service law. That having been done and the court having decided the entitlement of the decree-holder in a sum of Rs.1,97,000/- and odd, the question that arises is whether the executing court could step out and grant a decree for interest which was not part of the decree for execution on the ground of delay in payment or for unreasonable stand taken in execution? In our view, the executing court has exceeded its jurisdiction and the order is one without jurisdiction and is thereby a void order."

5. Our attention was invited to the Trial Court judgment wherein reliance was placed on the reported decision of Punjab and Haryana High Court in The State of Punjab v. Radha Ram & Anr. [1990 (2) SLR 588]. In this case a learned Single Judge of the Punjab and Haryana High Court has taken a view that even if the decree is silent upon the interest, the executing court can grant it in case of money claims. In this case the learned Single Judge had relied on the decision of the Full Bench between the parties in Radha Ram v. Municipal Committee, Barnala [1983 PLR 21]. Three paragraphs are quoted from that decision. All the three paragraphs only pertain to the right of a person, whose termination had been set aside, to get the arrears of salary and allowance. From the three paragraphs atleast it does not seem that the Full Bench had, in any manner, held that even where there is no interest granted in the decree, still the executing court would have the power to grant the interest. However, the learned Single Judge, after quoting the three paragraphs in para 6 observed that the executing court, while calculating the relief of past emoluments would have the powers under Section 34 of the Code of Civil Procedure, 1973 and would be in a position to grant interest. In our opinion this cannot be a correct reading of the Full Bench Judgment or even the judgment in Krishan Murari Lal Sehgal v. State of Punjab [AIR 1977 SC 1233] which was relied upon by the Full Bench of Punjab and Haryana High Court. From the three paragraphs quoted above in the judgment it has been held by the Full Bench that:

"Once the relief for quashing the order of termination has been

granted, or a declaratory decree has been passed to the similar effect, it necessarily follow that the employee in the eye of law continues to be in service and as a necessary consequences thereof would be entitled to all the emoluments flowing from that status."

We have also seen the aforementioned judgment in Krishna Murari Lal's case (supra) which is also indirectly relied upon by the learned Single Judge. We do not find any such proposition in that judgment. From this it is clear that the Trial Court, though was justified in relying upon the aforementioned judgment of the learned Single Judge of the Punjab and Haryana High Court, that judgment itself does not give out the correct law. In that view, the Trial Court's order was patently incorrect and the order of the High Court confirming the same in the Revision was also incorrect and it is for this reason that this Court by its order dated 14.8.2003 set aside that order.

6. It is contended in this application that the applicant-respondent herein did not or could not remain present at the time of hearing due to illness. However, since a complaint was made that he was not heard and the judgment was passed behind his back that we heard the applicant-respondent in detail. In our opinion, it is not necessary for us to review the order already passed by this Court on 14.8.2003 and we maintain that order.

7. In view of the above the Interlocutory Application filed by the applicant-respondent is dismissed. However, since the applicant-respondent has appeared in person, there will be no order as to costs.