

CASE NO.:
Appeal (civil) 1220 of 2007

PETITIONER:
Vedic Girls Senior Secondary School Arya Samaj Mandir, Jhajjar

RESPONDENT:
Smt. Rajwanti & Ors

DATE OF JUDGMENT: 08/03/2007

BENCH:
Dr.AR. Lakshmanan & Altamas Kabir

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No.12052/2004)

ALTAMAS KABIR, J.

Leave granted.

The Respondent No. 1 in this appeal was appointed as Science Mistress in the Appellant School on 07.09.1988. At the time of joining her duties she was given an appointment letter on 05.7.1988 indicating that she was being appointed as Science Mistress in the school with effect from the date she joined her duties in the grade of Rs. 1400-2600/- plus usual allowances sanctioned by the Haryana Government from time to time.

On 28.01.1994 the Respondent No. 1 filed a Civil Suit No. 49 of 1994 in the Court of Civil Judge (S.D.) Jhajjar, inter alia, for the following reliefs :-

"It is therefore prayed that this Hon'ble Court may be pleased to pass a decree of declaration to the effect that the plaintiff is entitled to the regularization of her services w.e.f. 06.7.1988 with right of contribution to the contributory Provident Fund from the same date as also to receive her future salaries by crossed cheques and that she is entitled to all kinds of leaves and as admissible under the Rules ever since her appointment on 06.7.1988 along with decree of permanent injunction restraining the defendants from deducting any money from her monthly emoluments on any ground except through due process of law. Any other relief that the Hon'ble Court deems fit and proper may also kindly be granted."

The suit was duly contested by the appellant School by filing written statement and on the pleadings of the parties the following issues were framed:-

1. Whether the plaintiff is entitled to regularization of her service with effect from 06.7.1988 with right of contribution to the contributory Provident Fund? OPP.
2. Whether the plaintiff is entitled to receive

salary by crossed cheque? OPP.

3. Whether the plaintiff is entitled to all kind of leaves admissible under service rules? OPP.

4. Whether the plaintiff has no locus standi to file the present suit? OPD.

5. Whether the suit is not maintainable in the present form? OPD.

6. Whether the plaintiff is estopped from filing the suit by her own act and conduct? OPD.

7. Whether the plaintiff has concealed material facts from the court, if so what effect? OPD.

8. Whether the defendants are entitled to special costs under Section 36-A CPC? OPD.

9. Relief.

The suit was ultimately decreed in favour of Respondent No. 1 and the following decree was passed by the Learned Trial Court:

"It is ordered that suit of plaintiff for declaration with consequential relief of permanent injunction is hereby decreed with cost by declaring that plaintiff is entitled to the regularization of her service w.e.f. 06.7.1988 with a right of contributory Provident Fund Scheme and also is entitled to receive the salary through crossed cheques and further defendants are hereby restrain from deducting any amount from her monthly emoluments on any ground except through due process of law."

Since according to the Respondent No. 1 the appellant was not giving effect to the decree, she put the decree into execution by way of Execution Petition No. 18 of 1999 for recovery of a sum of Rs. 2,71,436/-. In the execution petition the Respondent No. 1 stated as under:-

"That the suit of the plaintiff has been decreed by the Hon'ble Court on 15.10.1998 and Hon'ble Court directed the defendants to make payment of decree holder by cheque and without deducting any amount as per Government Scale. The plaintiff has submitted the entire balance of amount due towards defendants on annexure "A" which is to be read as a part of the execution petition. The amount be recovered from the movable and immovable property of Respondents which is attached with the petition. Further action under order 21 Rule 32 of CPC be also initiated against Respondents No 1 to 4 for not regularizing the service and not giving benefit of contributory Provident Fund Scheme to petitioner as per decree. The copy of judgment and decree are attached with the petition."

As will be evident from the claim made by the Respondent No. 1, the amount calculated by her towards her balance dues on account of salary was on the basis of the

Government Scale which was Rs. 1400-2600/-, as revised from time to time.

It appears that in the execution proceedings the officials of the Education Department calculated the salary of the Respondent No. 1 from December, 1993 to February, 2002 in the grade of Rs. 1400-2600/- plus usual allowances as sanctioned by the Government, to come to a finding that Rs. 6,00,584/- was due and payable to her. Ultimately, by its order dated 28.10.2002 the Executing Court, after giving credit to the appellant for having paid a sum of Rs.1,70,806/-, directed the appellant to pay the remaining amount of arrears of salary amounting to Rs. 4,29,778/- to the Respondent No. 1. Inasmuch as, the said order was not given effect to, a further order was passed by the Executing Court on 28.11.2002 issuing non-bailable warrants of arrest against the school authorities.

Aggrieved by the order passed by the Executing Court the appellant filed Civil Revision No. 6130/2002 in the High Court of Punjab and Haryana and the Learned Single Judge vide order dated 11.08.2003, while admitting the revision, stayed further proceedings before the Executing Court.

While the revision was pending in the High Court, the Respondent No. 1 herein filed an application to vacate the interim order dated 11.08.2003 staying the execution proceedings. The stay application was taken up for hearing along with the revision application on 02.04.2004 for final disposal. On consideration of the submissions made, the Learned Single Judge dismissed the revision petition with costs of Rs. 5,000/- and directed the Executing Court to execute the decree forthwith and to complete the execution proceedings within a period of three months from the date of receipt of a certified copy of the order.

The present appeal is directed against the said order of the Learned Single Judge dated 02.4.2004.

On behalf of the appellant it was submitted that when the Respondent No. 1 was appointed as Science Mistress in the School, an agreement was entered into between the School and the said Respondent on 07.9.1988 stipulating the terms and conditions of her appointment. One of the terms was that her pay scale would be Rs. 480-760/-. It was urged that the Respondent No. 1 knowingly signed the said agreement which was made EX. PW4/A in the suit.

It was further submitted that the decree as passed in the suit filed by the Respondent No. 1 did not specify the salary of the Respondent No. 1 and, in fact, no specific issue was also framed to decide the quantum of the salary of the Respondent No. 1. Both the appointment letter issued to the Respondent No. 1 on 05.7.1988 and the agreement dated 07.9.1988 had been brought to the notice of the Learned Trial Court, but despite the above, the Learned Trial Court had not specified the salary of the Respondent No. 1 on the basis whereof her dues were to be calculated.

It was also submitted that as per the agreement, whatever was due to the Respondent No. 1 had been duly paid and over and above the same a further amount of approximately Rs. 1,00,000/- had been realised by her by attaching the bank account of the school. There was, therefore, no further dues payable to the Respondent No. 1 and the subsequent calculation made by the District Education authorities had no foundation and the Executing Court erred in relying on the same.

It was submitted that the Executing Court had travelled beyond its jurisdiction in directing payment on the basis of the calculation made by the District Education authorities on the basis that the petitioner's salary was in the scale of Rs. 1400-2600/-.

In support of his aforesaid contention, Mr. Sanjay Sharawat, Ld. Advocate, referred to and relied on the decision of this Court in the case of State of Punjab Vs. Krishan Dayal Sharma, reported in A.I.R. 1990 SC 2177, wherein this Court had held that when no interest had been claimed in the suit itself, the grant of such interest by the Executing Court was illegal since the Executing Court is bound by the terms of the decree and it could not add to or alter the decree on its notion of fairness or justice.

The same view was taken by this Court in the case of State of Punjab Vs. Buta Singh, reported in 1995 Supp. (3) SCC page 684, wherein in a suit for a mere declaration the Executing Court directed recovery of an amount which had not been granted by the decree. This Court held that such a direction given by the Executing Court was beyond its jurisdiction.

Various other decisions were also cited in support of the aforesaid proposition which merely reiterate the same principle.

On behalf of the Respondent No. 1, it was contended that although her pay scale had not been specifically mentioned in the prayer portion of the plaint, since her appointment letter had been exhibited in the suit, all parties proceeded on the basis that her pay scale was Rs. 1400-2600/- and the decree was passed accordingly.

It was also submitted that even though in the decree, the pay scale of the Respondent had not been indicated, all the calculations made by the Authorities was on the basis that the pay scale of the Respondent was 1400-2600/- and not Rs. 480-760/- as had been contended by the School authorities.

It was pointed out that, in fact, although no issue had been framed, the Trial Court had considered the matter and in paragraph 16 of its judgment, it had come to a finding that the salary of the respondent was not Rs. 480-760/- as claimed by the School Authorities but Rs. 1400-2600/- as per her appointment letter (Ex. PW6/B).

It was submitted that in view of such finding, it was obvious that the decree had been passed by the Ld. Trial Judge on such basis and the Executing Court was therefore fully justified in directing the arrear payments to be made on such understanding.

It was submitted that no ground had been made out in the appeal for interfering with the order passed by the High Court and of the Executing Court.

Having heard the Learned Counsel of the respected parties we are unable to agree with the reasoning both of the High Court as also the Executing Court since the decree does not indicate the basis on which the dues of the Respondent No. 1 was to be calculated. When there were conflicting claims regarding the salary payable to the Respondent No. 1, the said respondent ought to have taken steps to amend the prayers in the plaint so that proper relief could be provided to her. The same not having been done, the Executing Court had no jurisdiction to go beyond the decree as passed, despite the fact that the Trial Judge had noticed the dispute and had even decided the same.

As will be evident from the decree extracted hereinabove, the Respondent No. 1 was entitled to regularization of her

services with effect from 06.7.1988, with other consequential relief and was also entitled to receive her salary through crossed cheques. The Executing Court was required to execute the decree as made and it had no jurisdiction to widen its scope or to add to it unless a specific question was raised relating to discharge or satisfaction of the decree as envisaged in Section 47 of the Code of Civil Procedure.

In our view, the Executing Court appears to have been misled by the application filed on behalf of the decree-holder Respondent No. 1 on 25.01.1999 indicating that her suit had been decreed by the Court with a direction upon the School authorities to make payment to her by cheque of her dues as per Government Scale (emphasis added).

The words "as per Government scale" do not find place in the decree as passed by the Trial Court and this has resulted in the anomaly with which we are faced in these proceedings. The Executing court was required to act within the bounds of the decree and not travel beyond it or to widen its scope without invocation of the provisions of Section 47 of the Code of Civil Procedure.

Having regard to the above, we have no option but to allow the appeal filed by the School authorities. The appeal is accordingly allowed, but we also make it clear that the Respondent No. 1 may approach the Trial Court for amendment of the decree in accordance with law.

There will be no order as to costs.