

Second application, if any, for the appointment of an arbitrator, if at all, could be filed immediately after when the award was set aside, as the said period could be excluded under sub-section (5) of section 37 of the Act. Since the said period of three years when once commenced on December 20, 1973, has expired, meanwhile, no fresh period of three years after the setting aside of award was available. Sub-section (5) of section 37 does not provide for fresh period of limitation. It only provides for the exclusion of certain period as is contemplated under section 14 of the Limitation Act. Thus, in the absence of any explanation on behalf of the Union of India for not making the application for more than one year after the setting aside of the award, when the limitation under article 137 of the Limitation Act, had expired, the application filed subsequently, by the Union of India under section 20 of the Act was barred by time.

(4) Consequently, this revision petition succeeds and is allowed. The impugned orders are set aside and the application filed by the Union of India under Section 20 of the Act is dismissed with no order as to costs.

S.C.K.

Before Ujagar Singh, J.

STATE OF PUNJAB,—*Petitioner.*

versus

RADHA RAM AND ANOTHER,—*Respondents.*

Civil Revision No. 644 of 1985

February 28, 1989.

Code of Civil Procedure (V of 1908)—S. 34—Declaratory decree declaring termination order unconstitutional, null and void—Decree holder also declared deemed to be in service—Execution of such decree—Payment of interest—Power of executing court to award interest.

Held, that any such declaratory decree, as in this case, enjoins upon the defendant to pay arrears of pay and other allowances, considering that the plaintiff was never dismissed from service and

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continued to be in service and therefore, entitled to pay and allowances etc. as such. After such a decree is granted, it can be implemented by way of execution and in such proceedings, the executing Court can calculate the total amount to which the plaintiff-decree holder is entitled. The executing court, while calculating this relief of payment of money, will have the same powers as the court in a suit for payment of money. S. 34 of the Code of Civil Procedure, 1973, therefore, empowers the court to award interest on the particular amount adjudged at such rate as the Court deems reasonable from the date of suit to the date of decree. (Para 5).

Petition under Section 115 C.P.C for revision of the order of the court of Shri S. K. Sharma, P.C.S., Sub Judge 1st class, Barnala, dated 20th December, 1984, directing the Municipal Committee, Barnala the Punjab State to pay interest at the rate of Rs. 12 per cent per annum on the arrears of pay as Moharrir from 10th July, 1969 to 20th December, 1982. This interest shall be payable on each month's pay accruing to the decree-holder since 10th July, 1969. The Municipal Committee, Barnala and the Punjab State Government are further directed to consider the case of the decree-holder for promotion as Inspector from 9th November, 1972 and making it clear that Gian Chand was not a party to this execution application or the original suit, so his promotion as Inspector shall not be effected by this order and the promotion of the decree-holder shall be in addition to the promotion of Gian Chand and giving the judgment-debtors a period of two months from today for making the payment to the decree-holder and for considering his promotion as Inspector. On his promotion as Inspector the decree-holder shall subsequently be entitled to recover the benefits accruing thereon in the shape of arrears of pay and interest.

S. S. Sahi, Advocate, for State.

Ashok Bhan, Senior Advocate with Ajay Mittal, Advocate, for the Respondents.

JUDGMENT

Ujagar Singh, J.—

(1) This judgment disposes of two Civil Revisions No. 644 of 1985, titled as *The State of Punjab v. Radha Ram and another*, and No. 911 of 1985, titled as *Municipal Committee, Barnala v. Radha Ram and another*, as they arise out of the same order passed by the executing Court on 20th December, 1984.

(2) The facts leading to these revisions are that Radha Ram respondent was working as Moharrir in Municipal Committee, Barnala

since 2nd January, 1965, but by an order dated 26th July, 1966, the Committee terminated his services with immediate effect in pursuance of a Government direction, purporting to have been given under section 41 of the Punjab Municipal Act. Radha Ram instituted the suit on 10th July, 1969 for a declaration that the termination order was absolutely wrong, unconstitutional, without jurisdiction, null and void and that he be deemed to be still in service of the Committee, enjoying full rights and privileges of full pay, dearness allowance, including annual grade increments accrued or yet to accrue in future. The suit of Radha Ram respondent was ultimately decided by this Court on 16th August, 1982. Thereafter Radha Ram took out execution proceedings, praying for the award of interest at the rate of 12 per cent per annum on the salary from 10th July, 1969 to 31st October, 1972 and for payment of salary as an inspector from 1st November, 1972 and interest thereon. The execution petition was contested by both the revision petitioners, i.e., the Municipal Committee, Barnala and the State of Punjab. The following issues arose out of the pleadings:

1. To what amount the decree holder is entitled to recover from Municipal Committee ? P DH
2. Whether the decree holder is entitled to be promoted as Oetroi Inspector ? If so, from which date ? P DH.
3. Relief ?

(3) After recording evidence and hearing the parties, the executing Court decided that Radha Ram respondent No. 1 was entitled to recover interest at the rate of 12 per cent per annum, on the amount which was paid to him and to which he was entitled as Moharrir, from 10th July, 1969 to 20th December, 1982.

So far as issue No. 2, was concerned, the executing Court held that the decree holder was entitled to be considered for promotion as inspector from 9th November, 1972 on which date his junior Gian Chand was promoted. Under relief, the executing Court directed payment of interest at the rate of 12 per cent per annum on arrears of pay as Moharrir from 10th July, 1969 to 20th December, 1982 and made this interest payable on each month's pay according to the decree holder. As regards promotion as inspector, the petitioners were directed to consider the case of the decree holder within two months of the date of the order. On preliminary hearing,

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Civil Revision No. 644 of 1985 was admitted and operation of the impugned, order was stayed meanwhile. Civil Revision No. 911 of 1985 was directed to be heard along with the other Civil Revision.

(4) The learned counsel for the revision petitioners have argued that there was no question of payment of interest on the arrears of salary directed to have been paid, as there is no specific order in the ultimate decree and judgment. Learned counsel for respondent No. 1 argues that once an order of termination is quashed, it follows that the employee, in the eye of law, continues to be in service, and as a necessary consequence thereof, he would be entitled to all the emoluments accruing from that status. Since the order of termination was quashed, respondent No. 1 was entitled to salary etc. to which he was otherwise entitled. So far as the question of interest on arrears of pay is concerned, he further submits that it is no longer a disputed question that in such a situation, the employee is entitled to interest, because of illegal deprivation of his salary.

(5) The dispute will be governed by the provisions of section 34 of the Code of Civil Procedure. This provision is no doubt applicable to a decree for payment of money, but, as indicated below, the present decree obtained by the respondent can also be safely said to be a decree for payment of money. The learned counsel for the respondent has referred to a Full Bench judgment between the parties in *Radha Ram v. Municipal Committee, Barnala*, (1), after referring to the case of *Krishan Murari Lal Sehgal v. State of Punjab*, (2), it was held:

“It deserves recalling that originally their Lordships by their judgment had only restored the decree of the trial Court which had granted the salary up to the 15th January, 1963. Therefore, the grant of relief of payment of salary for 11 years thereafter was rested wholly on the direction given by their Lordships and not on any existing decree or a prayer for any such relief earlier. It follows inexorably from the above that a direction of this nature is not only within the jurisdiction of the courts of law but from the language used by their Lordships appears to be the proper if not only, mode of relief in such cases.”

(1) 1983 PLR 21.

(2) AIR 1977 SC. 1233.

After discussing some earlier judgments, it was further reiterated as under:

“Now if it is once held that a declaratory decree enjoins the employer to reinstate the decree holder and grant him all the benefits and privileges including his past and future emoluments then it is obvious that a direction to that effect only makes pointedly explicit what is plainly implicit in the decree. Such a direction, therefore, only clothes in pre-emptory terms what has held to be enjoined by the decree itself. The aforesaid observations of the Full Bench, therefore, are clearly a pointer to the effect that such a direction would not only be feasible and within jurisdiction but would clothe the spirit of the decree with the letter of the law.

Once the relief of setting aside or quashing the order of termination has been granted, or a declaratory decree has been passed to the similar effect, it necessarily follows that the employee in the eye of law continues to be in service and as a necessary consequence thereof would be entitled to all the emoluments flowing from that status. He must be deemed to be in a position identical with that existing prior to the passing of the order of termination of his service. In the felicitous language of their Lordships the emoluments of the post are a logical consequence of setting aside the order of termination. In such a situation to insist upon the filing of a second suit for a relief which directly flows from the declaratory decree can hardly be warranted. The hallowed rule that the law disfavors multiplicity of proceedings would again require that a consequential relief should be recorded in the original proceedings itself. This seems to be more so in view of the recent judgments of the final court adverted to above holding that in essence the cause of action for the claim to salary and emoluments is co-terminus with the decree setting aside the wrongful termination. Therefore, no issue or bar of limitation now raises any hurdle in this context.”

In a nut shell, any such declaratory decree, as in this case, enjoins upon the defendant to pay the arrears of pay and other allowances, considering that the plaintiff was never dismissed from service and

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continued to be in service and therefore, entitled to pay and allowances etc. as such. After such a decree is granted, it can be implemented by way of execution and in such proceedings, the executing Court can calculate the total amount to which the plaintiff decreeholder is entitled. The executing Court, while calculating this relief of payment of money, will have the same powers as the Court in a suit for payment of money. Section 34 of the Code of Civil Procedure, 1973, therefore, empowers the Court to award interest on the particular amount adjudged at such rate as the Court deems reasonable from the date of suit to the date of decree. Further interest at such rate not exceeding 6 per cent per annum, as the Court deems reasonable on such particular sum from the date of decree to the date of payment or such earlier date as the Court thinks fit. In view of the facts of the case, award of interest from the date of suit till 16th August, 1982 when this case was finally decided by this Court has been rightly made. *Qua* future interest from the date of decree till realisation of the decretal amount, the Court can award interest, but the rate will not exceed 6 per cent per annum. The date of final decree is 16th August, 1982 and it is not clear from the impugned order where from the date 20th December, 1982 has been taken into account.

(6) In this view of the matter, I accept both the revisions and modify the order of the executing Court only to the extent that interest at the rate of 12 per cent per annum has to be counted only till 16th August, 1982. Thereafter interest at the rate of 6 per cent per annum till realisation of the amount has to be counted. No order as to costs.

(7) The executing Court gave 2 months period from its orders to the revision petitioners for considering Radha Ram for promotion as inspector, but before expiry of that time, there was stay of operation of the impugned order. May be, the case for promotion of Radha Ram has not been considered till today. The same be done now within two months from today.

S.C.K.

FULL BENCH

Before M. M. Punchhi, Ujagar Singh and A. P. Chowdhri, JJJ.

DALIP SINGH,—Appellant.

versus

BHARWAN BAI and others,—Respondents.

Regular Second Appeal No. 510 of 1982.

May 29, 1989.

East Punjab Urban Rent Restriction Act (III of 1949)—Ss. 2 (d) and 13—Lease of running flour mill in an urban area—Charac