

In the High Court of Punjab and Haryana at Chandigarh

.....

Civil Revision No.2644 of 2006

....

Date of decision:11.5.2006

The Punjab State and others

.....Petitioners

v.

Jiwan Lal

.....Respondent

....

Present: Mr. G.S. Cheema, Senior Deputy Advocate General, Punjab for
the petitioners.

.....

S.S. Saron, J.

This civil revision petition has been filed by the petitioners/judgment debtors ('JD' - for short) State of Punjab and others against the order dated 30.5.2005 passed by the learned Civil Judge (Junior Division), Jalandhar whereby in execution proceedings for execution of the judgment and decree dated 2.8.1996 passed by the learned Civil Judge (Junior Division) Jalandhar, the objection petition filed by the petitioners-State and others has been held to be devoid of merits.

The plaintiff-respondent/decreed holder ('DH' – for short) was a Constable in the Punjab Police which he joined in 1989. During his service on account of absence from duty for 82 days a show cause notice was served on him as to why he may not be discharged from service in terms of Rule 12.21 of the Punjab Police Rules, 1934 which provides that a constable who

is found unlikely to prove an efficient police official may be discharged by the Superintendent of Police at any time within three years of enrollment. There is no appeal against an order of discharge under the said rule. The plaintiff-decree holder gave a detailed reply to the show cause notice. However, vide order dated 21.10.1992 he was discharged from service. He then filed a representation before the Deputy Inspector General of Police, Punjab Armed Police ('PAP' – for short), Jalandhar Cantt. which was rejected on 4.6.1992. He then represented before the Inspector General of Police, PAP, Jalandhar Cantt. who also rejected his case on 27.7.1993. Thereafter, he filed a representation-cum- mercy petition before the Director General of Police who rejected the same vide order dated 2.12.1993. The plaintiff-decree holder then filed a suit for declaration to the effect that the order dated 2.12.1993 passed by the Director General of Police, Punjab whereby his representation-cum- mercy petition was rejected and also the discharge from service during the period of his probation was in fact removal from service.

The learned Civil Judge (Junior Division), Jalandhar on 2.8.1996 set aside the order of discharge. However, it was directed that the petitioner/ judgment-debtor would be at liberty to hold an inquiry as per rules and regulations against the plaintiff/decree holder within a period of six months from the date of receipt of the order and to decide all service benefits due to him accordingly. However, if no inquiry was conducted against the plaintiff within the stipulated period, then the concerned authority would decide about the service benefits of the plaintiff/decree holder within a reasonable time i.e. within a period of one month after the expiry of the

stipulated period granted for initiating inquiry proceedings against the plaintiff. The petitioner/judgment debtor filed an appeal before the District Judge against the judgment and decree dated 2.8.1996 of the trial Court. The Additional District Judge, Jalandhar dismissed the appeal on 27.7.1998 and it was observed that the trial Court had rightly set aside the order of discharge from service in respect of the plaintiff and directed the authorities to hold an inquiry. Against the order dated 22.7.1998, the petitioner/JD filed regular second appeal in this Court which was dismissed on 21.12.1998.

The plaintiff/DH thereafter filed an application for execution of the decree on 19.11.2004. In the execution application, the petitioners/JDs filed objections inter alia alleging that necessary inquiry against the plaintiff/DH has been conducted. However, the learned Executing Court in its impugned order dated 30.5.2005 found that the departmental inquiry that has been conducted was not within the stipulated period as envisaged by the decree passed on 2.8.1996. It was observed that the petitioners/JDs were given a period of six months to conduct a fresh inquiry against the plaintiff/DH as per rules and in case the inquiry was not completed within the said period, then his claim with regard to service benefits was to be decided within a period of one month after the stipulated period for conducting the inquiry had lapsed. The appeal against the judgment and decree of the trial Court was dismissed by the first appellate Court on 22.7.1998 and RSA was dismissed by this Court on 21.12.1998. Therefore, even if the period of six months was taken from the dismissal of the RSA by this Court on 21.12.1998, the inquiry should have been completed by 21.6.1999 whereas the inquiry was not completed by the said date. Besides, as per the order

regarding service benefits due to the petitioner, the same, it was observed, were liable to be paid by 21.7.1999 in case the inquiry was not completed within six months. It was further observed that the judgment and decree was implemented by the petitioner/JD only after the Director General of Police vide order dated 16.5.2000 directed the Commandant 80th Battalion, PAP, Jalandhar to implement the judgment and decree. It was, thereafter that the plaintiff/DH was reinstated in service on 17.10.2000 and an inquiry was conducted. In the order passed in the inquiry, one annual increment of the plaintiff/DH was stopped with temporary effect vide order dated 9.10.2001. It was also ordered that absence for a period of 81 days of the decree holder would be treated as non-duty. Thereafter another show cause notice was issued by the Commandant, 80th Battalion, PAP dated 29.5.2002 whereby the decree holder was required to show cause as to why the period from 21.1.1992 i.e. the date of his discharge from service to 17.10.2000 i.e. the date of his reinstatement, be not treated as non-duty period. After considering the reply filed by the decree holder to the show cause notice, the Commandant 80th Battalion, PAP vide order dated 4.9.2002 ordered that the said period from 21.1.1992 to 17.10.2000 for which decree holder remained out of service be treated as non-duty period. It was observed that the petitioners/JDs had failed to implement the judgment and decree in letter and spirit and the inquiry and orders were not passed by the petitioners/JDs within the stipulated period and the plaintiff/DH was held entitled to all the benefits and the subsequent order dated 4.9.2002 passed by the Commandant 80th Battalion, PAP whereby the period from 21.1.1992 to 17.10.2002 to be non-duty period was clearly in contravention of the judgment and decree

dated 2.8.1996.

Mr. G.S. Cheema, learned Senior Deputy Advocate General, Punjab appearing for the petitioners/JDs contends that in fact the Additional District Judge vide his judgment and decree dated 22.7.1998 had directed the authorities to hold an inquiry and no time limit was fixed. As such, the petitioners/JDs were at liberty to conduct an inquiry at any time. Therefore, the learned Executing Court erred in holding that the inquiry was not conducted within the stipulated period fixed by the Court vide its judgment and decree dated 2.8.1996.

After giving my thoughtful consideration to the matter, I am unable to agree with the said contentions of the learned State counsel. The trial Court vide its judgment and decree dated 2.8.1996 had specifically held that the order passed by the petitioners/JDs is set aside but they would be at liberty to hold an inquiry against the plaintiff/DH as per the rules and regulations, within a period of six months from the date of receipt of the order and to decide all the service benefits of the plaintiff accordingly. The necessary inquiry was not conducted within a period of six months. The petitioners/JDs filed an appeal before the District Judge and it is not shown as to whether any stay was granted during the pendency of the appeal. The provisions of Order 41 Rule 5 CPC enjoin that filing an appeal does not operate as a stay of the proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree. Therefore, it is evident that mere filing of an

appeal does not amount to stay of an execution of the decree and the petitioners/JDs were liable to comply with the decree of the trial Court within a period of six months as the decree in the present case was with the rider that if an inquiry is not completed within a period of six months then the claim of the plaintiff/DH with regard to service benefits would be decided within a period of one month after the stipulated period for conducting inquiry has lapsed. On 22.7.1998, the appeal against the decree of the trial Court was dismissed. A reading of the judgment dated 22.7.1998 passed by the Additional District Judge would show that the judgment and decree of the trial Court has been affirmed and there is no fresh direction to hold the inquiry at any time as is sought to be contended by the learned counsel for the State. Thereafter, on 21.12.1998, the regular second appeal in this Court was also dismissed. The learned Executing Court while considering the objections of the petitioners/JDs has taken into account the fact that even if the period of six months is counted from the date of dismissal of the regular second appeal, still it has not complied with the decree within the stipulated time. It is well known that the Executing Court is not to go beyond the decree that has been passed and, therefore, the failure to comply with the conditions stipulated in the decree would entail the necessary consequences which are provided for therein.

In the circumstances, there is no merit in this petition and the same is accordingly dismissed.

May 11, 2006.

(S.S. Saron)
Judge

hsp