State Of Punjab And Others vs Krishan Dayal Sharma on 27 August, 1990

Equivalent citations: AIR1990SC2177, 1990LABLC1871, AIR 1990 SUPREME COURT 2177, 1990 LAB IC 1871, (1991) 1 LANDLR 165, 2011 (11) SCC 212

Bench: K.N. Singh, J.S. Verma

JUDGMENT

1. Leave granted.

2. The respondent was retired from State Police Service of Punjab as Deputy Superintendent of Police. After his retirement, he filed a suit for declaration that he was entitled to be promoted from the post of Police Inspector to the post of Deputy Superintendent of Police with effect from 9-9-1964, the date when his juniors were promoted as Deputy Superintendent of Police. He further claimed relief for all consequential benefits, rights and privileges. The suit was dismissed by the Trial Court. On appeal the Addl. District Judge, Patiala set aside the decree of the Trial Court and decreed the respondent's suit holding that the respondent deserved promotion as Dy. S. P. w.e.f. 9-9-64 and consequently he was entitled to all benefits, rights and privileges which he would have drawn had he been promoted on 9-9-64. The decree became final as no appeal was filed against the judgment and decree of the Addl. District Judge. The respondent put the decree into execution for the recovery of arrears of salary w.e.f. 9-9-64 till his date of retirement, arrears of pension and other amounts. In addition to the benefits arising from the decree, the respondent claimed compound interest @ 12% per annum on the amount found due to him. The State of Punjab the appellant filed objection before the Execution Court regarding the decree holder's claim for interest, on the ground that the decree which was sought to be executed did not contain any direction for awarding interest to the decree holder. The execution Court rejected the State's objection and held that the decree holder was entitled to Rs. 30,383.35 as interest from the judgment debtor. The State filed appeal against the order of the Execution Court which was dismissed by the Addl. District Judge on the ground that no appeal lay against the order of the Execution Court. Thereupon, the State filed revision before the High Court which was also dismissed.

3. There is no dispute between the parties that the decree which was put to execution did not contain any order or direction for the payment of any interest on the amount which was payable to the decree holder consequent to the declaration made by the Court decreeing the respondent's suit. There is further no dispute that no relief for interest had been claimed by the respondent in the suit nor any such claim was discussed or awarded by the Court decreeing the suit. In the absence of pleadings and directions in the judgment or decree which was under execution, it was not open to the executing court to award interest. The Execution Court is bound by the terms of the decree, it cannot add or alter the decree on its notion of fairness or justice. The right of the decree holder to obtain relief is determined in accordance with the terms of the decree. The Execution Court has referred to a number of decisions where interest had been granted on the arrears of salary and

pension. The Execution Court failed to appreciate that in those decisions direction for payment of interest had been issued by the Court while granting relief for reinstatement or payment of arrears of salary or pension. None of those decisions relate to the grant of interest by the Execution Court. No doubt the Courts have power to award interest on the arrears of salary or pension or other amount to which a Government servant is found entitled having regard to the facts and circumstances of the case but that power cannot be exercised by the Execution Court in the absence of any direction in the decree.

4. In this view the executing court in the instant case acted in excess of its jurisdiction in awarding interest to the respondent-judgment debtor.

5. In the result, we allow the appeal, set aside the order of the Execution Court awarding interest to the judgment debtor. There will be no order as to costs.