State Of Punjab vs Darshan Singh on 29 October, 2003

Equivalent citations: AIR 2003 SUPREME COURT 4179, 2004 (1) SCC 328, 2003 AIR SCW 5488, 2004 (2) SERVLJ 78 SC, (2004) 2 SERVLJ 78, 2004 (1) ALL CJ 612, (2004) 16 ALLINDCAS 336 (SC), 2004 (16) ALLINDCAS 336, (2004) 1 JCR 38 (SC), 2004 (1) UJ (SC) 377, 2003 (6) SLT 582, 2003 (9) SCALE 35, 2004 UJ(SC) 1 377, (2004) 2 MAH LJ 565, (2003) 12 INDLD 253, (2003) 99 FACLR 1171, (2004) 1 MAD LJ 61, (2004) 1 MAD LW 618, (2004) 2 MPLJ 302, (2004) 1 SERVLR 39, (2003) 7 SUPREME 474, (2004) 1 ICC 557, (2003) 9 SCALE 35, (2004) 2 CAL HN 102, (2004) 3 CIVLJ 81, (2003) 4 CURCC 226

Author: Arijit Pasayat

Bench: Doraiswamy Raju, Arijit Pasayat

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           CASE NO.:
Appeal (civil)  8479-8480 of 2003

PETITIONER:
State of Punjab

RESPONDENT:
Darshan Singh

DATE OF JUDGMENT: 29/10/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
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J U D G M E N T (Arising out of SLP(C) Nos. 22777-22778/2002) ARIJIT PASAYAT, J Leave granted.

Both the appeals are taken up together for disposal. The State of Punjab questions correctness of judgment rendered by learned Single Judge of Punjab and Haryana High Court in Second Appeals Nos. 3618/1987 and 1472/1988 affirming the judgment and decree passed in appeal by the learned Additional District Judge, Patiala. The First Appellate court had reversed the judgment and decree passed by learned Senior Subordinate Judge, Patiala dismissing the suit filed by the respondent-employee.

Factual background giving rise to these appeals in a nutshell is as follows:

Respondent as plaintiff filed a suit in the Court of Senior Subordinate Judge, Patiala

> for a declaration that the order dated 13.3.1977 passed by the State through the Collector, Patiala removing him from service is unconstitutional, illegal, null and void, mala fide, ineffective, inoperative, improper and discriminatory. A further prayer was for a declaration that he was entitled to have his pay fixed in the appropriate scale by counting the period of his alleged forced absence.

Averments in the plaint were to the following effect: He was employed as a Senior Compositor in the Government Press, Printing and Stationary Department, Patiala. He was appointed in 1970 and was removed from service by order dated 13.3.1977. He made several representations to the Government and by order dated 14.2.1979 the Government passed an order for appointing him as a Junior Compositor and consequentially the Additional Controller, Patiala issued fresh order of appointment appointing him as a Junior Compositor on temporary basis as a new appointee. Three issues were framed which read as follows:

> "1. Whether the plaintiff is entitled to the declaration prayed for?
>
> 2. Whether suit is not maintainable?
>
> 3. Whether the suit is bad for non-joinder and mis-joinder of necessary parties?"

After considering the evidence on record the suit was dismissed. An appeal was preferred before the Additional District Judge who held that the dismissal was bad. Though it was the stand of the State that the work of the respondent-employee was not up to the required mark, the first Appellate Court held that the review of performance should have been done every year, and since it was done after several years, the order of termination was bad and when the plaintiff was taken back in service it could not have been ordered that he will be taken back as fresh recruit. The order being whimsical in nature, no reason was forthcoming as to why his representations were not rejected altogether and why he was allowed to be taken back as fresh recruit. While granting this relief the following order was also passed:

> "It is made clear that it is up to the department to grant him or not to grant him increments for the past service rendered by him. It will be again for the department to decide whether he is or he is not fit to be promoted after taking his past service into account".

The respondent-employee filed an application purported to be made under Section 152 of the Code of Criminal Procedure, 1973 (in short the 'Code') claiming that the afore-quoted directions were not in order and deserve to be deleted. By order dated 3.2.1988 learned Additional District Judge, Patiala deleted the afore-quoted portion on the ground that if the said portion remains, it would have the effect of neutralizing the relief granted to the plaintiff-appellant before it. In the aforesaid manner, the judgment and decree passed on 4.6.1987 in appeal was reviewed. The State filed Second Appeals Nos. 3618/87 and 1472/1988 under Section 100 of the Code before the High Court which by the impugned judgment dismissed the same. It is relevant to note that first appeal related to original judgment of the first appellate Court while second one related to the order dated 3.2.1988 passed

under Section 152 of the Code modifying the judgment.

The High Court by the impugned consolidated judgment in the two appeals came to hold that the decision of this Court in Central Inland Water Transport Corporation Ltd. and Anr. v. Brojo Nath Ganguly and Anr. (AIR 1986 SC 1571) was clearly applicable. When the employee was taken back to service it could not have been ordered that he will be taken back as fresh recruit. The plaintiff-employee's services should not have been terminated without assigning any reason after six to seven years of service.

In support of the appeals, learned counsel for the State of Punjab submitted that the respondent-employee did not approach the Court with clean hands. He was appointed on 22.12.1970 and was terminated by order dated 18.3.1977. He went on making representations and finally an order was passed by the Government on 14.2.1979 for taking him back as a fresh recruit on temporary basis. The consequential order was issued on 23.2.1979. The suit was filed more than five years of the fresh appointment on 8.12.1984, with a prayer to declare the termination in 1977 to be bad. Specific stand of the department had not been taken note of that there was no challenge in fact to the fresh order of appointment. It was not open to the First Appellate Court or the High Court to make out a new case for interference. The period of limitation prescribed under the Limitation Act, 1963(in short the 'Limitation Act') for filing a declaratory suit is 3 years and admittedly a suit was filed after seven years. In any event, there was no scope for amending the order in the manner done in purported exercise of power under Section 152 of the Code.

In response, learned counsel for the respondent-employee submitted that the decision in Central Water Transport's case (supra) is clearly applicable in view of the unblemished conduct of the employee. There was scope for applying Section 152 of the Code when the original order did not reflect the true intention of the Court passing the order.

We shall first deal with the case relating to the suit being belated. It appears that no specific issue was framed in that regard though the Government in its written statement specifically took the plea. Learned counsel for the State submitted that issue No.(2) was wide enough to take note of the plea relating to limitation. If the issue was not framed specifically a different course was available to be adopted by the respondent which does not appear to have been done. In Second Appeals preferred before the High Court also there was no specific plea regarding the question of limitation. That being so, we are not inclined to go into the question as to belated filing of the suit.

But learned counsel for the appellant is on terra firma so far as the submission relating to the scope of exercising power under Section 152 is concerned.

Section 152 provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the Court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, the same becomes final subject to any further avenues of remedies provided in respect of the same and the very Court or the

tribunal cannot, on mere change of view, is not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically therefor and subject to the conditions or limitations provided therein. The powers under Section 152 of the Code are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the Court concerned under the guise of invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it. The corrections contemplated are of correcting only accidental omissions or mistakes and not all omissions and mistakes which might have been committed by the Court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 as if it is looking into it for the first time, for which the proper remedy for the aggrieved party if at all is to file appeal or revision before the higher forum or review application before the very forum, subject to the limitations in respect of such review. It implies that the Section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the provisions of Sections 151 and 152 of Code even after passing of effective orders in the lis pending before them. No Court can, under the cover of the aforesaid sections, modify, alter or add to the terms of its original judgment, decree or order. Similar view was expressed by this Court in Dwaraka Das v. State of Madhya Pradesh and Anr. (1999 (3) SCC 500) and Jayalakshmi Coelho v. Oswald Joseph Coelho (2001 (4) SCC 181) The basis of the provision under Section 152 of the Code is founded on the maxim 'actus curiae neminem gravabit' i.e. an act of Court shall prejudice no man. The maxim "is founded upon justice and good sense, and affords a safe and certain guide for the administration of the law", said Cresswell J. in Freeman v. Tranah (12 C.B. 406). An unintentional mistake of the Court which may prejudice the cause of any party must and alone could be rectified. In Master Construction Co. (P) Ltd. v. State of Orissa (AIR 1966 SC 1047) it was observed that the arithmetical mistake is a mistake of calculation, a clerical mistake is a mistake in writing or typing whereas an error arising out of or occurring from accidental slip or omission is an error due to careless mistake on the part of the Court liable to be corrected. To illustrate this point it was said that in a case where the order contains something which is not mentioned in the decree, it would be a case of unintentional omission or mistake as the mistake or omission is attributable to the Court which may say something or omit to say something which it did not intend to say or omit. No new arguments or re-arguments on merits can be entertained to facilitate such rectification of mistakes. The provision cannot be invoked to modify, alter or add to the terms of the original order or decree so as to, in effect, pass an effective judicial order after the judgment in the case.

Above being the position, the first Appellate Court was not justified in exercising power under Section 152 of the Code and the High Court was equally in error by putting its seal of approval thereon. Therefore, the appeal relatable to the judgment in Second Appeal No.3618/1987 is dismissed while the one relating to Second Appeal No.1472/1988 is allowed. There shall be no order as to costs.