

Rameshwar Dass Gupta

Vs

State of U.P. and Another

SLP (C) No. 16335 of 1996

(B. L. Hansaria, K. Ramaswamy, S. B. Majmudar JJ)

27.08.1996

ORDER

1. This special leave petition arises from the order of the learned Single Judge of the Allahabad High Court made in Civil Revision No. 541 of 1996 on 24-4-1996. The admitted position is that the order of removal of the petitioner from service was set aside by the U.P. Public Services Tribunal, Lucknow. The Tribunal directed as under :

"The petition is partly allowed. The OPs Nos. 1 and 2 are directed to consider the confirmation of the petitioner on Group 1 post and consequent promotion to class II and Class I posts from the date on which his junior Shri Ram Niwas was promoted to such post with all consequential benefits of seniority, salary, pension etc., arising therefrom."

2. In execution thereof, as per the rules, the petitioner laid execution petition under Order 21 Rule 1 CPC read with clause (5) of the Tribunal's Rules, on a certificate for recovery of the dues under the order. The executing court in the impugned order dated 12-12-1995, in addition to the salary, gratuity and pension in a total sum of Rs. 1,97,575.32, awarded interest at 12 per cent per annum from the date of the execution till the date of the order which worked out to the sum of Rs. 1,46,205. The respondents challenged the legality thereof only in respect of the direction to pay the interest at 12 per cent. In the revision, the High Court in the impugned order held that the executing court had no power to enlarge the decree. The decree of the Tribunal does not grant payment of interest and, therefore, the order directing payment of interest was without jurisdiction. Thus this special leave petition.

3. It is contended for the petitioner that though normally the executing court cannot grant interest, in view of the unreasonable stand taken by the judgment-debtors in denying the legitimate claims of the petitioner and for prolonging the case unreasonably for a long time, the executing court must be held to have jurisdiction to grant interest in execution of the decree. He also contended that the revisional power of the High Court should be confined only to errors which do vitiate the ultimate justice. In this case, the executing court, having regard to the facts and circumstances of the case, has done justice to the petitioner. The High Court, therefore, was not right in reversing the order. We find no force in any of his contentions.

4. It is a well-settled legal position that an executing court cannot travel beyond the order or decree under execution. It gets jurisdiction only to execute the order in accordance with the procedure laid down under Order 21 CPC. In view of the fact that is a money claim, what was to be computed is the arrears of the salary, gratuity and pension after computation of his promotional benefits in

accordance with the service law. That having been done and the court having decided the entitlement of the decree-holder in a sum of Rs. 1,97,000 and odd, the question that arises is whether the executing court could step out and grant a decree for interest which was not part of the decree for execution on the ground of delay in payment or for unreasonable stand taken in execution ? In our view, the executing court has exceeded its jurisdiction and the order is one without jurisdiction and is thereby a void order. It is true that the High Court normally exercises its revisional jurisdiction under Section 115 CPC but once it is held that the executing court has exceeded its jurisdiction, it is but the duty of the High Court to correct the same. Therefore, we do not find any illegality in the order passed by the High Court in interfering with and setting aside the order directing payment of interest.

5. The special leave petition is accordingly dismissed. Whatever be the difference of amount due and payable to the petitioner, it is but duty of the respondents to pay the same as expeditiously as possible but not later than three months from the date of the receipt of this order. The petitioner is directed to communicate this order to the respondents.