

**(2013) 09 P&H CK 0409**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Revision No. 4208 of 2012 (O and M)

State of Haryana and Others

APPELLANT

Vs

Ram Kumar

RESPONDENT

**Date of Decision:** Sept. 2, 2013

**Acts Referred:**

- Constitution of India, 1950 - Article 227

**Hon'ble Judges:** L.N. Mittal, J

**Bench:** Single Bench

**Advocate:** Deepak Girotra, Assistant A.G., Haryana, for the Appellant; Puneet Gupta, for the Respondent

**Final Decision:** Allowed

**Judgement**

L.N. Mittal, J.

Judgment debtors (JDs) State of Haryana and others have filed this revision petition under Article 227 of the Constitution of India assailing order dated 14.6.2012 Annexure P/1 passed by the executing court. Suit filed by respondent-plaintiff Ram Kumar against petitioners was decreed by the trial court vide judgment and decree dated 1.4.2002 Annexure P/2 granting him benefit of Military Engineering Service to be counted for the purpose of seniority, promotion, pension and other service benefits. In execution petition, however, the executing court vide impugned order Annexure P/1 has held that the respondent decree holder (DH) is entitled to promotion as Sub Divisional Officer (SDO) against quota of degree holder and not against quota of diploma holder, on the ground that the examination passed by the DH from the Institution of Surveyors is recognized degree.

- I have heard counsel for the parties and perused the case file.
- Counsel for the petitioners contended that if the DH was aggrieved by the order of promotion against quota of diploma holder and not as degree holder, the DH should have challenged the said action of the petitioners by way of separate lis and

the same would not fall within the purview of the execution of judgment and decree Annexure P/2 passed in the suit.

4. There is considerable merit in the aforesaid contention. In the suit, the plaintiff simply claimed benefit of service rendered by him in Military Engineering Service. The said benefit has accordingly been granted by the petitioners/JDs to the respondent/DH. The question of promotion of the respondent-DH as SDO, whether against the quota of degree holder or against quota of diploma holder, was not involved in the suit and therefore, could not be agitated in the execution proceedings.

5. In view of the aforesaid, without going into merits of the claim of DH for being promoted against quota of degree holder and the version of the petitioners regarding promotion of DH against quota of diploma holder, it is found that the aforesaid question is not involved in the execution proceedings and the executing court while passing impugned order Annexure P/1 travelled completely beyond the scope of execution proceedings. The DH has already been granted benefit of Military Engineering Service as per decree in his favour. In these circumstances, impugned order passed by the executing court holding that respondent-DH is degree holder and is accordingly, entitled to promotion against quota of degree holder is patently perverse and illegal and suffers from jurisdictional error being beyond the scope of execution proceedings.

6. Resultantly, the instant revision petition is allowed. Impugned order Annexure P/1 passed by the executing court is set aside. Execution petition filed by the respondent-DH stands disposed of as satisfied without prejudice to right of the respondent-DH to avail of any remedy in accordance with law relating to his alleged right to promotion as degree holder. Civil miscellaneous application, if any pending, is disposed of as having been rendered infructuous.