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(2013) 10 P&H CK 0343

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 4265 of 2013

Shashi Pal	APPELLANT
Vs	
State of Punjab and Another	RESPONDENT

Date of Decision: Oct. 8, 2013

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

Bench: Single Bench

Advocate: Arnav Sood, for the Appellant;

Final Decision: Dismissed

Judgement

L.N. Mittal, J.
Plaintiff Shashi Pal, aggrieved by order dated 11.03.2013, passed by the trial court, thereby dismissing application (Annexure P-2) filed by the plaintiff u/s 152 of the CPC (in short-CPC), has filed this revision petition under Article 227 of the Constitution of India to challenge the said order. Suit filed by the plaintiff/petitioner against respondents/defendants was decreed by the trial court, vide judgment and decree dated 30.03.1996 (Annexure P-1) to the following effect:-

13. In view of my findings on the issue above, the suit filed by the plaintiff is decreed, with costs that the termination order passed by the Divisional Deputy Director, Rural Development & Panchayat, Patiala is illegal, unconstitutional, against the principles of natural justice and against service rules and regulations governing the services of the plaintiff and is null and void and liable to be set-aside. The plaintiff would be titled to all the arrears of pay and allowances and other benefits and would continue in service as if the order of termination had never been passed. However, defendant no. 2 would pass a separate order regarding the period of absence of the plaintiff before the passing of the order and regarding the period of which the leave has been applied by the plaintiff in compliance with the rules governing the services of the plaintiff and principles of natural justice. Decree sheet be prepared. File be consigned to the record room.

2. Plaintiff, in his application (Annexure P-2), alleged that the plaintiff had also claimed interest @ 12% per annum on the financial benefits to be awarded to him and issue no. 7 was framed: "Whether the plaintiff is entitled to declaration prayed for?" and the said issue was answered in favour of the plaintiff, and therefore, the plaintiff is also entitled to interest, as prayed for by him in the suit. However, interest has not been awarded in judgment and decree (Annexure P-1), which, therefore, required correction in this regard.

3. The application was opposed by respondents by filing reply (Annexure P-3). Averments made in the application were controverted.

4. The trial court has dismissed the application (Annexure P-2) filed by the plaintiff, vide order dated 11.03.2013, which is under challenge in this revision petition.

5. I have heard counsel for the petitioner and perused the case file.

6. Counsel for the petitioner reiterated the version of the petitioner pleaded in application (Annexure P-2), as noticed hereinbefore. Reliance has also been placed on judgment of Hon"ble Supreme Court in the case of Lakshmi Ram Bhuyan vs. Hari Prasad Bhuyan and others reported as AIR 2003 Supreme Court 351.

7. I have carefully considered the matter.

8. The contention raised by counsel for the petitioner is completely misconceived and meritless. The decree passed by the trial court did not grant any interest to the plaintiff, although the plaintiff had specifically prayed for the same. Consequently, the interest is deemed to have been declined to the plaintiff. Even otherwise, relief claimed but not granted is deemed to have been declined. In the instant case, it is also significant to notice that in judgment (Annexure P-1), there is no discussion regarding entitlement of the plaintiff to interest. Consequently, it cannot be said that intention of the trial court, while decreeing the suit, was also to grant interest to the plaintiff. Consequently, judgment in the case of Lakshmi Ram Bhuyan (supra) has no applicability to the instant case. On the contrary, judgment and decree (Annexure P-1) were passed on 30.03.1996 and the instant application (Annexure P-2) was filed on 29.09.2007 i.e. after 111/2 years of the passing of judgment and decree. There may not be specific limitation period prescribed for moving application u/s 152 CPC, but even then, it would be covered by residuary Article of the Schedule to the Limitation Act and the maximum period of limitation was three years. Even assuming that there was no limitation period for filing the application, even then it was supposed to have been filed within some reasonable period. It goes without saying that period of 111/2 years cannot be said to be reasonable period for moving application u/s 152 CPC. At the risk of repetition, it may be highlighted that the application (Annexure P-2) also has no merits because there is no clerical or arithmetical mistake nor any error arising from any accidental slip or omission in the impugned judgment or decree that may require correction within the purview of Section 152 CPC. The application (Annexure P-2) filed by the plaintiff-petitioner is completely misconceived

and meritless and has been rightly dismissed by the trial court. For the reasons aforesaid, I find that there is no perversity, illegality or jurisdictional error in the impugned order of the trial court so as to require interference by this Court in exercise of power of superintendence under Article 227 of the Constitution of India. The revision petition is meritless and is accordingly dismissed in limine.