

(2006) 01 AHC CK 0178

Allahabad High Court

Case No: Civil Revision No. 122 of 1999

Rajani Kant

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** Jan. 4, 2006**Acts Referred:**

- Uttar Pradesh Public Services (Tribunal) Act, 1976 - Section 5(6), 5(7)

**Citation:** (2006) 5 AWC 4420**Hon'ble Judges:** Janardan Sahai, J**Bench:** Single Bench**Advocate:** S.C. Srivastava, Ashok Khare, P. Srivastava and A.N. Srivastava, for the Appellant; A.K. Mehrotra and S.C., for the Respondent**Final Decision:** Allowed

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### Judgement

Janardan Sahai, J.

The applicant was working as a Gauge Reader. He filed a claim petition in the U.P. state Public Services Tribunal claiming promotion on the post of Data Processor on the ground that two persons who, were junior to him had been promoted with effect from 1.9.1980. These persons were Jagat Pratap Singh opposite party No. 4 in the tribunal and Ram Saroj Chaubey. The case was contested by the State. The tribunal by its order-dated 2.6.1992 allowed the claim petition and directed the respondents to consider the promotion of the petitioner, with all consequential benefits. As no order was passed for promoting the petitioner, the petitioner approached the civil court for execution of the order of the tribunal on the basis of a certificate issued by the tribunal for enforcement of the relief awarded. The civil court by its impugned order dated 2.2.1999 has rejected the execution case on the ground that the tribunal had merely directed the consideration of the petitioner's case for promotion but there was no direction to, promote the petitioner. According to the respondents the directions of the Tribunal have been complied with in that a committee which was constituted after the Tribunal's order to consider the

petitioner"s case for promotion did not find the petitioner entitled.

2. The question in this case therefore is as to how the order of the tribunal is to be interpreted, it is necessary for that purpose to refer to the finding, which the tribunal has recorded. in the body of the order the tribunal set out before itself the exercise it was required to conduct whether the petitioner was senior to the two persons aforesaid and whether he possessed the requisite educational qualification of B.A. at the time, When his so called juniors were promoted as Data Processor ignoring his rightful claim of promotion to the said post it found : "From para 7 of the counter affidavit/written statement that Jagat Pratap Singh the opposite party No. 4 and Ram Saroj Chaubey were appointed in 1979 to the post of Gauge Reader whereas the petitioner was appointed as such in 1976 prior to the appointment of the said employees. Moreover the said junior opposite parties have been shown to be promoted to the post of Data Processor on 1.9.1980. In this para the petitioner has been declared Unfit for the said promotion for not having the requisite qualification of B.A., which fact is no doubt is wrong, as is clear from Annexure 3.A of rejoinder affidavit wherein the Assistant Engineer has specifically mentioned that the petitioner has passed B.A. in 1979 and information to that effect was already sent to the Executive Engineer (Answering opposite parties) and the petitioner is qualified for holding the post of Data Processor for which the recommendation have been sent to the Executive engineer by him on the representation of the petitioner. These assertions have not been denied by the opposite parties by filing any reply as against the rejoinder affidavit of the petitioner. The said fact of petitioner"s having requisite qualification of B.A. is also confirmed from the letters dated 3.9.1977, 6.2.1979 of the Executive engineer as also from the mark sheet of B.A. II year 1979 issued by the Awadh vishvidyaiaya, Faizabad, wherein the petitioner has been shown to be passed B.A. in IInd Division and permission for the same was duly Recorded by the said Executive engineer. These documents were furnished by the petitioner along with the application-dated 11.5.1992 after the claim petition was heard and reserved on 6.5.1992 for delivery of judgment. All this clearly leads one to the conclusion that the petitioner was senior and qualified for promotion on the post of Data Processor on the dates when his junior were so promoted superseding him."

3. From the portion of the tribunal"s order extracted above it appears that the tribunal has decided the issue Involved In favour of the petitioners and it found that the petitioner was not only qualified for the post of Data Processor but was also senior to the aforesaid Jagat Pratap Singh and Ram Saroj Chaubey. The operative part of the Tribunal"s order directing the department to consider the petitioners case for promotion with consequential benefits has to be read in the light of this finding.

4. Sri A.K. Mehrotra, learned standing counsel vehemently argued that what is to be executed by the civil court is a certificate issued by the tribunal u/s 5(7) of the U.P.

Public Services Tribunals Act, 1976 as it stood at the time when the execution application was filed and the certificate is confined to the operative part of the order and therefore the court can not look into the observations made or findings recorded in the body of the order. Section 5(7) reads as follows:

5 (7) where the Tribunal makes an order other than a declaration referred to in Sub-section (6), In favour of any party and such order remains un-complied with for a period of three months from the date of such order, the tribunal may, on the application of the party in whose favour the order stands, issue a certificate for recovery of the amount awarded or, as the case may be, for any other relief granted by the Tribunal. Any party, in whose favour such certificate is issued, may apply to the principal Civil Court of original jurisdiction in Uttar Pradesh within the local limits of whose original jurisdiction the employee is for the time being serving, or, as the case may be, last served such employer, for execution of the order of the Tribunal and such Court shall thereupon execute the certificate or cause the same to be executed in the same manner and by the same procedure as if it were a decree for like relief passed by itself in a suit.

5. Under this provision the certificate of the tribunal has to be executed in the same manner as a decree of the civil court. The law in respect of the execution of decree by civil court therefore becomes relevant. It is well settled that if the decree passed by the civil court is unambiguous the executing court will execute it in terms and will not go behind the decree vide [Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others](#). However, if there is any ambiguity in the decree the executing court is entitled to interpret the decree by referring to the findings given in the body of the judgement and to the pleadings vide 1969 A.L.J. 975 Ragho Prasad v. Pratap Narain Agarwal. Learned Standing counsel relied upon Gopi Narain Khurana and Ors v. Bansidhar ILR Vol. XXVII 325 and [Rameshwar Das Gupta Vs. State of U.P. and Another](#). In support of his contention that the executing court has no power to add to the decree. That is true but the executing court undoubtedly has power to interpret the decree. Of course in the guise of Interpretation the executing court can not make a new decree vide V. Ramaswami Aivengar and Ors. v. T.N.V. Kailasa Thevar A.I.R. 1951 SC 189 . In [Bhavan Vaja and Others Vs. Solanki Hanuji Khodaji Mansang and Another](#), the apex court observed "it is true that an executing court can not go behind the decree under execution. But that does not mean that it has no duty to find out the true effect of the decree. For construing a decree it can and in appropriate cases it ought to take into consideration the pleadings as well as the proceedings leading up to the decree. In order to find out the meaning of the words employed in a decree the court often has to ascertain the circumstances under which these words came to be used. That is the plain duty of the executing court and if that court fails to discharge that duty it would be deemed to have failed to exercise the jurisdiction vested in it."

6. The operative part of the order of the tribunal reads as below:

The claim petition is allowed. The opposite parties are directed to consider the petitioner for promotion to the post of Data Processor with effect from the date his next junior was so promoted with all consequential benefits

7. As the relief granted in operative portion allows the claim petition it becomes necessary also to refer to the relief that was sought in the claim petition.

8. The copy of the claim petition was produced by Sri A. N. Srivastava, learned counsel for the petitioner at the bar. Learned standing counsel does not dispute the authenticity of the copy so produced. The prayer No. 1 made in this claim petition is as follows:

(1) That the Hon"ble Tribunal may- kindly be pleaded to direct to op"s to pay the salary & pay Scale of the post of Data Processor to the petitioner w.e.f. 19.8.82 (Annexure No. 1 of this claim petition) and Hon"ble Tribunal may also direct to op"s to promote the petitioner on the post of Data Processor from the date of Juniors promotion w.e.f. 1.9.80 with all consequential benefits

9. The exercise the tribunal was required to conduct was in the prayer to consider the petitioner for promotion to the post of Data Processor with effect from the date his next juniors were so promoted with all consequential benefits. The expression to "consider" used In the operative portion of the tribunals order has a wide amplitude and contains an element of ambiguity as the exercise of what is to be considered would depend upon the directions given in the operative part of the order in the context of the findings recorded in the body of the order. The portion of the order of the tribunal extracted above clearly indicates that the tribunal had decided the question, which was involved in the case by holding that the petitioner was qualified for the post of Data Processor and Jagat Pratap Singh and Ram Saroj Chaubey were juniors to the petitioner and they had been promoted with effect from 1.9.1980. The petitioner was thus entitled. under the tribunal"s order to be promoted on the post of Data Processor with effect from the date his next junior was promoted with consequential benefits. The view taken by the executing court that the tribunal had directed merely the consideration of the petitioner"s case for promotion on the post of Data Processor implying that the department had full discretion in the matter is not a correct interpretation of the tribunal"s order. No doubt the tribunal had directed consideration of the petitioners case for promotion but the discretion involved in considering the petitioner for promotion was fettered by the findings recorded by the tribunal in the body of its order. Neither the committee constituted after the tribunal"s order nor the executing court could go against the said findings.

10. It is submitted by the learned standing Counsel that the opposite party No. 4 Jagat Pratap Singh was initially appointed by office memorandum dated 3.5.1979 on the post of. Tracer-cum-station Attendant in the concerned department, namely, Ground water investigation Organization and Ram Saroj Chaubey was appointed on the post of Field Assistant which is a Class MI post by the office memorandum dated

18.11.1977 in the concerned department, namely, Ground Water investigation Organization Of state of U.P. These facts were not stated in the counter affidavit filed by the department before the tribunal. The committee referred to above, which was constituted to consider the petitioners case for promotion however considered certain facts and took the view that the petitioner was not entitled to promotion. The view taken by the committee is contrary to the tribunal's findings, It is well settled that the executing court will not go behind the decree nor will examine the correctness of the finding took the decree. as this Court in the present case is not sitting in [appeal over the tribunal's order it is not necessary to consider the correctness of the tribunals finding.

11. Two decisions cited by the learned standing Counsel may be considered. In Lalith Mathur V. L. Maheswara Rao, (2000) 10 SCC 285 the High Court had issued a direction for considering the respondents representation. The State Government considered the representation and rejected it. Instead of challenging the order rejecting the representation by a fresh petition the respondent had: filed a contempt petition and the-High Court directed absorption of the respondent against the suitable post. The Apex Court held that the order directing absorption was without jurisdiction. In [Chhotu Ram Vs. Urvashi Gulati and Another](#), the petitioner's eligibility for promotion was finally settled and the court directed that if the petitioner is fit for promotion he should be given the necessary promotion. It was held by the Apex Court that the said direction can not be treated as a mandate for promotion. The petitioner was considered for promotion but was not found fit. It was held by the Apex court that no question for contempt arises in such a case. These decisions are distinguishable in these cases no direction for promotion was given and discretion was left to the government to consider the fitness of the employee. in the present case however the tribunal it has been found above had already decided the crucial issue, regarding eligibility qualification of the petitioner and the fact that his Juniors had been promoted earlier and had directed that the petitioner's case for promotion be considered from the date his juniors were promoted with consequential benefits. The direction given by the tribunal in the operative part of its order if read with the findings recorded by it in the body of the order is to be equated to a mandatory injunction to promote the petitioner with effect from the date his juniors were promoted namely with effect from 1.9.1980 and to grant him all consequential benefits. Learned Standing counsel submits that the observation made in this order may preclude the right of the state to file a writ petition against the order of the tribunal. The apprehension is totally unfounded. it is well settled I that if the decree is executed but later on set aside in appeal or by higher authority the fact of execution of the decree will not come in the way of relief being granted by the superior court to examine the correctness of the decree.

12. In the result, the revision is allowed. The executing court shall now proceed with the execution on the foundation that the tribunal has allowed the claim petition with the directions aforesaid. The impugned order of the 1<sup>st</sup> Additional Civil judge Ballia

is passed in Execution Case No. 1 of 1993 is set aside.