

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 1700 of 1994

This 24th.. The Day of November, 1994

Union of India through the  
Secretary, Ministry of Communication,  
through Senior Superintendent  
Post Offices, Kanpur Nagar

..... Applicant.

By Advocate Shri N.B.Singh

Versus

1. Shri R.K.Mishra S/O Shri H.B.Mishra  
R/O 298-U Kanpur-14
2. VIIth Additional District Judge,  
Kanpur Nagar
3. Munsif City Kanpur

..... Respondents

By Advocate Shri

Coram:

Hon'ble Mr. T.L.Verma, Member-J  
Hon'ble Mr. S.Dayal, Member-A

O R D E R

Hon'ble Mr. T.L.Verma, Member-J

Heard Shri N.B.Singh, learned counsel for  
Union of India on admission.

2. Shri R.K.Mishra, respondent No. 1 filed a  
Suit in the Court of Munsif Kanpur for a declaration  
that he was entitled to be treated as regular class IV  
employee w.e.f. the expiry of 2 years from the date of  
his appointment on 23.1.1976 and the difference of  
empluments and all other benefits as may have accrued

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during the said period. The suit was contested by the Union of India. The Trial Court dismissed the suit. Respondent No. 1 filed an appeal before District Judge Kanpur in Civil Appeal No. 430/1978, R.K.Mishra Vs. Union of India. The appeal was allowed and the plaintiff was declared as entitled to be treated as being in regular Class IV cadre as prayed for. The second appeal filed in the High Court was dismissed by order dated 11.12.1981 (Annexure-2). The decree passed in the said suit was put in execution in case No. 147/1982. In execution proceedings, the applicant deposited a sum of Rs. 16,144.52 and stated to be the amount of consequential benefits to which the decree holder was entitled, and prayed that the execution application be struck off on full satisfaction. The respondent No. 1 Shri R.K.Mishra, however, filed an application for amendment of the execution application and claimed Rs. 21,176/- by way of overtime allowance of unpaid 8 hours excess duty on week days from 23.1.1976 to 14.11.1980. The prayer of Shri Mishra was allowed by the Munsif. The said order of the Munsif Kanpur was challenged in Civil Writ Pet. No. 336/1985. The High Court, after hearing rival contentions, has held that the claim for overtime payment can be executed in the execution proceeding and accordingly, dismissed the writ application. While dismissing the writ, a direction was issued to Shri R.K.Mishra to put in a fresh claim specifying the amount that he was claiming with the details thereof and mentioning the rule under which he claims the payment that the

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petitioner who should within a month thereafter decide the claim and report the result to the execution Court.

3. Shri R.K.Mishra, filed petition before the Munsif in terms of the direction issued by the High Court and the same was decided by order dated 14.7.1994 (Annexure A-6) whereby the Union of India was directed to make overtime payment to the respondent No. 1. Civil Revision filed against the above order of the Munsif was dismissed by the Additional District Judge, Kanpur City by order dated 14.7.1994 (Annexure-6).

4. This application has been filed for quashing the order dated 5.11.1988 passed by Munsif and order dated 14.7.1994 passed by the Additional District Judge, Kanpur City confirming the order passed by the Munsif.

5. Shri N.B.Singh, learned counsel for Union of India has urged that after coming into force of Administrative Tribunal's Act, the jurisdiction of the Civil Courts to determine the disputes regarding service matters pertaining to the persons holding Civil Posts has been excluded and as such the orders passed by the Munsif, Kanpur City and Additional District Judge are illegal, void and without jurisdiction.

6. The admitted fact of the case is that the decree passed in Civil Appeal No. 430/78 has become final after second appeal No. 3052/81 was dismissed by order dated 11.12.1981.

7. In course of execution of the decree, a question cropped up whether the overtime payment comes within the meaning of wages and whether execution Court could execute the payment of overtime in the execution proceedings. The objection raised by the applicant before the Munsif was over <sup>ruled</sup>ruled. The decision of the Munsif was questioned in the High Court by filing Civil Writ No. 3316/1985. The High Court by its judgement dated 23.4.1985 (Annexure-4) has ruled that the claim for overtime payment can, legitimately, be excluded in the execution levied by respondent No. 1 for execution of the decree passed in the Civil Suit filed by him. That being the position ~~of fact~~, the order passed by Munsif on the claim petition of the respondent No. 1 filed in terms of the direction of the High Court given in Civil Writ No. 3316/1985 cannot be said to be independent of the execution proceedings. In other words, the dispute between the applicant the respondent No. 1 has finally been settled by the High Court by dismissing the second appeal No. 3052/1981 (Annexure-2). The judgement of the High Court in Civil Writ 3316=81 (Annexure-4) also leaves no room for doubt that the claim for overtime payment allowed by the Munsif was in execution of the decree passed in favour of the applicant in Civil Appeal No. 430/1978.

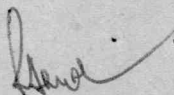
8. In that view of the matter, the impugned orders cannot be said to have been passed on fresh cause of action as to oust the jurisdiction of the Civil Courts. The only remedy available to the applicant



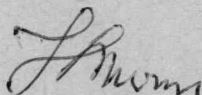
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in our opinion was to move the Supreme Court against the order of the High Court rendered in Civil Writ Petition No. 3316/1985 holding that the over time payment can be executed in the execution proceeding.

In view of the ~~above~~ discussions made above, we are satisfied that this application is devoid of merit and deserves to be dismissed in limine.

  
Member-A

24.11.94

  
Member-J

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