

Moulding of Relief under Writ Jurisdiction

Do you have the power to mould the relief under your writ jurisdiction?

- Yes, you certainly have this power.

Article 226. Power of High Courts to issue certain writs (1) notwithstanding anything in article 32, every High Court shall have the power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus* , *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them for the enforcement of any of the rights conferred by Part III and for any other purpose.

Scope of your power to mould the relief in your writ jurisdiction

- Section 151 Code of Civil Procedure

Saving of inherent powers of Court. Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

- Order VII rule 7 Code of Civil Procedure

Relief to be specifically stated.- Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

- Article 142 Constitution of India

Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc. (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it...

What is moulding the relief?

- To mould means to give shape to something.
- Moulding the relief means shaping the relief
- Moulding is giving something different from the relief which is sought
- Moulding is not denying the relief in whole or in part

How do you exercise your power to mould the relief?

- Rigidly follow the protocol
- ❖ First, go through the pleadings, hear arguments and decide whether there is an entitlement to a relief
- ❖ Secondly, decide whether the relief pleaded can be granted, wholly or in part
- ❖ Lastly, decide whether you need to exercise your power to mould the relief.

A famous example of what will go wrong if
you do not follow this protocol

FIAT JUSTITIA RUAT COELUM

Let justice be done though the heavens fall

Moulding the relief based on subsequent events

- Usually, you will mould the relief based on events happening subsequent to the filing of the writ petition
- Protocol:
 - the subsequent events must be on record. The party must be required to file an affidavit with supporting documents
 - the opposing party must be given an opportunity to respond
 - if you are thinking of moulding the relief in a particular manner, you must put your thinking to the parties and give them an opportunity to react and make submissions on what you have thought

Reliefs can be moulded even without subsequent events

- For example the Central Administrative Tribunal imposes a certain punishment which the High Court finds as perverse. The High Court can mould the relief by imposing such punishment as it thinks fit.
- The abolition of a post is challenged. The court may access the challenge but direct compensation to be paid for the remaining period of service instead of restoring the post.
- The benefit of the judgement is extended only to the parties before the court and not to the others
- Giving prospective effect to the judgment

Prospective Over-ruling

- Doctrine of prospective over-ruling
- Giving prospective effect to a judgment

Principles on which the relief is moulded

- Relief claimed originally has become inappropriate and cannot be granted
- Moulding the relief will shorten the litigation or enable complete justice to be done between the parties; avoiding an abuse of process of the Court
- Procedural law is complied and the opposite party is not caught by surprise



Other guidelines for moulding the relief

- Follow the Supreme Court
- Do not imitate the Supreme Court

The three Hs of a High Court Judge

- Honesty
- Hard work
- Humility