

(2014) 09 P&H CK 0214

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 907 of 2006 (O&M)

Mohinder Pal

APPELLANT

Vs

Presiding Officer, Labour Court

RESPONDENT

Date of Decision: Sept. 4, 2014

Hon'ble Judges: Gurmeet Singh Sandhawalia, J

Bench: Single Bench

Advocate: Deepak Sharma, Advocate for the Appellant; Shivendra Sawroop, Assistant Advocate General, Advocate for the Respondent

Final Decision: Partly Allowed

Judgement

Gurmeet Singh Sandhawalia, J.

Civil Misc. No. 10762-CWP of 2014

1. Application for placing on record the statement of the petitioner (Annexure P4) made before the Labour Court, is allowed, subject to all just exceptions.

2. Annexure P4 is taken on record.

Civil Misc. No. 4773-CWP of 2014

3. Application has been filed for disposal of the writ petition in terms of the order passed by this Court in Civil Writ Petition No. 3076 of 2009 titled as ♦Jarnail Singh v. Presiding officer, Labour Court, Ambala and Others", decided on 9.11.2009. The same is allowed, subject to all just exceptions.

4. The writ petition is taken up on board of this Court with the consent of the counsel for the parties.

Civil Writ Petition No. 907 of 2006

5. The present writ petition has been filed against the award dated 13.10.2004 (Annexure P3), wherein the workman is only agitated against the non-grant of back

wages by the Labour Court, Ambala.

6. The petitioner was working as a Contractual Driver with the respondent-Haryana Roadways since 9.4.1992 and was issued Show Cause Notice on 26.3.1997 on account of causing the death of one Malkiat Singh while driving bus of the roadways in a rash and negligent manner. The Motor Accident Claims Tribunal, Kurukshetra had awarded compensation and the roadways had to pay a sum of Rs. 3,91,360/- as compensation in pursuance of the award dated 4.8.1993, due to which services of the petitioner were terminated on 26.9.1997, which was the subject matter of challenge before the Labour Court.

7. The Labour Court found that solely because the award of Motor Accident Claims Tribunal had been given against the workman, he could not be removed from his services. It also kept in mind the fact that he was acquitted by the Chief Judicial Magistrate on the criminal side and directed reinstatement but without back wages on account of the fact that he had not uttered a word to prove that he was gainfully employed. The petitioner has now placed on record his deposition dated 7.3.2001 wherein, in his evidence in affirmative, he stated that he should be reinstated by giving him benefit of past service along with back wages. However, perusal of the cross-examination, which was conducted by the State counsel, would go on to show that a suggestion was put that it is incorrect that he was unemployed these days and that he is dependent upon his parents, despite the fact that he was being married, which was denied by the workman. In cross-examination, it has also come on record that he was having a driving license to drive an ordinary vehicle but was not driving any vehicle. Accordingly, this Court is of the opinion that the Labour Court has failed to exercise its jurisdiction while denying the benefit of back wages.

8. It has been time and again held that back wages are not to be granted as a normal rule and cannot be granted mechanically when the workman has remained out of services and contributed nothing to the department. It is also a matter of fact that the petitioner was employed as a Driver and therefore, would have worked elsewhere to earn his livelihood. But he is also entitled for the relief of back wages as the Management had terminated his services without any proper enquiry and he cannot be denied the fruits of the litigation.

9. Reference can be made to the judgment rendered by the Apex Court in Reetu Marbles Vs. Prabhakant Shukla, The relevant observations read as under:-

21. Applying the aforesaid ratio of law we have examined the factual situation in the present case. The services of the respondent were admittedly terminated on 11.6.87. The Labour Court gave its award on 27.9.02. Therefore, there is a gap of more than 15 years from the date of termination till the award of reinstatement in service. Labour Court upon examination of the entire issue concluded that the respondent would not be entitled to any back wages for the period he did not work. A perusal of the award also shows that the respondent did not place on the record

of the Labour Court any material or evidence to show that he was not gainfully employed during the long spell of 15 years when he was out of service of the appellant. In the writ petition the respondent was mainly concerned with receiving wages in accordance with the Minimum Wages Act and for inclusion of the period spent in Conciliation Proceedings for the calculation of financial benefits. The High Court without examining the factual situation, and placing reliance on the judgment in M/s. Hindustan Tin Works Pvt. Ltd. vs. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. and Ors. held that the normal rule of full back wages ought to be followed in this case. We are of the considered opinion that such a conclusion could have been reached by the High Court only after recording cogent reasons in support thereof. Especially since the award of the Labour Court was being modified. The Labour Court exercising its discretionary jurisdiction concluded that it was not a fit case for the grant of back wages. In the case of P.V.K. Distillery Ltd. (supra), it is observed as follows:

"The issue as raised in the matter of back wages has been dealt with by the Labour Court in the manner as above having regard to the facts and circumstances of the matter in the issue, upon exercise of its discretion and obviously in a manner which cannot but be judicious in nature. There exists an obligation on the part of the High court to record in the judgment, the reasoning before however denouncing a judgment of an inferior tribunal, in the absence of which, the judgment in our view cannot stand the scrutiny of otherwise being reasonable."

22. In our opinion the High Court was unjustified in awarding full back wages. We are also of the opinion that the Labour Court having found the termination to be illegal was unjustified in not granting any back wages at all.

23. Keeping in view the facts and circumstances of this case we direct that the respondent shall be paid 50 per cent of the back wages from the date of termination of service till reinstatement."

10. Accordingly, the present writ petition is partly allowed to the extent that the workman shall be entitled for 50% back wages from the date of his termination till reinstatement. The said amount be paid to the workman within a period of two months from the receipt of a certified copy of this order, failing which it shall carry interest at the rate of 8% per annum from the date of award i.e. 13.10.2004. Award of the Labour Court stands modified, accordingly.