

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2412 of 1993

Date of Decision: 20.10.2015

Executive Engineer, Central Works Division,
Punjab PWD B&R Branch, Pathankot

... Petitioner

Versus

Shri Ravail Singh and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Nikhil K.Chopra, Addl. AG, Punjab,
for the petitioner.

Mr. R.S. Bains, Advocate,
for respondent No.1.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. Respondent No.1 was tried by the Court of the learned Judicial Magistrate, Ist Class, Dasuya and was convicted for an offence under section 61 (1) (a) of the Punjab Excise Act, 1914 ("1914 Act"). He was sentenced to imprisonment but was released on probation under section 4 (i) of the Probation of Offenders Act, 1958 on his furnishing bail bonds in the sum of Rs.2000/- with one surety in the like amount for a period of one year together with the costs of proceedings quantified at Rs.50/-. Elicit liquor was recovered from the accused. In appeal before the Sessions Judge, Hoshiarpur the period of probation was reduced to the period already

undergone by him and the judgment in appeal was notified to this extent vide order dated August 19, 1978. When the criminal law was put in motion against respondent No.1 by registration of FIR in Police Station Mukerian on September 01, 1976 he was placed under suspension. He remained under suspension throughout the criminal trial after which he represented to the Department that he be reinstated as Beldar. He was reinstated to service on June 01, 1981.

2. Respondent No.1 instituted a suit in the Court of the learned Additional Senior Sub Judge, Dasuya on September 08, 1986 after a period of 5 years claiming service benefits and promotion as well as arrears of wages for the suspension period amounting to Rs.25,000/- with effect from the date he was placed under suspension. The suit was dismissed on October 13, 1988 by the decree sheet drawn on even date. The claim was for the period September 1976 to April 1985. The suit was dismissed for many reasons including bar of limitation, want of service of notice under section 80 CPC and non-joinder of Punjab State as a party while the suit was filed against the Public Works Department through the Executive Engineer. Besides, respondent No.1 was not acquitted by Court and, therefore, the order denying him difference of salary and subsistence allowance was legally valid and proper nor was respondent No.1 able to show in his suit any entitlement to Rs.25,000/- as claimed by him. The decree of the civil court was not appealed against and became final.

3. Having lost in the civil court, respondent No.1 turned around and filed an application under section 33-C (2) of the Industrial Disputes Act, 1947 ("the Act") claiming payment of arrears of wages for the

suspension period as was claimed before the Civil Court. The application was filed on December 27, 1988. The application was allowed and a sum of Rs.24031.33 paisa was held due and payable by the department to the respondent.

4. The State is before this Court impugning the order of the Presiding Officer, Labour Court, Gurdaspur as suffering from errors. The State has invoked principles of *res judicata* against the impugned orders dated March 09, 1992 for which reason it deserves to be quashed. The Labour Court could not go behind the decree as it was bound by the decree of the Civil Court. The State claims that the application was time barred.

5. I heard Mr. Nikhil K.Chopra, learned Additional AG, Punjab appearing for the petitioner and Mr. R.S. Bains, learned counsel appearing for respondent No.1 and reserved orders on September 09, 2015 which are being pronounced.

6. The claim application in Form K-3 of the Industrial Disputes Act and Rules is placed at Annexure P-6. The schedule of payments of arrears of wages less paid are detailed at Annexure-B to the application. The Labour Court noticed the arguments on *res judicata*, time bar etc. pressed by the State. The Labour Court framed two issues (1) whether the applicant is entitled to the amount claimed and (2) relief to be granted?

7. The admitted position before the Labour Court was that despite the criminal trial, respondent No.1 was neither served with any charge-sheet for misconduct nor was he imposed any punishment. The management witness also admitted that an order was not passed by any authority that respondent No.1 will not be given any increment which became due to the

applicant during the intervening period. The management admitted that increments falling due between the years that were consumed in the trial after suspension were not paid to him. The Labour Court has allowed the claim mainly for the reason that no charge-sheet was issued nor the order was passed withholding increments or wages during the period of suspension. The Labour Court found no evidence on record to rebut the claim in Annexure-B and for which reasons the workman was held entitled to the money due as computed by the workman. The decree passed by the Civil Court has been kept aside in one sweeping line that it has no relevance to the facts of this case.

8. The operation of the impugned order was stayed on March 11, 1993 when the petition was admitted. The impugned order may not strictly pass the test of judicial scrutiny but the only question remains as projected by Mr. Bains is that in addition to what was claimed before the Civil Court the respondent No.1 being a Beldar and qualifying as a workman had developed industrial rights under the Act. There is no limitation prescribed in bringing an application under section 33-C (2) of the Act.

9. The foremost argument of Mr. Bains is that even if the order may not be the best one but still interference may not be called for and this Court should exercise its extraordinary jurisdiction under Article 226 of the Constitution of India to contemplate an order which would do complete justice between the parties. He refers to the observations made in paragraph 21 [separate but concurring opinion of Hon. B.L.Hansaria,J.] in **B.C. Chaturvedi vs. Union of India and others**, AIR 1996 SC 484: (1995) 6 SCC 749 and in paragraph 30 of the report in ruling **Madhya Pradesh**

Special Police Establishment v. State of Madhya Pradesh and others,

AIR 2005 SC 325 (CB) where the Supreme Court observed as follows:-

“I am in respectful agreement with all the conclusion reached by learned brother Ramaswamy, J. This concurring note is to express my view on two facets of the case. The first of these relates to the power of the High Court to do "complete justice", which power has been invoked in some cases by this Court to alter the punishment/penalty where the one awarded has been regarded as disproportionate, but denied to the High Courts. No doubt, [Article 142](#) of the Constitution has specifically conferred the power of doing complete justice on this Court, to achieve which result it may pass such decree or order as deemed necessary; it would be wrong to think that other courts are not to do complete justice between the parties. If the power of modification of punishment/penalty were to be available to this Court only under [Article 142](#), a very large percentage of litigants would be denied this small relief merely because they are not in a position to approach this Court, which may, inter alia, be because of the poverty of the person concerned. It may be remembered that the framers of the Constitution permitted the High Courts to even strike down a parliamentary enactment, on such a case being made out, and we have hesitated to concede the power of even substituting a punishment/penalty, on such a case being made out. What a difference? May it be pointed out that Service Tribunals too, set up with the aid of [Article 323-A](#) have the power of striking down a legislative act.”

“30. We have, on the premises aforementioned, no hesitation to hold that the decision of the Council of Ministers was ex- facie irrational whereas the decision of the Governor was not. In a situation of this nature, the writ court while exercising its jurisdiction under [Article 226](#) of the Constitution of India as also this Court under Articles 136 and 142 of the Constitution of India can pass an appropriate order which would do complete justice to the parties. The High Court unfortunately failed to consider this

aspect of the matter.

10. He submits that this is an appropriate case where interference be not made in the order of the Labour Court as no substantial injustice has resulted from it.

11. Mr. Bains would refer to the judgment of the learned Additional Senior Sub Judge, Dasuya dated October 13, 1988. It is his contention that the Civil Court had not rendered a decision on merits but non-suited him on technical issues including bar of limitation. The Civil Court noticed that the plaintiff-respondent No.1 has been promoted as Mate in the meanwhile and the suit had been rendered infructuous after his promotion. Therefore, the principles of *res judicata* would not stricto sensu apply when the controversy has not been settled on merits between the same parties litigating on the same or similar cause of action. The principles of constructive *res judicata* and bar of Order 2 Rule 2 CPC would also not apply.

12. Having read the judgment of the Civil Court and the decree drawn on its basis it is not possible to say that the case of respondent No.1 for arrears of wages has been decided on merits since the suit was dismissed as time barred and for want of maintainability. Thus, the decree will not operate as *res judicata* in the face of the remedy provided to the claimant before the Labour Court under section 33-C(2) of the Act and the impugned order though sketchy in its dispensation is yet good in the conclusion. Ordinarily, wages can be only withheld by an order. There is no order withholding wages/difference of wages as neither charge-sheet nor disciplinary action was taken against respondent No.1 for being involved in

a case of illicit liquor under the 1914 Act. Respondent No.1 was suspended on September 01, 1976 and reinstated on June 01, 1981. I have read the judgment in Crl. Appeal No.231 of 1977 passed by the learned Sessions Judge, Hoshiarpur to acquaint myself of the role of respondent No.1 in commission of offence. I find from there that respondent No.1 was stopped on suspicion by the police party who were on duty near the Cinema at Mukerian. A personal search was conducted and two bottles full of country made liquor and one bottle containing 375 MLs country made liquor were recovered from him. That is how the trial started. The offence to my mind is trifling in nature and not a serious offence and carrying liquor on person is a common sight in Punjab which tops the list of liquor consumption. He was not a distiller of illicit liquor nor was he a bootlegger and the conviction is more or less technical in nature and that is why he was let off on probation and the sentence reduced to the period already undergone while in judicial custody. To the mind of this Court hardly any question of moral turpitude is involved in an offence under section 61 of the 1914 Act. The feature is not uncommon on the Punjab landscape.

13. Keeping in view the totality of facts and circumstances, I find no palpable infirmity in the impugned order passed by the Labour Court, Gurdaspur and would maintain the order.

14. For these reasons, I would dismiss the petition.

(RAJIV NARAIN RAINA)
JUDGE

20.10.2015
manju