

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8619 of 1994

Date of Decision: 21.12.2015

The Ludhiana District Cooperative
Milk Producers' Union Limited

... Petitioner

Versus

The Presiding Officer, Labour Court,
Ludhiana and others

... Respondents

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

Present: Mr. D.S. Patwalia, Sr. Advocate,
with Mr. Kannan Malik, Advocate,
for the petitioner.

Mr. S.D. Bansal, Advocate,
for R-3.

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

RAJIV NARAIN RAINA, J. (Oral)

1. Having perused the order passed by the Labour Court in proceedings under section 33-C (2) of the Industrial Disputes Act, 1947 it cannot be said that a positive finding has been recorded that the workman discharged duties and responsibilities of the higher post of Store Keeper (Products) during the period asserted in the claim application. The Labour Court declined the application finding that the workman had no pre-existing right to the difference of pay of the post of Store Keeper (Products) and that of Assistant Store Keeper to which post he was promoted earlier.

2. Mr. Bansal appearing for the workman vehemently argues that the observations of the Labour Court in the claim application are not mere

observations but are findings of fact which have become *res judicata* between the parties. I am unable to agree with this contention which has only to be noticed and rejected. It was for the workman to plead and prove in the proceeding under S. 10 of the ID Act that he had shouldered and discharged duties and responsibilities of the higher post of Store Keeper (Products) in all respects with wholesale identity of work but he did not lead any fresh evidence in the subsequent proceedings and depended on the documents produced in the previous litigation and transported to the subsequent proceeding.

3. Mr. Bansal has produced a copy of the written arguments placed before the learned Industrial Tribunal, Punjab but that paper cannot be taken as a substitute for evidence on record produced by adopting the prescribed mode of proof.

4. It is the case and the contention of the petitioner-Federation as urged by Mr. D.S. Patwalia, learned Senior counsel that the workman was not promoted to the post of Store Keeper (Products); merely because some junior employees addressed the workman as a Store Keeper (Products) would not make him a Store Keeper (Products); a Store Keeper (Products) can be promoted only by the Managing Director of the Federation; the general Manager is not competent to promote a Store Keeper (Products) as at best there was an emergent situation arising from the sudden transfer of one Piara Singh, Store Keeper and at best the case can be viewed as a stop-gap arrangement but that does not lead to the conclusion that the full duties and responsibilities of the higher post were discharged by the workman by a conscious act of the Federation conferring such interim charge. Even if the

disputed documents have been taken on record lawfully and legally they do not appear to this Court to add up to grant of relief to the workman of the difference of arrears of pay of the two posts on the principle of 'equal pay for equal work', the burden of proof not having been discharged by the workman on the core issue whether he had indeed performed the duties and responsibilities of the higher post in all respects and in every manner with full charge of the higher post lawfully given by the competent authority. Moreover, there are no pleadings in the statement of claim filed by the workman to the effect that he enjoyed the sum total of the powers and authority of the higher post in all the degrees of responsibility and duly shouldered by him. No pleadings could be pointed out on the present file by his counsel on this crucial aspect. It is trite that no evidence can be adduced in absence of pleadings on the essential ingredient of right to equal pay for full work done.

5. The Tribunal erred in accepting as legally admissible the evidence before the earlier Labour Court in S. 33-C (2) proceeding and believing it to be a finding of fact that the workman had worked and had performed duties of a Store Keeper (Products). This was an wrong assumption drawn by which the Industrial Tribunal, Punjab which has led to erroneous reasoning in the impugned award which kept its mind away from the main test of applicability of the principle of quantum meruit that presumes that the claimant has discharged the full duties and responsibilities of the higher post which has to be proved by producing direct evidence. No material of this kind was placed before the Tribunal by the respondent-workman and, therefore, the impugned award cannot be sustained as it

suffers from an error apparent on the face of the record.

6. Consequently, this writ is allowed and the impugned order is set aside.

(RAJIV NARAIN RAINA)
JUDGE

21.12.2015
manju