

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 11493 of 2009
Date of decision: 12.10.2015

Sushil Kumar & others

....Petitioner(s)

Versus

State of Punjab & others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Sarabjit Singh Khaira, Advocate, for the petitioners.

Mr.Pankaj Mulwani, D.A.G., Punjab.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present writ petition is to the orders of recovery dated 27.02.2009 (Annexure P1) and 16.07.2009 (Annexures P3 to P6), initiated against the petitioners by the State on the alleged pretext that an additional amount was paid to them while complying with the award dated 23.01.2002 (Annexure R-31).

It is not disputed that the petitioners challenged their retrenchment as beldars, before the Labour Court, Gurdaspur and vide an award dated 23.01.2002, they were directed to be reinstated with continuity of service. However, their claim for back wages were restricted to their demand notices issued in October, 1999 and December, 1999, since it had been served after a period of 9 years from the date of the termination of service, which was in November, 1990. It is not disputed that the said awards were upheld by this Court and the writ petition was dismissed and in one case, the writ petition pertaining to petitioner No.5-Jarnail Singh, was dismissed, bearing CWP No.18134 of 2002 (Annexure R-XVIII). The Special Leave Petition, in the case of Jarnail Singh, was also dismissed on 27.07.2003 (Annexure R-XXII).

The petitioners, thus, sought the implementation of the awards and filed execution proceedings before the Labour Court on the finalization of the proceedings of the litigation by approaching the Assistant Labour Commissioner. Summons were issued on 01.10.2003 [Annexure R-24 (T)], whereby respondent No.2 was asked to put in appearance and submit objections, if any. Replies were filed before the Labour Court, contesting the demand raised by the petitioners and a sum of Rs.13,50,154/- was quantified by the Assistant Collector Grade-I & Labour-cum-Conciliation Officer, Gurdaspur on 05.10.2014 (Annexure R-IV) and sealing of heads of work with the Assistant Treasury Officer was done and payment of the above said amount was recovered.

Thereafter, on 02.07.2008, the demand of Rs.18,77,725/- was raised by the workman. The respondents again, in their objections, stated that the workmen had wrongly calculated the amount which was payable to them and that the previous amount of Rs.13,50,154/- had been deposited on account of the attachment of the accounts. The workmen had been engaged only on daily wage basis and were only entitled for the DC rates and the subsequent claim of Rs.18,77,725/- was not admitted and a plea was raised that it cannot be disbursed to the applicants since the legitimate amount is getting amended under Section 33-C(1) of the Industrial Disputes Act, 1947 and a highly exaggerated amount had been claimed. The workmen were also reinstated on 11.07.2008 at Shahpur Kandi. On 20.08.2008 (Annexure R-30), the balance amount was also deposited under protest on account of the attachment made on 16.07.2008 (Annexure R-29).

Thereafter, on 27.02.2009 (Annexure P1), the show cause notice was issued that the payment had been wrongly received by the petitioners and it was not as per the scales and they were asked to be present in the office. Subsequently, vide the impugned order dated 16.07.2009 (Annexures P3 to P6), respondent No.1 quantified the amount of Rs.3,72,639/-, in the case of Jarnail Singh, for example,

and came to the conclusion that the back wages which were to the tune of Rs.6,45,576/- have been wrongly paid. Thus, the conclusion arrived was that Rs.32,27,880/- had been wrongly released on account of coercive methods taken by the Labour Court and therefore, on taking the remaining service of the workman on daily wage basis, the recovery was affixed, which is now, subject matter of challenge.

Counsel for the State has tried to justify the action by submitting that the said deposits were on account of attachment in duress, resorted to by the Labour Court and the calculations were wrong and on account of the coercive methods adopted, they had to deposit the amount.

There is no dispute to the said proposition. However, it was open to the respondents to contest the execution application, in accordance with law and get the amount released, subject to furnishing of security and subject to final calculations. Nothing to that extent was resorted to. An extraordinary measure and resort was taken by sitting in the office and calculating the amounts afresh on their own account and ordering the recovery. It is also pertinent to notice that after ordering the recovery also, the petitioners have been allowed to be transferred to the BBMB Project, Sundernagar, on NOC having been issued on 12.03.2013 (Annexure P8), to Jarnail Singh, for example. The petitioners, thus, are no longer now working under the supervision of the respondents also, who were directed to walk away by the Department itself, during the pendency of the writ petition.

This Court had granted several opportunities to the Department to place the specific order, on the execution application, on record way back on 17.11.2012. A period of almost 3 years has expired but no such material has been placed on record to show whether the respondents had reserved some liberty for themselves before the Labour Court. In such circumstances, the order of recovery which has been ordered at the own instance of the respondents, without resorting

to the Executing Court, is without any basis and cannot be justified. Accordingly, the recovery notices (Annexures P1 to P5) are quashed.

However, it is to be noted that the amount involved is a public money and the petitioners cannot be allowed to get away scot-free, as such and it would, therefore, be always open to the respondents to plead on application before the Labour Court, Gurdaspur, for recovery of the amount. It will be open to the Labour Court to decide the issue as to whether the amount recovered was in excess or not and grant restitution.

Accordingly, the present writ petition is allowed, to the extent that the recovery orders, on the departmental side are quashed.

12.10.2015
sailesh

(G.S. SANDHAWALIA)
JUDGE