IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: April 30, 2015

1. CWP No.16801 of 2008

The General Manager, Haryana Roadways, Ambala

...Petitioner

Versus

Sultan Singh & others

...Respondents

2. CWP No.16795 of 2008

The General Manager, Haryana Roadways, Ambala

...Petitioner

Versus

Shashi Bhushan & others

...Respondents

3. CWP No.16802 of 2008

The General Manager, Haryana Roadways, Ambala

...Petitioner

Versus

Jai Pal & others

...Respondents

4. CWP No.16822 of 2008

The General Manager, Haryana Roadways, Ambala

...Petitioner

Versus

Ram Kumar & others

...Respondents

5. R.S.A.No.3720 of 2006

State of Haryana & others

...Appellants

Versus

Shahnawaj

...Respondent

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CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Hitesh Pandit, Addl.A.G.Haryana,
for the petitioners in all the writ petitions &
for the appellants in RSA No.3720 of 2006.

Mr.Deepak Sharma, Advocate,
for respondent No.1 in all the cases.

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AMIT RAWAL, J. (Oral)

By this common order, I intend to dispose of aforementioned four writ petitions and one RSA as the question of law and facts involved in all the cases is the same. The facts are being taken from CWP No.16801 of 2008.

The petitioner-Management has approached this Court for quashing the order dated 25.3.2008, whereby the application under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short "the Act") has been decided in favour of respondent No.1.

The claim of respondent No.1 in the application U/S 33-C (2) of the Act, ibid, is that he was appointed as Conductor on contractual basis in Haryana Roadways, Kaithal and was transferred to various Depots. Thereafter, his services were regularised w.e.f. 12.11.996 vide letter dated 18.2.2000, but, however, the department did not accede to the request of the claimant for release of the dues relating to the regularisation and not even paid the over time dues which the workman was entitled to.

It has been stated that certain other employees had been paid over time wages from the date of regularisation, but the respondent-

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workman was discriminated.

The aforementioned claim was contested by the petitioners on the premise that the services of the claimant had been regularised w.e.f. 12.11.996 pursuant to his initial appointment as Conductor on contractual basis, which was extended from time to time and on account of the regularisation, all the dues and arrears thereof has duly been paid as per entitlement. The claim of the workman qua over time wages was contested on the premise that the said claim is only available to the regular employees. The Industrial Disputes Tribunal, on the basis of the documentary evidence brought on record and as well as considering the law laid down by the Division Bench of this Court in **State of Haryana Versus Hisam Singh and another, 1992(2) RSJ 419** held that the workman is entitled to the back wages for the over time period, i.e., 12.11.1996 to 1.6.1998 and also ordered the payment of interest @ 12% per annum.

Mr.Hitesh Pandit, learned Addl.A.G.Haryana, appearing for the State submits that the claimant is not entitled to wages for the period he remained on contract basis and after services were regularised, he has been paid wages and, therefore, the order of the Labour Court allowing the petition under Section 33-C(2) of the Act is vitiated in law, much less, erroneous and perverse.

Learned State counsel further contends that the application under Section 33-C(2) of the Act at the behest of the claimant before the Tribunal was not maintainable.

Mr.Deepak Sharma, learned counsel appearing for the respondent-workman contends that the controversy in the present writ

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petitions is squarely covered by the judgment dated 5.3.2009 of this Court rendered in Civil Writ Petition No.15807 of 2008 (The General Manager, Haryana Roadways, Chandigarh Versus Azad Singh and others), wherein also the State had taken an identical objection qua the maintainability of the application under Section 33-C(2) of the Act.

I have heard the learned counsel for the parties and appraised the paper book and as well as the order dated 5.3.2009 passed by this Court.

The operative part of the judgment dated 5.3.2009 is extracted herein below:-

> I have heard learned counsel for the parties and have gone through the records of the case. The position which emerges from the pleadings of the parties is that the over time allowance is granted to the workmen under the Instructions issued from time to time by the Government of Haryana. Although over time allowance does find mention in Rule 2.30 of the Punjab Civil Services Rules Vol.I Part I but the pay as provided under Rule 12.44 of the Punjab Civil Services Rules Vol.I Part 1, as applicable to Haryana does not include over time allowance. It is not in dispute that the instructions did provide for the grant of over time allowance and the rate thereof was also provided under those instructions i.e. the same was to be double the amount of the wages as calculated per hour. For the period from 1.1.1996 to 31.12.1997 also, the workmen were entitled to the over time allowance as per this rate prescribed under the

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instructions. It is also not in dispute that the workmen have been granted the over time allowance as per this very rate for the period in question but by calculating the same as per the un-revised pay scales. The formula for calculating the over time allowance is also not in dispute i.e. the wages drawn by the workmen for that particular period. The entitlement of the workmen for grant of over time allowance is not in dispute. What is in dispute, therefore, is the quantum of the over time allowance the workmen are entitled to.

When the basis for calculating over time allowance i.e. the wages for one hour, the formula for determination i.e. double the wages calculated and the period i.e. from 1.1.1996 to 31.12.1997 is not in dispute; then what is left out for the Labour Court to decide is the quantum the workmen would be entitled to for the said period. If that being so, the contention of the counsel for the petitioner that the application under Section 33-C (2) would not be maintainable, cannot be sustained. The contention raised by the learned counsel for the petitioner that there are no specific instructions providing for the grant of over time allowance under the revised pay-scales with effect from 1.1.1996 to 31.12.1997, would be of no consequence as the pay-scales were revised with effect from 1.1.1996 and the arrears thereof have been paid to them with effect from the said date. Meaning thereby, the workmen have been granted the

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revised wages which would become the basis for calculation and for determination of the amount of over time allowance they would be entitled to.

When it is not the case of the petitioners that they are not entitled to nor is it their case that they are not to be given over time allowance for the period in question and that they have not been granted the revised pay-scale, how can they be deprived of the claim of the amount due as per the wages determined under the revised pay-scales received by them for this relevant period? It is also not the case of the petitioners that from 1.1.1996 the mode of calculation for grant of over time allowance to the workmen has been changed or that their entitlement for over time allowance has been curtailed or withdrawn. What has, therefore, been determined by the Labour Court is not the entitlement of the workmen for payment of over time allowance but only the amount they are entitled to on the revision of the pay-scales without violating any of the instructions which entitle the workmen for the payment of over time allowance. The instructions prevalent during the relevant time, provided for the over time allowance and the mode of calculation which admittedly has not been changed by the Government and both these basic features have not been tampered with or changed by the Labour Court while determining the quantum of the amount, the workmen would be

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entitled to. The Labour has only taken the revised pay-scales, which have been granted to the workmen with effect from 1.1.1996, the actual payment thereof has admittedly also been made in the form of arrears to them, as the basis for determining the average wages per hour for determining the quantum of over time they would be entitled to for the period in question. No fault can be found in this decision of the Labour Court. Therefore, the contentions as raised by the counsel for the petitioner cannot be accepted.

The Division Bench of this Court vide its order dated 11.8.2003 in **Anirudh's case** (supra) in C.W.P.No.12530 of 2003 has held as follows:-

> "The workman had made an application under Section 33-C (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") claiming for payment of overtime allowance in the sum of Rs.43,241/-. It was argued by the Management before the Labour Court, which has been reiterated in this Court by Ms.Monga, that the Government has not sanctioned payment by difference on account of overtime between the prerevised amount and the amount which was due after revision. Consequently, there was no pre-existing right which could have been enforced by the workman under Section 33-C (2) of the Act. The Labour Court, after examination

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> of the entire evidence has come to the conclusion that the workman was entitled to the payment of overtime allowance in the same ratio as was being paid on the pre-revised pay scale. We are unable to agree with the submission of Ms.Monga tot he effect that the Labour Court has no jurisdiction to compute the difference of payment on account of overtime between the pre-revised amount and the amount which was due after revision of the pay scale.
>
> In view of the above, the writ petition is dismissed."

These observations of the Division Bench, further support the conclusions reached by me above and I see no reason to take a contrary view despite the Hon'ble Supreme Court keeping the question of law open in the SLP.

In view of the above, I do not find any illegality in the order passed by the Industrial Tribunal-cum-Labour Court, Chandigarh which would persuade me to take a different view therefrom or interfere with the same. Finding no merit in these writ petitions, I dismiss the same."

This Court has allowed the writ petition by relying upon the observations of the Division Bench in **Civil Writ Petition No.12530 of 2002 (State of Haryana Versus Anirudh and others),** decided on 11.8.2003 and as well as the observations of the Hon'ble Supreme Court. The Division Bench in the aforementioned judgment has also decided that

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the claim of the claimant under Section 33-C(2) of the Act is maintainable.

I do not find any illegality in the order passed by the Tribunal to take a different view to what has been taken by the coordinate bench of this Court and interfere with the same.

Accordingly, all the writ petitions and the RSA are dismissed.

April 30, 2015 **(AMIT RAWAL)**
ramesh **JUDGE**

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