

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1395 of 2015

Date of Decision: 13.02.2015

Rameshwar Sharma

..... Petitioner

Versus

State of Punjab and others

..... Respondents

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

Present: Mr. Puneet Gupta, Advocate,
for the petitioner.

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

RAJIV NARAIN RAINA, J.

Notice of motion.

On the asking of the Court, Mr. Anshul Gupta, AAG, Punjab
accepts notice. Copy supplied.

The matter is taken up for final disposal.

In view of the nature of the prayer made by the petitioner for
expunging a condition imposed in the impugned order tying up the
petitioner's fate with a writ petition filed by the State against an order of the
Labour Court passed under Section 33-C (2) of the Industrial Disputes Act,
1947 (for short "the Act") a written statement from the opposite parties is
not found necessary in order to do prompt and substantial justice to the
petitioner without further delay.

The judgment is a collection of words used for culminating in an
adjudication. No man can be made an victim of the words used by a Judge

in an order which are not found essential to the decision making process. The petitioner became a victim of the words used by the Presiding Officer, Industrial Tribunal, Gurdaspur in Application No.133 of 2008 in a dispute between Bhupinder Kumar, workman and his management, which was a department of the State of Punjab. An order was passed under Section 33-C (2) of the Act on several applications filed by aggrieved workmen against the Water Supply & Sanitation (Government Works) Division, Pathankot etc. claiming in execution proceedings money due to them remaining unpaid. The litigation has a long history originating from an award dated April 16, 1991 passed by the Presiding Officer, Industrial Tribunal, Punjab in reference dated January 25, 1990 under Section 2 (k) of the Act made by the appropriate Government to the Tribunal at Chandigarh. The learned Tribunal had applied the principle of 'equal pay for equal work' by granting to the disputing temporary workers as had worked for long periods of time and thereby claimed regularization of their services and wages equivalent to the wages and benefits available to permanent employees performing the same nature of duties in the department. The State of Punjab was ex parte. The writ petition filed against the award was dismissed.

The award was litigated till the Supreme Court when SLP (C) No.19474 of 2001 filed by the State was dismissed as withdrawn. This had led to another ground of litigation by way of a review application filed by the State before this Court. The review application was dismissed on March 13, 2002 by the learned Single Judge. In the Intra Court Appeal No.57 of 2003 the same was withdrawn on September 24, 2003. Still dissatisfied, the State of Punjab carried SLP No.5075 of 2004 which was also dismissed by

the Supreme Court on July 13, 2004. In the present dispensation the Labour Court issued directions in Section 33-C (2) proceedings in implementation of the award dated April 16, 1991.

The petitioner was not a party to the dispute nor had anything to do with it except that he was an Assistant Engineer/SDE at the relevant time and was named the management witness to depose before the Labour Court in defence of the applications under Section 33-C(2) of the Act. As the petitioner was named as a witness for the management he submitted his affidavit by way of examination-in-chief dated September 15, 2010 which reads as under:-

“RW-1 – I, Rameshwar Sharma, S.D.E. water supply & sanitation, Sub Division No.1, Pathankot District Gurdaspur do hereby solemnly affirm & declare as under:

- 1. That I am deposing on the basis of record.*
- 2. That the concerned workmen as admitted were regularized on their Posts and allowed to fix in the pay scales applicable to the Posts. The applicants were paid arrears of back wages, when fixed in the regular cadre and bound by services rules and cannot claim monetary benefits under the Industrial Disputes Act as they are now Punjab State Government employees. Workmen have already been paid arrears of wages as due. Keeping in view their regularization of services and pay scale they were getting at that time. The Award dated 16.04.1991 does not imply that applicant has been regularized from the date of joining on Muster roll. The services of the applicant have been regularized in view of the policy framed by the State Government in view of the decision rendered by apex Court in case of State of Haryana V/s. Piara Singh. Therefore having regard to the aforesaid decision rendered by Hon'ble Supreme Court especially in State of Haryana V/s. Tilak Raj's case AIR 2003 S.C. 2658; the applicant who were working on daily wage basis prior to their regularization are not entitled to “Equal Pay for Equal work” at par will regular*

employees or in the mater even the minimum of the pay scales as revised from time to time with permissible allowances.

3. The claim of arrears of less pay for the period July 2006 to December 2008 is wrong, incorrect & denied. Applicants Bhupinder Kumar, Kewal Singh, Surinder Singh, Gurdev Singh, Rashpal Singh and Ram Majira were regularized on 01.09.1992 onwards as per regularization order enclosed as Exh_. and since then Applicants are drawing Basic pay, D.P., D.A., H.R., M.A. etc. besides annual increments, increased dearness and other allowances during the period in Question therefore nothing is due to the Workman/Applicant and their claims are false & vexatious

4. That the present claim are bad in the eyes of law for mis-joinder and non-joinder of necessary party.

5. That the applications are not maintainable as the answering respondent is not a party to the award dated 16.04.1991 and the same is not binding upon the answering respondent.

Sd/-

Deponent”

When he appeared in the witness box to face cross-examination

he deposed on being recalled for cross-examination as follows:-

“RW1 Rameshwar Sharma, S.D.E. (Recalled for cross examination) on S.A.

XXXX By Sh. Natha Singh AR for applicant

I have personal knowledge of the case. I know about the award dated 16.4.91 passed by the Tribunal. The due arrear was paid to the concerned workman. I do not know how much payment was made and for which period. Because the concerned workman joined our division after transfer from other division about 1½ years back. I do not know whether the payments are to be made by Government Works or R.W.S. Division. The transfers were made by the S.E. At present G.W. and R.W.S. are merged at Government level. I do not know why the Government has not fixed the pay of the concerned workmen from the date of their initial appointment. The amount if any due is to be paid by the Government in terms of the award. I do

not know why the applicants cannot claim in this Hon'ble Tribunal. It is incorrect that concerned workmen are not paid full pay as per pay fixation. It is correct that at the time of regularization the workmen were allowed initial pay of the post. It is correct that the service of the workmen is not counted from the date of their appointment as they were on muster roll. It is incorrect that the orders of regularization were not conveyed to the workmen by the department. At the time of regularization the workmen were not in our division, so I cannot produce the office order. Copy of the Tribunal award is AW1/1. It is incorrect that I have deposed falsely.

Sd/-

R.O.A & C

Presiding Officer

1.12.2010"

The petitioner's deposition was considered by the Labour Court in the order and certain remarks were made in para.11 which have a material bearing in this case and against which the petitioner has approached this court for deleting an offending condition put by the respondent in an office order based on the remarks made by the labour court in para. 11:-

"The Ld. AR for applicants submitted that as per the award EX A1 dated 16/4/91, all the employees were held entitled to get similar wages and other benefits available to the permanent employees performing the same nature of duties, from the inception of their employment. All these facts have also been admitted by RW1 Rameshwar Sharma, SDE of respondent deptt. In his cross examination that the applicants/workmen were held entitled to equal wages and allowances as admissible to permanent employees vide award dated 16/4/91 Ex A1. He has also admitted that all the applicants were given wages and allowances as per the order of the Labour Court Ex A1, for the earlier period and that order of the labour court stands upheld upto the Hon'ble Supreme Court of India. He has also admitted that the award dated 16/4/91 has also become final. This witness of the respondent has virtually admitted the claim of the applicants in toto. He has also admitted that regular employees working

with these applicants, are getting more pay and the applicants are not paid wages at par with their Juniors. So, impliedly, Sh. Rameshwar Sharma has admitted the claim of the applicants are correct."

The Labour Court paraphrased the deposition of the petitioner made before it and put words in the mouth of the petitioner which he had not spoken. This is apparent on a comparison of what he stated in his oral evidence and what was recorded by the Labour Court.

The respondent-State to advantage of the words of the Labour Court to think that they constituted misconduct of a serious nature construing them as an admission of liability before the Labour Court. The petitioner was accordingly issued charge-sheet on December 06, 2012 for negligence in performance of official duties, which led to causing loss of Rs.6.96 lacs plus interest to the Government because of not giving correct evidence in favour of the department during the cross-examination. He was charged of not being a trustworthy employee of the Government and not taking interest in work. The charge-sheet was issued under Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 for major misconduct. It may be mentioned that the petitioner had approached this Court at the stage of show cause notice in CWP No.26786 of 2013. The petition was disposed of on December 06, 2013. While declining to interfere at the stage of issuance of the show cause notice, this court disposed of the writ petition as premature, but liberty was granted to the petitioner, which he always had, to furnish reply to the notice and for this purpose extended the period by two weeks for doing so.

A departmental inquiry was instituted after the reply was not

found satisfactory. The domestic trial ended in exoneration. The report was submitted on May 08, 2013. The charges were not proved. A second inquiry was instituted in which the petitioner was indicted, upon which a show cause notice was again issued to him which was unsuccessfully challenged before this Court. The reply of the petitioner was considered. At last, it was found satisfactory and the matter was dropped but his future was put in a question mark by linking the inquiry proceedings with the final outcome of CWP No.3158 of 2012, *Executive Engineer & Others v. Bhupinder Kumar & Others*, filed against the order of the Labour Court by the Government. It is this twist in the tail in the exoneration order dated December 29, 2014 (P-24) which has brought the petitioner to this Court assailing the recording of remarks by linking the inquiry to the outcome of the aforesaid writ petition pending in this Court. With these conditional remarks, the inquiry proceedings against the petitioner would be taken in law to be pending and the charge-sheet still alive which will surely cause him prejudice, injury and harm in his future career in terms of loss of promotion rights etc due to pendency of the petition.

Heard learned counsel for the parties.

If the Labour Court failed to read the deposition of the petitioner appearing as RW-1 correctly, manifestly untrue to the chapter and verse of the oral evidence recorded, then I am sorry to say the paraphrasing of the Labour Court becomes a figment of his imagination. I do not find anywhere in the deposition where the petitioner 'virtually' admitted the claim of the applicants 'in toto'. Even so, the labour court's conjunction between the expressions "virtually admitted" and "in toto" are lexically incompatible and

irreconcilable in their meaning and relation to each other. The Labour Court quite apparently appears to have lightened its work by miserably failing to appreciate the oral evidence truthfully and in its true perspective, which was its bounden duty. It conjured up words and put them in the mouth of the petitioner whereas he had made no such absolute statement. Loose words coming in writing from the dais can cause serious injury to innocent party which perhaps the court may not have contemplated. But the injury remains and its effect is grievous. Any person of ordinarily intelligence would not support the paraphrased words of the Labour Court with the deposition of the petitioner in the witness box. It is trite to say that an act or remarks of a court cannot injure a person unless the findings are absolutely necessary to the decision or pointedly in issue. This is the view which has been taken by the administrator himself when he finds the explanation of the Officer as not without weight but still adds a drop of poison at the tail end of the order which will keep the petitioner on tenterhooks and in animated suspension.

Therefore, this petition is allowed and the impugned remarks and the condition consequentially imposed in the impugned order are quashed. However, in doing so, nothing in this order will be read as a final expression on the interpretation of the evidence of the petitioner as may be adjudicated in the pending writ petition against the order of the Labour Court in execution proceedings under Section 33-C (2) of the Act.

(RAJIV NARAIN RAINA)
JUDGE

13.02.2015
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