

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

**CWP No.23544 of 2012  
Date of decision: 22.12.2015**

Gurdial Singh

... Petitioner

Versus

Presiding Officer, Industrial Tribunal,  
Amritsar & ors.

... Respondents

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

Present: Mr. Amarjit Singh, Advocate,  
for the petitioner.

Mr. Manuj Chadha, Advocate, for  
Mr. Amit Aggarwal, Advocate,  
for respondents No.2 & 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)**

The petitioner was relieved from service of the Board as a Driver on April 4, 1995 as he kept indifferent health and could no longer drive a vehicle. Aggrieved by the order he approached this Court in CWP No.1424 of 1996 in which notice was issued to the Board and after hearing both sides the following order was passed by the Division Bench:

“Present: Mr. B.R. Mahajan, Advocate.

Mr. Gur Rattan Pal Singh, Advocate.

After having heard the learned counsel for the parties and perusing the paper book, this writ petition is disposed of with a direction to the respondent to allow the petitioner to resume the duty on the post on which the work is not strenuous as the petitioner is not in a

position to drive the motor-vehicle.”

The prayer in the writ petition was for issuance of a writ of mandamus directing the respondents to take back “resume the duty” of the petitioner and issue a posting order and to pay him the arrears of pay and allowances for the period April 1, 1995 till the date of his resuming duties. It was also prayed that any other relief to which he is found entitled in view of the facts and circumstances of the case be also granted to him. It is quite evident that this Court on a sympathetic consideration of the plight of the petitioner made the aforesaid order in equitable jurisdiction so that he could earn his livelihood. But no specific direction was given as to the payment of money for the period after relieving and before the implementation of the order in the writ petition. It is trite law that what is not decreed cannot be executed and nothing can be read in the decree by necessary implication which is not granted and therefore, the learned counsel for the Board is correct in his contention that there was no obligation on the Board to pay arrears of salary from April 1, 1995 till the date he was recalled to resume duty on August 3, 1996 under Court directions. It was recorded in the order that the petitioner was not in a position to drive a vehicle. But for the order, the petitioner would have suffered retrenchment on the ground of continued ill health being unable to perform the duty of the post held. However, by the kindness of the Court, the petitioner was offered resumption of duty and he continued to serve the Board thereafter. The learned Labour Court, Amritsar has held that the amount claimed is not recoverable by the application under Section 33-C(2) of the Industrial Disputes Act, 1947 as money due.

I do not find any infirmity in the view taken by the Labour Court when it held that the claim was neither a legal right nor a pre-existing one. In the circumstances, the relief could be granted only if the relieving order dated April 4, 1995 had been set aside by the High Court. But no prayer was made for quashing the same, which meant that the petitioner was satisfied with the order till he filed the writ petition feeling aggrieved in hindsight to secure resumption of service on some post less strenuous than of a Driver. It is well settled in law that proceedings under Section 33-C (2) of the ID Act are in the nature of execution proceedings and the Labour Court can only compute money due which the employer is bound to pay as a matter of accrued right in the claimant and in this process cannot create fresh rights and obligations which can alone be achieved in a proceeding under S. 10 of the ID Act apart from writ proceeding, the employer being amenable to writ jurisdiction. It then matters little as to how the Board actually treated the period of absence by applying either the principle 'no work no pay' or by declaring the period as one of absence from duty or by treating it as leave of the kind due. The choice was within the domain of employer. The petitioner is still faced with the court order which said nothing about how the period was to be treated. He did not file a review application nor asked for modification of the order passed by the Division Bench nor was preferred an appeal to the Supreme Court to ask for further relief. In the absence of any of these eventualities this Court remains bound by the contours of the order of the Division Bench passed long back in the year 1996. But so long as the relieving order stands, is not rescinded, varied or modified or

struck down as illegal by a court declaration it continues to operate to the detriment of the petitioner. The labour court was right in not going behind the relieving order.

For the foregoing reasons, this petition is not without substance and is accordingly dismissed. The impugned order is upheld as within the bounds of jurisdiction. The result could not be achieved in the proceeding launched before the labour court. Parties to bear their own costs.

**(RAJIV NARAIN RAINA)**  
**JUDGE**

**22.12.2015**  
**monika**