

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21380 of 2015

Date of Decision: 06.10.2015

Kuldip Singh Saini

... 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 of petition supplied.

The matter is taken up for final disposal.

In view of the nature of the order proposed to be passed there is  
felt no necessity to await written statement since I have already decided the  
issue involved in an earlier petition by a person similarly placed.

Heard.

The issue raised in this petition was raised before me by a  
colleague of the petitioner, namely, Rameshwar Sharma who was placed in  
identical circumstances as the present petitioner with respect to their  
testimonies recorded before the Labour Court in proceedings under section

33-C (2) of the Industrial Disputes Act, 1947 brought by an employee of the department claiming computation of money due. Rameshwar Sharma and the present petitioner were serving Junior Engineers in the Water Supply & Sanitation Division, Pathankot, District Gurdaspur, who appeared as witnesses for the management in the claim application filed by the workman to depose as to the true facts of the case set up by the claimant. The full story is recorded in the order passed in Rameshwar Sharma's case i.e. CWP 1395 of 2015 rendered on February 13, 2015 in which I took the following view:-

*“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.”*

Since the above case involved Rameshwar Sharma his testimony had been incorporated in the order. In the case in hand the testimony of the petitioner was to the similar effect and is recorded as follows:-

**“Evidence of the management by way of affidavit:**

*I, Kuldeep Saini, J.E. Water Supply & Sanitation Division, Pathankot, District Gurdaspur do hereby solemnly affirm & declare as under:*

- 1. That the present claim is bad in the eyes of law for mis-joinder and non-joinder of necessary party.*
- 2. That the claim application is highly belated, time barred and suffers from delay and latches.*

3. *That the Hon'ble Court has got no jurisdiction to entertain and try the present application and there is no existing right between the parties as claimed by the applicant in his favour and present application is liable to be dismissed on this score alone.*

4. *That the Id. Labour Court lacked the requisite jurisdiction to grant to the employee the relief claimed. It is only an existing right, which constitute the foundation of the claim u/s. 33-C (2) of the I.D. Act, 1947. The right asserted by the applicant is not one which can be any jeans be described as an existing right. It is a right at moment has merely been asserted but not yet adjudicated upon. Therefore, there could be no occasion for computation of the benefits claimed by the applicant.*

5. *That the impugned Industrial Tribunal Award dated 16.4.1991 is not binding upon the respondent so far as related to the case of concerned workman as the concerned workman/applicant was not a party to the said proceedings, therefore, applicant cannot claim relief on the basis of the impugned Award. Even the Respondent No.2 was not a party to the award dated 16.04.1991.*

6. *That the concerned workman who is employed on daily wages cannot be treated as on a part with the persons in regular/service of the State holding similar posts daily rated workers are not required to possess the qualification prescribed for regular workers nor do they have to fulfill the requirement relating to age at the time of recruitment. They are not selected in the manner in which regular employee are selected. In other words, the services are liable to be transferred and his being subject to the disciplinary jurisdiction of the authorities as prescribed, which the daily rates workmen are not subjected to. Therefore, the concerned workman cannot be equated with the regular workmen for the purpose of his wages nor can claim the minimum of the regular pay scale of the regularly employed.*

7. *As per the Award dated 16.4.91 passed by the Hon'ble Presiding Officer, Industrial Tribunal, Punjab, Chandigarh, no relief as claimed by the applicant regarding the fixation of pay w.e.f. the date of joining the service on*

*daily wages has been granted to the applicant however workman has he been regularized w.e.f. 01.12.1994 and paid arrears of differences of Salary from 01.12.1994 to 31.08.1997 and thereafter they are drawing regular pay scales at par with Government employees. As such, he is not entitled for pay fixation and subsequent arrears w.e.f. 6/95 to 5/07 as claimed by him.*

8. *That the applicant is not entitled to receive the alleged amount claimed by him with interest @ 12% as the Presiding Officer, Industrial Tribunal, Punjab, Chandigarh has not granted the interest or arrears while passing the Award dated 16.4.1991. As such the alleged claim of the applicant is false, frivolous and is devoid of merits. The respondents has complied with the Award dated 16.4.1991 passed by the Presiding Officer, Industrial Tribunal, Punjab, Chandigarh.*

9. *It is further brought to your kind notice these daily wagers had claimed and paid huge amount accepting their plea of equal pay for equal work. The Hon'ble Supreme Court of India in its latest judgment has observed that:*

*“Even if a daily wage employee is discharging the same functions as a regular employee, the authorities are not bound to grant equal pay to such a person who is appointed on daily wage” The Court ruled. The Hon'ble Court said it was apparent that at the time of engaging daily wager the appointing authority had in mind to hire him for a short duration and the most important factor was that he never has under gone the selection process laid down as per the appointment rules and procedures.*

*Sd/-*

*Deponent*

*Verified that the contents of the above Para of the affidavit are true and correct to the best of my knowledge, belief & record and nothing has been concealed therein.*

Sd/-

Deponent

Copy of the affidavit is appended herewith as **Annexure P-7.**

9. That the petitioner was cross examined as under:

“RW1 Kuldip Saini J.E. (recalled for cross examination)  
xxxx by Sh. Natha Singh AR for applicant.

*I am deposing on the basis of record and have no personal knowledge. It is correct that the award dated 16.4.91 was passed by Industrial Tribunal, Punjab Ex. A3. Ex.A5 listed of workmen who were party in the award. List Ex.A2 bears of names of workmen out of which Nanak Chand was appointed on muster roll on 1.12.84 and regularized w.e.f. 1.12.94, Ramesh Lal was engaged on daily wages on 1.10.83 and regularized on 1.12.94, Mohinder Singh was engaged on 1.10.85 and was regularized 18.7.03, Vir Singh was appointed on daily wages on 7.9.82 and was regularized w.e.f. 1.12.94. Vijay Kumar husband of Sunita Devi was appointed on 1.8.84 and was regularized on 1.12.94. It is correct that this Hon'ble Court passed order Ex.A4 in favour of the workman. It is correct that the order Ex.A4 has been complied by the depts. and payment was made upto 5/95. Out of 11 persons in this case, 10 workmen are transferred to other Divisions i.e. R.W.S. on the orders of the S.E. All these orders are passed by S.E. for making payment. It is correct that the basic pay has not been fixed from the initial date of their appointment on muster rolls. It is correct that order dated 7.12.2000 (Ex.A4) is upheld upto Supreme Court. The award dated 16.4.91 has also taken the finality. I do not know whether workmen concerned has approached to the XEN for fixation of their pay from date of their initial engagement. I do not know whether this Hon'ble Court has jurisdiction or not to try the case. It is incorrect that I have deposed falsely. It is correct that all the workmen fulfill the requisite qualification for their posts. I cannot say why the payment was delayed as per order of this*

*Hon'ble Court. It is correct that the regular employees engaged with these workmen are getting more pay and they are not being paid wages at par their juniors. I have not seen the claims of the workmen in present applications. It is incorrect to suggest that workmen are entitled to the claim claimed in the applications, I do not know the dt. of initial appointment and regularisation except above said 5 workmen.*

*R.O. A&C*

*Presiding Officer*

*19.5.10"*

It may be noted that the texture of the deposition of Rameshwar Sharma and the present petitioner is no different and, therefore, the petitioner deserves the protection afforded by this Court in Rameshwar Sharma's case.

I have no reason not to follow my previous order passed in an identical situation. Both the cases present hardly any dissimilarities warranting any difference of opinion

As a natural consequence, the present petition is also allowed in terms of the orders passed in Rameshwar Sharma's case (supra) and the conditions imposed in the present impugned order of which a copy is at Annexure P-21 would also stand quashed, subject to the rider placed in the last paragraph of the judgment dated February 13, 2015 in CWP 1395 of 2015 which will be read in its reasoning assigned, for the conclusions arrived at, as part and parcel of this judgment and order.

The petition stands disposed of as above.

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

**06.10.2015**  
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