IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.8340 of 2011 (O&M)
Date of decision: 27.04.2015

Nitya Nand ... Petitioner

Vs.

Presiding Officer and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Padmkant Dwivedi, Advocate
for the petitioner.

Mr. P.S.Thiara, Advocate
for respondent No.2.

AMIT RAWAL J. (Oral)

Challenge in the present writ petition is to the order dated 25.02.2011 (Annexure P-8), passed by the Presiding Officer, Industrial and Labour Court, Union Territory Chandigarh in an application filed under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter called 'I.D.Act.').

This case has a little checkered history. On 10.03.1975, the petitioner was appointed as Peon. Though he was eligible for promotion for the post of Ferro Printer but some Juniors to him were promoted which necessitated the petitioner to serve upon the respondents a demand notice dated 19.1.1988 seeking promotion to the post of Ferro Printer. The said reference was allowed vide order dated 18.6.1992 and it was ordered that the petitioner is entitled to the promotion to the post of Ferro Printer. The said order was assailed by the Management which was partly set aside by the a Single Bench of this Court vide order dated 07.02.1995. The petitioner assailed the aforesaid order which was modified by this Court vide order dated 09.02.1996. Since the Management did not pay the salary for the period, the petitioner was entitled for the same and as a result thereof, a COCP was filed and vide order dated 12.09.2000 (Annexure P-3), the same was allowed. As per the order, ibid, the petitioner was held entitled to recover the amount from the respondent i.e. the difference of his pay as Peon and that of Ferro Printer from the date when Juniors to him were promoted. The operative part of the order is extracted herein below:-

> *"There is no order of demotion of the workman. No order has been passed by the Management that on the date of the filing of the application and during the pendency of the application the workman is not entitled to the amount shown in the statement Ex.AW1/A1. So, as per calculations of the management it has been shown that the difference of the pay and allowances. As per calculation given in Ex.W-1/1 the workman is entitled to the difference of pay and allowances to the post of Ferro Printer and the Peon. As such he is entitled to recover the*

amount from the respondent which is difference of his pay as peon and that of Ferro Printer from the date when his junior were promoted while ignoring the applicant so he is entitled to take the difference as per the calculation made by the management itself. It has been shown that as peon the workman has drawn Rs.5,21,130.00 and as Ferro Printer he was to draw Rs.7,91,738.00. As such the workman is entitled to recover to Rs.2,70,608.00. This issue is accordingly decided in favour of the workman and against the management.

In view of the findings, I held that the workman is entitled to Rs.2,70,608/- as difference of pay & allowances. The application is accordingly accepted. The management is directed to make the payment of the above said amount within three months from the date of the order. File be consigned."

The said order was assailed by the Management before this Court. However, the writ petition was dismissed vide order dated 24.08.2001 (Annexure P-4). Since order dated 12.09.2000 was not complied with which compelled the petitioner to approach this Court through Contempt Petition No.1548 of 2001. The said contempt petition was disposed of vide order dated 14.07.2003. The said order reads thus:-

"Learned counsel for the petitioner says that payments

have not been made as per order of this Court dated 28.4.2001 passed in CWP No.2075 of 2001 arising out of proceedings under Section 33-C(2) of the Industrial Disputes Act. Learned counsel for the respondent says that amounts have been paid.

If there are any outstanding payments, the petitioner will be free to avail or appropriate remedy in accordance with law.

Petition stands disposed of."

From the aforesaid order, it is clear that the petitioner was given liberty to avail remedy in accordance with law, in case the relief to the petitioner had not been given.

Mr. Padamkant Dwivedi, learned counsel for the petitioner contends that after the filing of contempt petition, an application under Section 33-C(2) of the Act and the Labour Court vide impugned order dated 25.02.2011 dismissed the application by reducing the amount as ordered by the Labour Court on 12.09.2000 (Annexure P-3) and thus, it amounts to review which is not permissible in law.

Mr. P.S.Thiara, learned counsel for respondent No.2-Management contends that there was an error in the calculation as sum of ₹ 25,482, a contribution to the Provident Fund was actually has been deducted from his salary.

I have heard learned counsel for the parties and appraised the paper book.

Learned counsel for the petitioner has not denied the contribution to the Provident Fund, since the petitioner had been promoted to the post of Ferro Printer w.e.f. 27.03.1981 and the calculation submitted on 12.09.2000 was upto 30.06.2000, therefore, the petitioner is entitled to the dues on promotional post for the period from 01.07.2000 to 31.12.2001. The Labour Court could not have reduced the amount, disclosed in the calculation submitted on 12.09.2000, of course, there was some miscalculation, that too, on account of contribution to the Provident Fund is justifiable.

It is a matter of record that petitioner had calculated the difference to the tune of ₹ 71,154/- for the period from 1.7.2000 to 31.12.2001. Thus, the Management is liable to pay remaining amount of ₹ 45,672/- to the petitioner.

In view of what has been observed above, impugned order dated 25.02.2011 is hereby set aside and the Management is directed to pay balance amount of ₹ 45,672/- along with interest at the rate of 6% per annum to the petitioner within a period of three months from the date of receipt of certified copy of this order. In case, the amount is not deposited or paid, it shall entail interest at the rate of 12% per annum from the date of order till the actual realization.

Writ petition stands disposed of in the above terms.

April 27, 2015 **(AMIT RAWAL)**
savita **JUDGE**