

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

CWP No.7107 of 2012 (O&M)

Date of decision: 31.03.2015

Ram Kumar

... 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. Pankaj Jain, Advocate
for the petitioner.

Mr. Keshav Pratap Singh, Advocate
for respondent No.2.

AMIT RAWAL J. (ORAL)

Challenge in the present writ petition is to the finding of the Labour Court, whereby, the claim qua back wages has been denied though, the petitioner has been ordered to be reinstated into service with continuity of service.

Mr. Pankaj Jain, learned counsel appearing on behalf of the petitioner-workman contended that once the Labour Court came to a categorical finding that date of birth of the petitioner was actually 02.08.1954 and not 01.07.1949, therefore, the petitioner could not have retired on 01.01.2008 as his date of superannuation would have been 02.08.2012. Once the Labour Court has arrived at

aforementioned conclusion, there was no occasion for the Labour Court to decline the salary for the said period and the principle of 'No Work No Pay' does not apply to the facts and circumstances of the present case.

In support of his aforementioned contention, he relied upon the judgments of Hon'ble the Supreme Court in **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidalaya (D.Ed) and others** 2013 (10) SCC 324; **Srikantha S.M. vs. Bharath Earth Movers Ltd.** 2005 (8) Supreme Court Cases 314 and **J.N.Srivastava vs. Union of India and another** 1998 (9) Supreme Court Cases 559.

Mr. Keshav Pratap Singh, learned counsel appearing on behalf of respondent No.2-Management argued that since the reply filed by the Management was stated to be counter claim and the Management has been able to bring on record the documents with regard to the workman's date of birth which shows his date of birth is not 02.08.1954 and rather 01.07.1949 on the basis of the documents submitted by him and the workman had rightly been superannuated on 01.01.2008.

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

There is a merit in the contention raised by Mr. Pankaj Jain, learned counsel appearing on behalf of the petitioner that once it has been found that date of birth of the petitioner is of 02.08.1954,

and rejection of back wages on the ground that he did not work during the period, or he remained out of job is not legally justified. It is not the case of the parties to the lis that there is no pleading or submission that the petitioner did not remain gainfully employed for the aforementioned period. The Hon'ble Supreme Court while culling out the ratio descendi in the aforementioned judgments particularly in Srikantha S.M.'s case (supra) while dealing with the proposition of resignation, held that it would not be open to the employer to deny monetary benefits to the workman who was not permitted to discharge his duties. The present case is not the case of that kind, where the petitioner was permitted or allowed to abandon the job. He has only retired, on the premise of alteration in the date of birth, that too on the basis of the record of the Management. Since the date of birth of the petitioner has been modified as 02.08.1954 and the relationship of employer and employee continued and thus, petitioner is treated to be continuous in service for the period, he remained out of job.

It is a matter of record that petitioner had retired on 01.08.2012, in order to defray the payment of back wages. I deem it appropriate to grant consolidated amount of compensation to the petitioner for the period, he remained out of job and it would be equitable and in the fitness of things, in case the Management is directed to pay compensation of ₹ 1,50,000/- in lieu of the full back wages. The Award of the Labour Court stands modified to the

aforementioned limited point only and the petitioner is entitled to the compensation of ₹1,50,000/-.

Writ petition stands disposed of.

(AMIT RAWAL)
JUDGE

March 31, 2015
savita