

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

CWP No.2540 of 2014

Date of Decision: 10.2.2015

Usha Bajaj

..... Petitioner

Versus

Industrial Tribunal, Bathinda and others

.....Respondents

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

Present:Ms.Ishrat Kaur Pannu, Advocate for the petitioner

Mr.S.S.Behl, Advocate for the respondent

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

RAJIV NARAIN RAINA, J. (Oral)

The learned Presiding Officer, Labour Court, Bathinda granted reinstatement with continuity of service and 50% backwages to the petitioner-workman in Reference 208 of 1997 by award dated 12th April, 2001. The workman was directed to report for duty after 30 days of publication of the award. The petitioner submitted her joining report on 17th August, 2001 within the time fixed by the Labour Court. Since the respondent-Board was in litigation against the award before this Court, the award was not implemented and the petitioner was not permitted to join her duty. Ultimately, after the dismissal of the writ petition she was reinstated to service on 16th September, 2002 after delay awaiting result of writ proceedings. She has been working in the respondent-Board since then. In order to satisfy the award, the respondent-Board paid 50% of the arrears of backwages for the period 23rd July, 1996 [the date of termination which termination stood nullified by the award] to 16th September, 2002 [the date of being allowed to join] at the rate of minimum

wages i.e. Rs.52.95 paise per day as was paid on the date of termination. Since the petitioner was on daily wages, an amount of Rs.48,996/- was accordingly paid to her which the petitioner says is short payment.

Aggrieved by the calculation made by the respondent-Board in paying 50% of the backwages, the petitioner approached the Labour Court by filing an application under Section 33-C(2) of the Industrial Disputes Act, 1947 [for short the 'Act'] praying that she ought to be restituted wages as per rates fixed by the Deputy Commissioner of the District where the petitioner served the respondent-Board, and in the ascending order of minimum wages revised from time to time. The total claimed amount according to the petitioner worked out to Rs.78,271.98 P of which sum she had already received Rs.48,996/- from the respondent-Board. She claimed 50% of this amount which worked out to Rs.29,275.98 paise.

The second limb of dues is found at Sr.Nos.9 to 11 which was paid in conformity with the calculations presented before the Labour Court in the application under Section 33-C (2) of the Act. These three figures are reproduced as follows:-

“9. 01.07.1996 to 23.07.1996 (23 days) @ Rs.65.95 per days; Rs.1516.85

10.17.08.2001 to 28.2.2002 (196 days) @ Rs.80.35 per days; Rs.15,748.60

11.01.03.2002 to 15.09.2002 (199 days) @ Rs.98.74 per days; Rs.19649.26

Total Balance: Rs.66,190.69"

It may be mentioned that claims shown in the above Item Nos.9 to 11 stand paid in satisfaction and discharge of monetary benefits due under the award. Ultimately, a balance sum of Rs.29,275.98 became due and payable to the petitioner and compliant with the directions of the award. But the Labour Court in the impugned order has sadly neither noticed nor dealt with the claims

suffers from material irregularity in exercise of jurisdiction vested in it, by lack of decision making on the point pressed.

I have heard Ms. Ishrat Pannu, the learned counsel for the petitioner and Mr. Behl appearing for the respondent Board and have perused the record of the case found in the writ papers with their able assistance.

There can be no gainsaying that from a reading of the impugned order, it appears rather starkly that claim items Nos.1 to 8 have indeed been ignored as urged by Ms. Pannu, while the amounts under each of them were actually due and payable to the petitioner for the reason that when the Labour Court awarded reinstatement with continuity of service and 50% back-wages, and this continuity meant that a deeming fiction has been created from the date of termination till reinstatement and hence it will be deemed that the petitioner had served the Board throughout the period of forced idleness to be treated as though the termination had not taken place. Had she worked throughout the period under the legal fiction of continuity awarded, then all the consequential benefits due to revision of minimum wages notified meanwhile from time to time became payable to the petitioner, but unfortunately the same has not been honoured while calculating the arrears of wages in a fashion suitable to the Board. Revision of minimum wages as notified from time to time and paid to those who remained in service of the Board while the petitioner was rendered idle, become due and payable to the petitioner as a matter of right to bring her on par with her compatriots who remained in service but such amounts stand reduced by half by operation of the award which has become final between the parties.

Learned counsel for the respondent submits that the petitioner did not claim the amounts as due under the award which have been calculated by her and presented before the Labour Court in the claim application under Section

33-C (2) of the Act. Neither did she claim any interest thereon from the respondent-Board and directly approached the Labour Court without approaching the Board first and making a demand for principal amount and interest. If interest was not claimed from the Board none can be granted for absence of request since interest would not run automatically not being a condition of service.

To my mind, this would not absolve the Board from its obligation to have correctly interpreted the award and made the entire payment due to the petitioner which flowed as a natural consequence of the directions issued by the Labour Court under the award. Based on its incorrect interpretation a wrong decision was taken to illegally deprive the petitioner of her monetary dues which any reasonably prudent man or person of ordinary intelligence would have interpreted in her favour and therefore, I find myself unable to agree with the argument of the learned counsel for the respondent that only because the petitioner did not stake a claim on the principal amount of 50 percent of the arrears of salary plus interest from the Board in the first instance, she should be denied the relief by applying any of the principles of estoppel, waiver, acquiescence or the like.

There is yet another reason why I would like to make an award of interest in favour of the petitioner, which is, that both the balance principal amount based on a gradual increase of minimum wages during the period of her absence together with interest was legally due to the petitioner as she was deprived of that money by virtue of being kept out of work by an illegal order of termination and it would thus be taken to be withheld without just cause or legal justification. On the point of interest on arrears and principles underlying, cf. **Union of India v. Justice S.S.Sandhawalia (Retd.) and others**, 1994 (2)

of the revision of minimum wages fixed from time to time, running from the dates they became due and payable to those who were in service while the petitioner was pursuing her legal remedies in courts trying to get back in.

Therefore, the award of 6% interest per annum by the Court *a quo*, from the date of application till realization for the period 17th August, 2001 to 6th September, 2002, [the period of non-compliance of the award with respect to joining duty] is maintained. However, interest on the amount of Rs.29,275.98 is directed to be paid from the date of termination till 16th August, 2001 in order to do substantial justice. The interest component may be treated as costs, compensatory damages or by whatever name called, the purpose being to restore an injured party to the position the party was in before being harmed.

Consequently, this petition is allowed. The impugned order dated 7th March 2013 (P-5) is declared bad to the extent it is *sub silentio* at item nos.1 to 8 and the calculation sheet placed before the Labour Court and reproduced in the impugned order are accepted as correct for the reason there is no contra-indication in the pleadings of the respondent-Board that the minimum wages ascending from Rs.63.25 to Rs.80.35 for the period from 1st March 2001 to 16th August 2001 are true and correct as notified under the Minimum Wages Act, 1948 fixed from time to time. The petitioner is held entitled to an amount of Rs.29,275.98 which will be paid by the respondent-Board within 30 days from the date of receipt of a certified copy of this order. However, since this amount has been withheld by the Board without just cause and legal justification and there is no denial based on legal opinion which may have been relied by the respondent-Board to discredit payment of interest then the respondent-Board is seen as placing its own self-serving interpretation of the directions of the Labour Court in its award which will not save the it from liability to payment of interest on this amount. Therefore, it would be just and

proper that the petitioner is held entitled to simple interest @ 12% per annum on the amount of Rs.29,275.98 calculated with effect from the date when the amount of Rs.48,996/- was paid by the respondent-Board to the petitioner in purported satisfaction of the award and the sum total so computed would stand recoverable till the payment is actually made.

With these directions, the present petition is disposed of. No costs.

10.2.2015
MFK

(RAJIV NARAIN RAINA)
JUDGE