

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

Sr. No.216

LPA-690-2015 (O&M)

Pronounced on : 31st October, 2015

Sunil Kumar

.... Appellant

VERSUS

**Chairman-cum-Managing Director,
Gurgaon and others**

..... Respondents

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
HON'BLE MS. JUSTICE REKHA MITTAL

Present: **Mr.Dinesh Kumar, Advocate, for the appellant.**

**Mr.Ashok Aggarwal, Senior Advocate, with
Mr.Rajat Khanna, Advocate, for the respondents.**

RAJIVE BHALLA, J.

By way of this order, we shall dispose of LPA-690-2015, LPA-848-2015, LPA-849-2015, LPA-850-2015, LPA-851-2015, LPA-852-2015, LPA-853-2015 and LPA-854-2015. For the sake of convenience, facts are being taken from LPA-690-2015.

CM-1425-2015

Prayer in this application is to condone delay of 45 days in filing the appeal.

We have heard counsel for the parties and as sufficient cause has been shown, allow the application and condone delay of 145 days in filing the appeal.

LPA-690-2015

The appellant challenges order dated 13.02.2015, passed

in CM-1677-2015 in CWP-1470-2015.

Counsel for the appellant submits that while issuing notice of motion, in the writ petition, on 30.01.2015, the award pronounced by the Labour Court was stayed on the condition that back wages are paid from the date of reference upto the order. The benefit of Section 17-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”) was allowed from the date of the impugned order and any amount paid to the workmen at the time of Voluntary Retirement Scheme (VRS) which has not been given effect to, shall be adjusted. The management/respondents filed CM-1677-2015, for modification of order dated 30.01.2015. Notice of the application was issued to counsel for the appellant. Counsel for the appellant accepted notice on 13.02.2015 but order dated 30.01.2015 was modified to the detriment of the appellants, on 13.02.2015 itself, without granting an opportunity to the appellant to file a reply. Counsel for the appellant submits that if the appellant had been granted an opportunity to file a reply, he would have brought it to the notice of the Court by reference to appellant mentioned at Sr. No.18 that he was paid VRS of Rs.7,72,392/- whereas in the event of normal superannuation, he would have been entitled to Rs.35 lacs. The situation in the case of many of the appellants is identical. The order directing deduction of VRS at this stage, would in essence, render the award of wages under Section 17-B of the Act, illusory and meaningless.

Counsel for the respondents submits that there is no error in the impugned order as even the Labour Court has held that back wages shall be paid minus the VRS. The appellant cannot be allowed to avail double benefit namely back wages, under Section 17-B of the Act i.e. without deducting the VRS amount which he has admittedly received. A perusal of the impugned order reveals that counsel for the appellants was present and his contentions were duly considered, thereby rendering the impugned order legal and valid.

We have heard counsel for the parties and perused the impugned order.

A perusal of the facts reveals that when the writ petition came up for hearing on 30.01.2015, the following order was passed:-

“Notice of motion.

Mr.Gautam Kail, Advocate, accepts notice on behalf of the respondents-workmen.

Interim stay on the condition that the State pays the back wages from the date of reference before Labour Court till the date of order and the benefit under Section 17-B of the Industrial Disputes Act from the date of the impugned order of Labour Court. In the manner of fixing the liability for the State through this order, any amount paid to the workmen at the time of the voluntary retirement scheme, which has not been given effect to, now shall be adjusted. Such direction is already available in the labour court order. This additional benefit under Section 17B of the Industrial Disputes Act would apply only where the workmen have not been superannuated and who are entitled to continue in service as per the order of the Labour Court.

For filing the reply, adjourned to 31.3.2015.

Copy of the order be given dasti.

Registry to place a photostat copy of this order on the connected file.”

The management thereafter filed an application for modification of order dated 30.01.2015, which came up for consideration on 13.02.2015. Notice in the application was issued to counsel for the appellant. Mr.Gautam Kail, Advocate, accepted notice on behalf of the present appellants. The order dated 30.01.2015, was modified on 13.02.2015, in the following terms: -

“(i) Benefit of Section 17-B of the Industrial Disputes Act shall not be available to any of the 13 workmen who have already reached the age of superannuation and who cannot claim the benefit of re-instatement, if the impugned award is to be given effect.

(ii) The benefit of back wages granted shall be adjusted against the amount paid as towards VRS by the management and it shall be applicable to the class of workmen who have been superannuated up to the date of superannuation and to the remaining class of persons who could continue in service by virtue of the award it would be adjusted up to the full period when the amount is payable either as back wages or as the benefit of Section 17-B of the Industrial Disputes Act.

(iii) It is clarified that the benefit of Section 17-B shall avail only from the date of the order passed on 30.01.2015 till the disposal of the writ petition or any date when this interim order is modified for any other circumstance brought before this Court.

(iv) There shall be no interest either for the back wages or for the VRS amount in the manner of calculation of adjustment.

(v) The workmen entitled to the benefit of Section 17-B of the Industrial Disputes Act shall give affidavits that they were not gainfully employed beyond living wages and shall not engage in any other employment for the relevant periods.

All applications stand disposed of.

Registry to place a photostat copy of this order on the connected files.”

The appellant is primarily aggrieved by the fact that before modification of order dated 30.01.2015 he was not granted an opportunity to file a reply. The appellant contends that modification particularly the modification in clause (ii) would operate to the

detriment of the persons who have superannuated and the award of wages under Section 17-B of the Act minus the amount of VRS to persons still in service would be rendered illusory. Be that as it may, as the appellants have not been granted an opportunity to demonstrate before the learned Single Judge their grievance against order 13.02.2015, the appeals are disposed of by granting liberty to the appellants to file an application putting forth their grievances, if any, before the learned Single Judge and for consideration whether order dated 13.02.2015, needs to be recalled.

[RAJIVE BHALLA]
JUDGE

31st October, 2015
shamsher

[REKHA MITTAL]
JUDGE