

CWP No. 13216 of 1993

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 13216 of 1993
Date of Decision : 30.05.2016

Haryana Cooperative Sugar Mills Ltd.

...Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court,
Rohtak and another

...Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

- 1) *Whether Reporters of the local papers may be allowed to see the judgment?*
- 2) *To be referred to the Reporters or not?*
- 3) *Whether the judgment should be reported in the Digest?*

Present: Mr. P.K. Mutneja, Advocate for the petitioner.

Mr. Ashish Rawal, Advocate for respondent No. 2.

P.B. Bajanthri, J.(Oral)

In this writ petition, the petitioner have questioned the award of the Labour Court dated 10.02.1993.

Brief facts of the case are that the petitioner was appointed as a Weighment Clerk in the year 1974 for a seasonal worker in the pay scale of ₹127/-. Thereafter in the year 1977, he was appointed as a Chowkidar in the pay scale of ₹110/- instead of pay scale 127/-. Feeling aggrieved by not extending the pay scale of ₹127/-, he approached the Labour Court. The Labour Court decided in favour of the respondent-

workman on 01.05.1989 by holding as under :-

“Relief:-

14. In view of my findings detailed above, the impugned application of the workman is allowed and the respondent-employer is accordingly directed to pay a sum of ₹3944.35 P. in all, to the workman, within a period of 3 months from today failing which the petitioner workman shall be entitled to recover it along with interest @ 12% per annum from the date of default, till actual payment. This application is disposed off accordingly, with no order as to costs. Parties be informed.”

Learned counsel for the petitioner submitted the order of Labour Court has been complied. The respondent-workman once again approached the Labour Court under Section 33-C(2) of Industrial Disputes Act, 1947. The Labour Court passed the impugned order dated 10.02.1993 by holding as under :-

“10. In view of my findings on the issues discussed above, I hold that the workman is entitled to recover ₹25,620/- from the management and that the management is directed to make the payment of this amount within three months from the date of order, failing which the workman would be entitled to recover the interest at the rate of 12% per annum on the amount from the date of filing of application till the date of realization of the amount. The application is disposed of accordingly, with costs of ₹300/- only.”

In this background, learned counsel for the petitioner submitted that the workman is working as a

Chowkidar from 1978 in the pay scale of ₹110/- and he has accepted the appointment as per the scale mentioned in the order of appointment. In view of appointment order read with nature of duties of the post of Chowkidar, the petitioner is entitled to pay scale of ₹110/- and not entitled to pay scale of ₹127/-. It was further contended by learned counsel for the petitioner that the Labour Court cannot determine the pay scale of the post. In support of this contention, learned counsel for the petitioner relied upon decisions of the Hon'ble Supreme Court in case *Central Inland Water Transport Corporation Limited Vs. The Workmen and another*, (1974) 4 SCC 696 (Para-13) *and P.K. Singh and others Vs. Presiding Officer and others*, (1988) 3 SCC 457 (Para-5).

Per contra, learned counsel for respondent-workman pointed out that workman is entitled for pay scale attached to the post of Weighment Clerk for the reason that he was initially appointed as a Weighment Clerk in the pay scale of ₹127/-. He has been given an alternative post/appointment as a Chowkidar. Having regard to the initial appointment as a Weighment Clerk, the workman is entitled for pay scale attached to that post. In this regard, he had approached the Labour Court. The Labour Court has determined the pay scale of the post held by the petitioner that he is entitled to pay scale of ₹127/- and not pay scale of ₹110/-. In this regard, a difference of wages has been calculated and directed the petitioner to pay the difference amount. The decision of the

Labour Court dated 01.05.1989 has attained finality. Therefore, petitioners are bound by the Labour Court award dated 01.05.1989. It was further contended that the award dated 10.02.1993 is in accordance with the earlier award, therefore, there is no infirmity in the award dated 10.02.1993 so as to interference by this Court.

Heard learned counsel for the parties.

It is undisputed that respondent-workman was appointed as a Clerk in the year 1974 in the pay scale of ₹127/-. Later on, he was appointed as a Chowkidar in the year 1977 in the pay scale of ₹110/-. The workman without any protest, has accepted the order of appointment as a Chowkidar in the pay scale of ₹110/-. Pay scale of an employee would be determined with reference to the Rules of recruitment read with scale of pay attached to the post. The respondent-workman did not agitate when he was posted as a Chowkidar, seeking for continuation or appointment to the post of Clerk, which is a higher post than Chowkidar. In this background, the respondent-workman is entitled to pay scale attached to the post of Chowkidar in the pay scale of ₹110/-. He has no lien over the Weighment Clerk having accepted the lower post. He cannot seek for higher pay scale in the absence of necessary amendment to the Rules of recruitment or revision of scale of pay or merger of cadre of Clerk and Chowkidar.

That apart, Courts and Tribunals cannot determine the pay scale of the post. It is ultimately, authority and

employer is required to determine what is the scale of pay of the post, therefore, the Labour Court has erred in holding that the petitioner (respondent-workman) is entitled to pay scale of ₹127/- on the sole reason that he was initially appointed as a Clerk in the year 1977 ignoring the fact that subsequently he was appointed as a Chowkidar in the year 1978. Earlier Labour Court even though determined pay scale of ₹127/- and arrears have been granted. However, in the final order what has been granted is only arrears of pay. There is no final determination of pay scale of ₹127/-. Had there been a determination of pay scale that the workman is entitled at ₹127/-. The workman has no occasion to approach once again to the Labour Court seeking for the same relief. Even in the second round litigation before the Labour Court, the Labour Court, Tribunal has not determined what has been stated is in the body of the order. Even if there is determination ultimately relief granted is only payment of arrears.

In view of these facts and circumstances, the award of the Labour Court is set-aside. Petition stands allowed.

May 30, 2016.
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(P.B. BAJANTHRI)
JUDGE