

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

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**CWP No. 15570 of 2012(O&M)
Date of decision: 15.09.2016**

The Ajnala Cooperative Sugar Mills Ltd.

.... Petitioner

Versus

The Presiding Officer, Labour Court, Amritsar and another

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Rahul Verma, Advocate for the petitioner.

Mr. S.K.Gupta, Advocate for respondent No.2.

P.B. Bajanthri, J. (Oral)

CM No. 12968 of 2015

This is an application for impleading Kashmir Kaur widow of Shri Nirmal Singh as legal representative of respondent No.2. Heard. In view of the reasons mentioned in the application as well as in the affidavit, same is allowed.

Smt. Kashmir Kaur widow of Shri Nirmal Singh is impleaded as LR of respondent No.2.

Main case.

In the instant writ petition, the petitioner has questioned the validity of the Award passed by the Labour Court dated 08.12.2011.

2. Respondent No.2-Nirmal Singh Subedar was appointed as a Yard Supervisor on 16.11.1994. His services were regularized on

27.03.1999 in the pay scale of Rs.1050-1600. His probation period was declared to be satisfactory on 18.12.2001. In the meanwhile w.e.f. 01.07.2001 revised pay has been granted. The respondent No.2-workman submitted an application on 30.04.2003 to the petitioner stating that Security Officer's post is vacant. He can be accommodated against Security Officer's post. The petitioner is stated to have considered his grievance and posted him as a Security Officer for a period of 89 days. On 02.05.2006, he submitted an application before the Labour Court claiming, he is entitled for the scale of Security Officer. Application under Section 33-C(2) of the Industrial Disputes Act, 1947 was decided by the Labour Court on 08.12.2011 in favour of the respondent No.2-workman holding that respondent is entitled to receive the amount of Rs. 1,26,514/- from the petitioner along with interest @ 8% per annum from the date of filing of the application till realization. The petitioner aggrieved by the award presented this petition.

3. Learned counsel for the petitioner submitted that application before the Labour Court under Section 33-C(2) of Industrial Disputes Act, 1947 for extending pay scale attached to the post of Security Officer is not maintainable for the reasons that respondent No.2 was posted as Security Officer for a period of 89 days which is a Seasonal permanent. Therefore, there is no pre-existing right to seek pay scale attached to the post of Security Officer. Learned counsel for the petitioner relied on the following decisions :-

1. *The Una District Consumer Marketing Federation Ltd versus Kuldeep Singh reported in 2007(2) SimLC 208,*
2. *Surinder Saini versus Doaba Worsteds Spinners*

Limited reported in 1997(1)S.C.T. 124,

3. *Executive Engineer, PSEB, Mansa versus Presiding Officer, Labour Court Bathinda* reported in 1997(1) SCT 733 and

4. *Suresh Chand Jain versus Central Government Industrial Tribunal-cum-Labour Court II, Chandigarh and others* reported in 2013(6) SLR 463.

4. It was contended that in view of the above decisions, the contesting respondent has not made out a case that he had pre-existing right to seek scale attached to the post of Security Officer. Consequently, very application under Section 33-C(2) is not maintainable. Thus, the Labour Court has erred in entertaining application submitted by the respondent under Section 33-C(2). Thus, the award is liable to be set aside. No other contention was advanced by the petitioner.

5. Per contra, learned counsel for the respondent submitted that the respondent's right accrued to seek pay scale attached to the post of Security Officer from the date on which he was posted/appointed to the post i.e., 04.08.2003. In other words, the date on which he commenced discharging the duties of the post of Security Officer right has accrued to seek pay scale attached to the post. Therefore, on the date of submission of the application under section 33-C (2) of I.D.Act, 1947 right was existing and occurred w.e.f. 04.08.2003 to seek scale attached to the post. Therefore, there is no infirmity in entertaining the application under Section 33-C(2) and also passing an award in favour of respondent No.2. Hence, cited decisions on behalf of the petitioner are distinguishable since the facts and circumstances of the present case are entirely different from the cited decision. Thus there is no error in the Award passed by the Labour Court.

6. Heard learned counsel for the parties.
7. Short question for consideration is whether the respondent had a pre-existing right as on 02.05.2006 the date on which application under Section 33-C(2) of I.D.Act, 1947 was presented in order to seek pay scale attached to the post of Security Officer or not. It is undisputed that the petitioner was accommodated/posted as a Security Officer. An extract of the decision reads as under:-

“There are 35 posts in security section during off season against which 34 persons are working. Hence one post of permanent nature of Security Officer is lying vacant since the dismissal of Ex/Security Officer so far. Sanction may kindly be accorded to recall Sh. Nirmal Singh, Yard Supervisor (Seasonal Permanent) against this post.”

8. Reading of the order of posting the respondent-workman as Security Officer/Yard Supervisor (Seasonal permanent) for 89 days. However, without break after completion of 89 days the respondent was continued till he attained age of superannuation and retired from service on 26.12.2007. Thus, the petitioner has extracted the work attached to the post of Security Officer from 04.08.2003 onwards. The moment when respondent No.2 was posted as a Security Officer and he discharged the duties of the post, he has right over the post of Security Officer. Consequently, he is entitled for pay scale attached to the post of Security Officer. Pre-existing right in the present case accrues to the respondent No.2 from the date he assumed the charge of the post of Security Officer.

Therefore, application under Section 33-C(2) of the I.D.Act, 1947 is maintainable before the Labour Court and there is no infirmity in the Award passed by the Labour Court.

9. In support of the preliminary contention that application under Section 33-C(2) is not maintainable, petitioner counsel relied on number of judgments cited supra are distinguishable to that of the present case on facts. In the present case, pre-existing right of respondent No.2 accrues as and when he assumed the post of Security Officer to seek pay attached to the post. Consequently, application under Section 33-C(2) is maintainable in the Labour Court and there is no infirmity in the Award passed by the Labour Court.

10. Accordingly, petition stands dismissed.

15.09.2016

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No