

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

CWP No.12463 of 2014

Date of Decision:04.11.2016

Gurpreet Singh

... Petitioner

Vs.

Presiding Officer Industrial Tribunal Patiala and others ... Respondents

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

Present : Mr. Nitin Jain, Advocate for the petitioner.
Mr. Paul S. Saini, Advocate for respondents No.2 to 5.

P.B. BAJANTHRI J.

In the instant writ petition, the petitioner has assailed the award passed by the Labour Court dated 21.1.2014. The grievance of the petitioner before the Labour Court under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short "ID Act") is to release a sum of Rs.12,74,900/- alongwith interest for the period from 1.1.1995 to 31.7.2002; 16.1.1998 to 10.2.2006 and service compensation from 1.2.1981 to 31.7.2002 @ 15 days salary per year for 22 years.

The petitioner is appointed as a Development Officer Grade-I in the National Insurance Company Limited w.e.f. 1.2.1981. The petitioner suffered certain mental depression. On account of the same, he had requested for premature retirement in the month of December 1995, March 1996, July 1996 and October 1996. Request of the petitioner was forwarded to the head of the Department on 7.3.1996. His request for premature retirement was refused on the score that he did not fulfill the criteria for permitting him to retire prematurely on 5.11.1996. Thereafter, the respondents issue a show cause notice terminated the services of the petitioner. In the show cause notice itself, the respondents have indicated that the petitioner can prefer an appeal before the Appeal Committee. Thus,

the petitioner has exercised his option to prefer an appeal before the Appeal Committee and filed an appeal before the Appeal Committee on 5.3.1998. The Appeal Committee slept over the appeal and did not pass any orders. At the same time, the petitioner did not attend the office. For not attending the office, no action has been taken by the Insurance Company by initiating necessary proceedings to terminate or dismiss the petitioner from service and further Appeal Committee has not approved the proposal of termination dated 15.1.1998.

In this backdrop, the petitioner filed an application under Section 33-C(2) of the ID Act before the Labour Court seeking payment of backwages and other reliefs. The Labour Court declined to grant the relief sought by the petitioner on the score that appeal against show cause notice for termination is pending consideration before the Appeal Committee and further petitioner has failed to challenge decision dated 5.11.1996 by which the respondents have rejected the claim of the petitioner for retiring him prematurely. Thus, the petitioner is before this Court.

During the pendency of the litigation on 22.7.2016, this Court directed the respondents as to whether any decision has been taken on the petitioner's appeal by the Appeal Committee or not, for which the respondents have submitted that the Appeal Committee has not taken any decision and the appeal is pending consideration. Thereafter, the appeal was decided on 30.8.2016 while upholding the proposal for termination of the petitioner's services and the same was decided at the behest of this Court direction.

Learned counsel for the petitioner submitted that mere pendency of the appeal against proposed show cause notice for termination

is not a ground for rejection by the Labour Court insofar as payment of backwages as on the date of demand notice and when case is pending consideration before the Labour Court, the petitioner's services have not been terminated, therefore, the petitioner is entitled for wages for the intervening period. It is further submitted that order of termination would be effective as and when Appeal Committee approves the show cause notice for termination and till date formal order of termination has not been passed, therefore, it is deemed that the petitioner is in service and he is entitled for the payment of wages as relief sought before the Labour Court. Therefore, the Labour Court erred in holding that the petitioner is not entitled for wages merely on the pendency of the appeal against show cause notice for termination and rejection of the petitioner's claim for premature retirement on 5.11.1996. Both the issues are not at all related to the relief sought for payment of wages.

Per contra, learned counsel for respondents No.2 to 5 submitted that the petitioner's request for premature retirement was turned down on 5.11.1996 and he has been paid wages till March 1998. Since the petitioner failed to report back to duty, question of payment of wages do not arise. Pendency of the appeal before the Appeal Committee is not a hurdle for the petitioner to report back to duty and discharge the duties. Since the principal of "No Work No Pay" is applicable to the petitioner, therefore, he is not entitled for the payment of wages. Therefore, no interference is called for insofar as decision of the Labour Court.

Heard learned counsel for the parties.

Question for consideration in the present petition is whether the petitioner is entitled to payment of wages for the period from 1.1.1995 to

31.7.2002 and 16.1.1998 to 10.2.2006 and consequential compensation for the period from 1.2.1981 to 31.7.2002.

From the perusal of the dates and events, it is evident that the petitioner had requested for premature retirement. The same was not accepted. Thereafter, the respondents have proceeded to terminate the services of the petitioner on 15.1.1998 by issuing a show cause notice but the same has not attained finality before the Appeal Committee despite the fact that the petitioner has submitted his appeal on 5.3.1998. In other words, there is no finality insofar as terminating the services of the petitioner till 30.8.2016. The Labour Court has committed an error in rejecting the claim of the petitioner for wages only on the ground that the petitioner's request for premature retirement was turned down on 5.11.1996 and appeal against show cause notice for termination is pending consideration. For grant of wages what is required to be examined is whether the petitioner is in service or not? It is evident that the petitioner's services is required to be terminated. Proposal was approved only on 30.8.2016. Consequently, it is deemed that the petitioner is in service. Therefore, he is entitled for the wages.

The contention of the respondent that the petitioner has not worked from January 1995 till disposal of the appeal dated 30.8.2016 is not entitled for the wages is not tenable. The respondents though proposed to terminate the services of the petitioner on 15.1.1998. Thereafter the petitioner had filed an appeal on 5.3.1998. From 5.3.1998 till 30.8.2016, they did not take any action either to accept the appeal of the petitioner or to reject. Therefore the petitioner's services have not been terminated till 30.8.2016. Consequently, the petitioner would be deemed to be in service

and he is entitled for his service benefits for the intervening period.

Contention of the respondents that respondents have not terminated the petitioner and the petitioner has to discharge the duties of the post when his request for premature retirement was turned down on 5.11.1996 and the petitioner has been paid salary till March 1998. Therefore, there is no lapses on the part of the respondents so as to grant wages to the petitioner is concerned the respondents were not prevented to take action for not reporting and discharging the duties.

Having regard to the above contention, it is to be noted that there is no prohibitory order for taking action in not discharging the duties of the post by the petitioner during the intervening period from 1995 to 2016. At the same time, the respondents did not invoke necessary provisions for taking disciplinary action for remaining unauthorized absent from 1995 to 2016.

In view of these facts and circumstances, the Labour Court erred in holding that the petitioner is not entitled for the relief. Accordingly, Labour Court award dated 21.1.2014 is set aside. The respondents are directed to pay the wages sought by the petitioner for the period from April 1998 to till filing of application before Labour Court. The second spell i.e. from the date of filing of application before the Labour Court till disposal of appeal dated 30.8.2016 the respondents are directed to pass suitable order within a period of four months from today. The respondents are also directed to calculate the wages and disburse the same within a period of three months from today. Reserving liberty to the petitioner to challenge approval of projected termination by the Appeal Committee.

Accordingly, the petition stands allowed.

04.11.2016
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No