

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1.)

CWP No.14077 of 2014
Date of Decision:- 02.09.2016.

Divisional Forest Officer, Sonapat

.....Petitioner

Versus

Tiraspal and another

.....Respondents

(2.)

CWP No.12294 of 2014

Divisional Forest Officer, Sonapat

.....Petitioner

Versus

Smt. Salochna and another

.....Respondents

(3.)

CWP No.12295 of 2014

Divisional Forest Officer, Sonapat

.....Petitioner

Versus

Shiv Kumar and another

.....Respondents

(4.)

CWP No.12296 of 2014

Divisional Forest Officer, Sonapat

.....Petitioner

Versus

Smt. Darshan and another

.....Respondents

(5.)

CWP No.12297 of 2014

Divisional Forest Officer, Sonapat

.....Petitioner

Versus

Smt. Bedo and another

.....Respondents

(6.)

CWP No.12321 of 2014

Divisional Forest Officer, Sonapat

.....Petitioner

Versus

Smt. Rani and another

.....Respondents

(7.)

CWP No.15783 of 2014

Divisional Forest Officer, Sonapat

.....Petitioner

Versus

Smt. Roshni and another

.....Respondents

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

Present: Mr. Keshav Gupta, AAG, Haryana for the petitioner.

Mr. Deepak Sonak, Advocate for respondent No.1.

P.B. BAJANTHRI, J. (Oral)

1.) This order shall dispose of CWP Nos.14077, 12294, 12295,

12296, 12297, 12321 and 15783 of 2014 as the point in issue is similar.

Facts are being extracted from CWP No.14077 of 2014.

2.) All the respondents were appointed as Mali on various dates and their services have been terminated. They issued demand notices on different dates. Learned counsel for the respondents submitted that on 6.11.2013 all the awards passed by the Labour Court have been implemented by the appellant insofar as reinstatement is concerned. Learned counsel for the appellant submitted that in CWP Nos.12296 and 15783 of 2014, there is a delay of four years on the part of respondents seeking their claim. Therefore, respondents' claim is barred by limitation. The other contention raised in all the writ petitions is that none of the workmen pleaded that they were unemployed so as to claim back wages. Thus, the Labour Court erred in granting 50 % back wages to all the respondents and granting relief to the workmen in CWP Nos.12296 and 15783 of 2014 despite the fact that it was time barred claim.

3.) Per contra, learned counsel for the respondents submitted that Labour Court has awarded only 50 % back wages from the date of demand notice. Therefore, there is no infirmity. Insofar as limitation in respect of two workmen are concerned, it was submitted that Labour Court award has been implemented by reinstating them. Therefore, question of delay may not be a hurdle. It was further submitted that in the case of application of Industrial Disputes Act, 1947 is concerned, question of delay of four years may not be a hurdle to grant any relief.

4.) Learned counsel for the appellant relied on decision of the Apex Court reported in 2005 (5) SCC 91 Haryana State Coop. Land Dev.

wages, he relied on the decision of the Apex Court reported in (2013) 10 SCC 324 (Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalya (D.ED.) and others. Belated claim was made by the two respondents could have been considered that there is delay on the part of workmen since the appellants themselves have implemented the award while reinstating them amongst others and they were working as on the date of filing of the present case. Therefore, delay may not be hurdle in the present writ petition. Pursuant to the award insofar as granting of back wages is concerned, the Supreme Court in Deepali Gundu's case (supra) it is held as under:-

“38.3 Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.”

5.) In view of the above principles laid down by the Apex Court and the fact that the workmen have not pleaded before the Labour Court that they were unemployed, so as to claim back wages. Therefore, the Labour Court has erred in holding that the workmen are entitled for 50 % back wages is incorrect. To that extent, the award of the Labour Court is set aside. Appeals are allowed in part.

(P.B. BAJANTHRI)
JUDGE

September 02, 2016.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.