

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1888 of 2013 (O&M)
Date of Decision: 28.04.2016

Raja Ram

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Harjinder Singh Dhillon, Advocate,
for the petitioner.

Mr. Inqulab Nagpal, AAG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. The petitioner was employed as a Chowkidar in 1976 and his services were terminated in 1988. The petitioner challenged his termination through a reference made to the Labour Court. He succeeded before the Labour Court with an award of reinstatement with continuity of service. He was, however, denied back wages. The challenge petition carried to this Court by the State of Punjab was dismissed. The cross petition filed by the present petitioner met with partial success. The award of the Labour Court was modified to read 50% back wages as he was held entitled to the same vide order dated November 25, 2009 passed in CWP No.2990 of 2001. Both the petitions were decided by a common judgment. Later, the services of the petitioner were regularized vide office order dated September 20, 2011 w.e.f. September 01, 1992 in accordance with Government letter dated May 07, 1993. Trouble began when the 3rd respondent inserted clause 2 in the

terms and conditions of the order dated September 20, 2011 denying to the petitioner the benefit of minimum of the pay scale with effect from the date of regularization w.e.f. September 01, 1992. It is said by the petitioner that this was contrary to Government policy dated May 07, 1993 by which the services of the petitioner were regularized. The offensive term of the office order dated September 20, 2011 is that the decision of award of 50% of the back wages [as passed in the writ petitions] will be complied with as such. This meant that the petitioner would only be entitled to 50% of the back wages as awarded by the High Court and nothing further. It may not be out of place to mention that other incidentals and resultants of the reinstatement awarded were that the petitioner's pay scale was fixed w.e.f. September 01, 1992 vide office order dated November 08, 2011. He was also granted benefit of ACP scheme w.e.f. November 01, 2006 on completing 4, 9 and 14 years of service in the same cadre.

2. The subsisting claim and the main grievance of the petitioner is that he has not been granted benefit of arrears of minimum of the pay scale w.e.f. September 01, 1992 (date of regularization) to September 21, 2011. He made a claim thereto in April 2012 for release of arrears of pay w.e.f. September 01, 1992. However, no action was taken. He made further representations to claim dues but all in vain. Today, the Arrear Sheet of Wages in respect of the petitioner has been produced in Court which is supposed to be compliance of the order dated November 25, 2009 passed in CWP No.2990 of 2001 covering the period September 01, 1988 (date of termination) to December 27, 2009 (the month after orders were passed in the writ petition). The document in reliance is Pay Bill of Work-Charged

Establishment Form D.F.R. (P.W.29) of Provincial Division, PWD (B&R) Mansa. The total amounts calculated for the period is Rs.4,51,504.30 paisa outstanding against the petitioner. A cut of 50% has been imposed for 50% back wages and accordingly a total sum of Rs.2,25,752/- has been found due and payable to the petitioner. The amounts have been calculated gradually as per rising DC rates/daily wages starting Rs.450/- per month on September 01, 1988 and ending at Rs.3398/- per month till December 27, 2009.

3. Concisely put, the claim of the petitioner in repudiation of the Pay Bill/Arrear Sheet is to the following effect:-

i) The services of the petitioner have been regularized by a non-litigious order dated September 20, 2011 passed by the respondents regularizing the services of the petitioner w.e.f. September 01, 1992.

ii) The petitioner is a regular hand since September 01, 1992.

iii) He thus shifts from work charge daily wage service to regular service w.e.f. September 01, 1992 and, therefore, entitled to the pay scale of the post of Chowkidar from September 01, 1992 onwards. He is entitled to difference of arrears of salary between the figures in the Pay Bill and the pay scale of the post of Chowkidar.

iv) Fifty percent back wages awarded on September 20, 2011 when his writ petition was partly accepted and the award of the Labour Court is modified to read 50% back wages, then back wages have to be read for the period between termination on August 31, 1988 till the date of the award of the Labour Court i.e. August 29, 2000.

v) Which means that prior to August 29, 2000 the petitioner would be entitled to 50% of the back wages calculated on daily wage basis. Therefore, the petitioner is not entitled to the other half of back wages for the period intervening termination and reinstatement with continuity of service and he can claim no more by virtue of order of this Court dated November 25, 2009.

vi) However, this does not mean that after the services of the petitioner have been regularized on September 20, 2011 he would not be entitled to arrears of salary in the pay scale of Chowkidar w.e.f. 1988 till the date of the award in 2000 minus the sums granted by the Court restricting back wages to 50%. Calculated thus, the petitioner would be entitled to arrears of difference of pay w.e.f. September 01, 1992 by virtue of the respondent regularizing his services after the decision of the learned Single Judge from retrospective date. This would be the position up to the date of the award.

vii) After the passing of the award [which has been upheld as far as reinstatement and continuity of service is concerned] the petitioner would be entitled to the difference of arrears of salary in the pay scale minus the amounts shown for the corresponding period in the Pay Bill/Arrear Sheet of Wages (Mark 'A'). Accordingly, the calculation in the Pay Bill/Arrear Sheet of Wages in respect of the petitioner suffers errors. Consequently, the orders of the High Court have not been properly implemented and thus viewed the impugned condition No.2 of the office order dated September 20, 2011 when read in conjunction with the Pay Bill/Arrear Sheet of Wages is not fair and proper implementation of the

orders of regularization itself granted w.r. e from September 01, 1992, leave alone the orders of this Court. There can be hardly any doubt that the order dated September 20, 2011 regularizing the petitioner services w.e.f. September 01, 1992 out reaches the award of the Labour Court and the judgment in challenge thereto since it has been passed without intervention of Court by the employer on merits.

4. There is merit in these contentions canvassed by the petitioner that he has been wronged without hearing, without reasons. In short, it is held that the view put forth by the petitioner is the legally correct one which merits acceptance and is the true position on record. Hence his prayer deserves to be accepted. He is held entitled in law to arrears of difference of salary/pay upon regularization w.e.f. September 01, 1992 will all consequential benefits both pecuniary and non-pecuniary arising out of award of reinstatement with continuity of service. The 50% back wages awarded in the writ petition in 2009 for the first time by modification have to be accordingly read to bring harmony.

5. For the reasons recorded supra, there is substantial merit in the petition and is thus allowed. A writ of certiorari is issued reading down clause 2 in the terms and conditions of the order dated September 20, 2011 in conformity with the rule laid down in this order with respect to the rights of petitioner. A direction is issued to the respondents to calculate the arrears of difference of pay/salary with effect from the date of regularization i.e. September 01, 1992 in terms of Government instructions containing its policy decision on regularization dated May 07, 1993. The amounts be calculated and paid to the petitioner within three months from the date of

receipt of certified copy of the order after associating him with the calculation work to be done so that no dispute remains on the outstanding dues payable in terms of this order.

(RAJIV NARAIN RAINA)
JUDGE

28.04.2016
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