

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

CWP No.21046 of 2013

Date of Decision:26.08.2016

Kaushalya Rani

... Petitioner

Vs.

Presiding Officer, Industrial Tribunal-cum-Labour Court, Patiala and
another

... Respondents

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

Present : Mr. M.S. Longia, Advocate for the petitioner.

Mr. Aman Sharma, Advocate for respondent No.2.

Mr. J.S. Gill, Advocate for
respondents No.3(i), 3(ii) and 3 (iii).

P.B. BAJANTHRI J.

Through the instant petition, the petitioner has sought for quashing of order dated 27.12.2012 (Annexure P-6) through which his application filed under Section 33(C)(2) of the Industrial Disputes Act, 1947 (for short “the Act”) has been turned down.

The husband of the petitioner was appointed as a clerk in the respondent-Municipal Council, Ropar. On 10.02.2009, the application filed by the husband of the petitioner under Section 33(C)(2) of the Act was allowed holding that the petitioner is entitled to receive Rs.192566/- from the respondent, subject to departmental calculations. The respondent-Municipal Council, Ropar, feeling aggrieved by the award of the Labour Court dated 10.02.2009 preferred a writ petition before this Court. This Court while disposing of the writ petition i.e. CWP No.18859 of 2009, remanded the matter on 14.10.2011 for determination the total number of

Saturdays and Sundays on which the workmen performed duties as octroi Clerks at octroi posts. The Labour Court turned down the application of the husband of the petitioner for want of materials. In para-9 of the award dated 27.12.2012, it was observed by the Labour Court that legal heirs of workman failed to produce any document. On the other hand management witness MW-1 Vikas Gupta statement has been taken into consideration that no record is available in which deceased Darshan Kumar actually worked with the respondent. For want of necessary record, the Labour Court has declined to accept the application of the deceased employee. Hence, the present petition.

Learned counsel for the petitioner submitted that legal heirs are entitled to monetary benefits which are due to the deceased employee Darshan Kumar. The benefit is relating to working on Saturdays and Sundays in the octroi post. The deceased employee while working as a clerk in the Municipal Council, Ropar, work has been extracted both in the Municipal Council, Ropar as well as in the octroi post. However, for want of materials, the claim of the husband of the petitioner has been declined. At the same time, the respondent-Municipal Council, Ropar, has not produced any material to show that other clerks who are also working in the office of the Municipal Council, Ropar as well as in octroi posts, they have been granted the benefit whereas deceased employee was never posted to octroi post as a clerk. The Labour Court has erred in relying upon the statement made by MW-1 Vikas Gupta. Statement of Vikas Gupta is not supported by any documents. Therefore, the Labour Court has erred in declining the application of the husband of the petitioner filed under Section 33(C)(2) of the Act.

Per contra, learned counsel for the respondents submitted that the petitioner is one of the legal heir and other legal heirs are not before the Court. It is further contended that the petition is premature for the reasons that deceased Darshan Kumar was missing from 30.8.2007. As per law, the legal heirs are required to wait for 7 years to deem that after 7 years, Darshan Kumar declared to have been died. Therefore, the present petition cannot be entertained. It is further contended by the learned counsel for the respondents that no material has been produced by the legal heirs of the petitioner to demonstrate that deceased employee Darshan Kumar has discharged his duties as clerk in the octroi post. Consequently, the Labour Court rightly relied upon the statement of MW-1 Vikas Gupta. Therefore, the petitioner has not made out any case so as to interfere with the Labour Court's award.

Heard learned counsel for the parties.

Insofar as the contention of respondents that whether the writ petition is premature or not is concerned, similar preliminary issue was raised before the Labour Court, the same has not been considered. For non consideration of the aforesaid plea, the respondent-Municipal Council, Ropar, should have filed an independent writ petition challenging in not giving decision by the Labour Court. Whereas the respondent-Municipal Council, Ropar, have accepted decision of the Labour Court only on merits. Of course on merits, the Labour Court has passed an award in favour of the respondents.

In view of the above facts and circumstances, this Court has to consider only on merits since there is a finality insofar as preliminary objection regarding the maintainability of the claim as premature is

concerned.

Insofar as merit is concerned, as is evident from the earlier award dated 10.02.2009, the Labour Court has determined the amount in the absence of record. When the respondents have approached this Court, this Court has passed the following order:

“In view of the statements made by counsel for the parties, the order passed by the Labour Court, Patiala, is affirmed with respect to the entitlement of the workman to receive wages for every Saturday on which they performed duties of octroi Clerks at octroi posts. The matter is however, remitted to the Labour Court, Patiala to determine the total number of Saturdays on which the workmen performed duties as octroi Clerks at octroi posts.

Each party shall be granted three opportunities each to lead evidence to establish their respective pleas. In case any amount is found due to any workman, it shall be paid within three months with interest @ 6% p.a.

Parties are directed to appear before the Labour Court, Patiala on 8.12.2011.

The matter be decided, preferably within six months from the said date.”

In view of the above, it is crystal clear that the deceased employee Darshan Kumar is entitled to benefit of performing duties as octroi clerks at octroi posts on Saturdays and Sundays. However, neither the petitioner nor the respondents-Municipal Council, Ropar, have concrete material to determine number of Saturdays and Sundays work discharged by the then deceased employee Darshan Kumar. It is not disputed that the deceased employee Darshan Kumar has discharged the duties of the post of clerk in the octroi post for the reasons that Municipal Council, Ropar has failed to produce any material to show that the husband of the petitioner has

not worked on Saturdays and Sundays.

In view of these facts and circumstances, Municipal Council, Ropar is directed to determine the amount with reference to the similarly situated clerks who were appointed and retired during the period from 1998 to 1999 and take average of Saturdays and Sundays of other clerks, who worked on those days and who have been granted the benefit of work performed on Saturdays and Sundays. Such average determination be made within a period of three months and the monetary benefits shall be released to the legal heirs of the deceased employee Darshan Kumar within a period of two months from the date of determination.

Disposed of accordingly.

26.08.2016
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**