

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.359 of 2014

Date of Decision:- 24.5.2016.

Kulwinder Singh

.....Petitioner

Versus

The Presiding Officer, Labour Court, Ambala and another

.....Respondents

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

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Saurabh Garg, Advocate for the petitioner.

Mr. Raj Kumar Makkad, DAG, Haryana.

P.B. BAJANTHRI, J.

1.) In the instant writ petition, the petitioner has questioned the denial of back wages by the Labour Court in the award dated 7.8.2008 (Annexure P-5).

2.) The petitioner is stated to have been appointed as a Driver on 16.2.1989 in the Haryana Roadways. While he was on duty on 1.9.1993, the bus which he was driving met with accident resulting in filing of FIR. The petitioner was convicted on 29.7.2002 sentencing him for rigorous imprisonment for four months. On 8.7.2004, the petitioner was acquitted in the criminal appeal.

3.) Insofar as service condition of the petitioner is concerned,

he was dismissed from service on 3.8.1998 without holding an inquiry. In other words with reference to filing of FIR and pendency of the criminal proceedings, petitioner has been dismissed from service. Against the order of dismissal, the petitioner preferred appeal and revision, both were rejected. On 7.8.2008, Labour Court set aside the order of termination/dismissal and directed for petitioner's reinstatement with continuity of service but without back wages. Denial of back wages by the Labour Court is on the ground that the *"he is a Driver and would have worked somewhere and have not remained idle"*.

4.) Learned counsel for the petitioner submitted reasoning assigned for the denial of back wages is on the presumption of the Labour Court. In the absence of any documentary and oral evidence, the petitioner cannot be denied back wages. No material has been produced by the respondent-Haryana Roadways for denial of back wages. On the contrary, learned counsel for the petitioner pointed out from the cross-examination of the petitioner wherein he has specifically taken the stand that he is not working anywhere. On the other hand, learned counsel for the second respondent submitted that Labour Court has rightly rejected the back wages on the ground that the petitioner would have worked somewhere as a Driver for his livelihood. It was further contended by the second respondent counsel that there is delay of six years in raising the dispute. The demand notice was issued on 23.11.2005 whereas his order of

dismissal is dated 3.8.1998. Learned counsel for the second respondent cited decision of this Court as well as Supreme Court that if there is a delay in claim, such persons are not entitled for back wages. Learned counsel for the petitioner also cited decision of this Court in ***CWP No.15160 of 2005 (Satish Kumar Vs. Presiding Officer, Labour Court, Ambala and another)*** decided on 5.8.2013 to claim back wages.

5.) Heard learned counsel for the parties.

6.) The short question for consideration is whether the petitioner is entitled for back wages or not? The respondent-Haryana Roadways has not produced any material before the Labour Court for denial of back wages. The Labour Court on imaginary basis held that the petitioner might have worked somewhere as a Driver and he has remained idle, therefore, he is not entitled for back wages. The reasoning assigned by the Labour Court is highly imaginary one. In the absence of documentary and oral evidence that petitioner was working during the intervening period, denial of back wages is not correct.

7.) Learned counsel for the second respondent contended that there is a delay in raising demand notice, therefore, the petitioner is not entitled for back wages for the reasons that dismissal was on 3.8.1998 and dispute raised in the year 2005. The petitioner had remedy of appeal and revision. He had exhausted revision on 13.5.2005 and the demand notice was issued on 23.11.2005.

Therefore, there is no delay as contended by the second respondent counsel. That apart, dismissal of the petitioner on 3.8.1998 is without inquiry and also in the absence of order of conviction. The order of conviction was passed on 29.7.2002. At the best the second respondent could have terminated/dismissed the petitioner after his conviction not prior to that date only on the ground petitioner is facing criminal proceedings. In view of these facts and circumstances, the petitioner is entitled to 50 % back wages without interest. The second respondent is directed to pay 50% back wages to the petitioner within a period of three months. To that extent, the award of Labour Court is modified.

8.) Civil Writ Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

May 24, 2016.

sandeep sethi