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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 554/2016**
V.M. PURI

..... Petitioner

Through: Mr. K.K. Sharma, Sr. Adv. with Ms.
Bhanita Patowary & Mr. Rajiv
Bakshi, Advs.

versus

M/S HINDUSTAN INSECTICIDES LTD

..... Respondent

Through: Mr. Arvind Kumar, Adv. with Mr.
P.K. Ghosh (AR)

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **15.07.2016**

1. The challenge in this writ petition, is to the Award dated December 9, 2015 passed by the Labour Court (XI), Karkardooma Courts, in an application under Section 33C(2) of the Industrial Disputes Act for recovery of sum of Rs.2,17,880/-.
2. It may be stated here, as per the statement of claim, the amount claimed is Rs.4,13,820/-. Be that as it may, the petitioner was working with the respondent; it is alleged that one Mr. P.C. Talwar junior to the petitioner was promoted to the post of Establishment Assistant (Special Grade). As the petitioner was denied the promotion, he approached the Managing

Director of the respondent but his representation was not considered by the respondent, which resulted in the petitioner resorting to Industrial Dispute, which resulted in a reference made by the Appropriate Government, on the following terms:-

“Whether promotion of Sh. P.C. Talwar as Establishment Assistant (Special Grade) in supersession of Sh. V.M. Puri is illegal and/or unjustified and if so, whether Mr. V.M. Puri should be promoted to the said post and what directions are necessary in this respect.”

3. The Award dated November 30, 1987 was passed in favour of the petitioner in terms of the following directions:-

“(i) The management is hereby directed to promote Shri Puri to the post of Special Grade Establishment w.e.f 19.2.77 notionally by creating promotion post till 31.1.79 when he stood promoted to higher post. He will get all the benefits of this proforma promotion i.e financial difference of high pay with allowances of proforma post and the post held by him and counting of this service period for all other purposes of seniority experience for promotion etc accordingly.

(ii) From 1.2.79 onward Shri Puri will be given option to retain and continue with post of Superintendent.

(Accounts) of availing posting against the proforma post of Asstt. Establishment Special Grade upto when the said post was upgraded and redesignated as Personnel Supervisor and thereafter against the said upgraded proforma post until he is actually posted to the same

post on vacation by Shri Talwar by operation and implementation of this Award with all connected benefits of such posting including the counting of such notional posting experience as actual experience for further promotion if any in the line.

(iii) It is further clarified and directed that in case Shri Puri avails later part of the option under the (ii) directions, he shall retain the emoluments he has received or will receive by virtue of holding the post of Accounts Superintendent being on higher side than the post of Estt. Assistant Special Grade without any deductions by way of adjustment etc. under the terms of this Award for any earlier or subsequent emoluments he is found entitled of course during this period he will not get separate any salary as Asstt. Establishment Special Grade by way of double payment for two posts.”

4. The said Award was challenged by the respondent before this Court in Writ Petition(Civil) No.1626/1988. This Court vide order dated December 2, 1988 directed the respondent to pay to the petitioner, the financial difference of high pay and pursuant thereto an amount of Rs.14,539.95 was given to the petitioner vide cheque dated September 5, 1989. The writ petition was disposed of on September 13, 2004 as being infructuous in the absence of the petitioner. Be that as it may, on coming to know that the petition has been disposed of, the petitioner filed an application in the year 2006 before this Court along with the calculation of the amount, which was

due and payable by the respondent in terms of the Award dated November 30, 1987. The said application was dismissed vide order dated December 21, 2006. The said order was impugned by the petitioner in an LPA No.259/2007. After hearing the parties, the Division Bench of this Court had, on March 1, 2013 passed the following order:-

“In the event there is a dispute with respect to computation of money payable under an award, the appellant has the right to approach the Labour Court under Section 33 C (2) by filing an appropriate application for computation of the amount payable to him in terms of the Award. Admittedly, the appellant has not availed that remedy.

In view of the above, we are not inclined to entertain this appeal and accordingly, the appeal is rejected. The appeal shall not stand in the way of the appellant to obtain his remedy for enforcement of the Award by filing appropriate application and the respondent is also equally entitled to defend such application, if any, filed. Counsel for the appellant submitted that such an application will be filed within four weeks from today. The said statement is recorded. The application, if filed, shall be decided without reference of the orders passed in the writ petition on its own merit.”

5. It is pursuant thereto, that the petitioner had approached the Labour Court in an application under Section 33C(2) with a claim of Rs.4,13,820/-. In substance, the stand of the respondent has been that on payment of

Rs.14,539.95, no claim survives for payment of any further financial benefits to the petitioner. I note, that the claim of the petitioner is primarily premised on the ground that he would be entitled to a higher pay, had he been promoted as Dy. Manager/Personal Manager/Dy. General Manager, as has been given to one Mr. Kara or Mr. Rama Krishna.

6. The Labour Court, at page 40 of the paper-book has observed as under:-

“Admittedly, workman stood promoted to Superintendent in Accounts department on 31.1.79, which post was senior to the post of Establishment Assistant to which workman was directed to be promoted w.e.f 19.2.1977 till 31.1.79 by notionally creating the promotion post. Workman was entitled to get all the benefits of this proforma promotion i.e financial difference of high pay with allowances of proforma post and the post held by him. Obviously, this financial difference pertained to the period from 19.2.1977 till 31.1.79 only but details in Annexure-A3/Ex.-P4 not pertain to this period.

A careful perusal of the details given in Annexure-A3/Ex.-P4 reveals that workman is, inter-alia, claiming the differences in the salary drawn by workman Mr. V.M. PUri and the persons namely Kr. Kara, Dy. Managar, Personal, Mr. Rama Krishna, Personal Manager and Dy. General Manager allegedly promoted in super-session of the workman herein. In the

Labour Court Application there are no pleadings qua the promotion of Mr. Kara or Mr. Rama Krishna but in the written synopsis filed; by learned counsel for workman after addressing final arguments in this case is mentioned that, “... in 1985 the post of Deputy Manager personal was vacant. Instead of promoting the applicant being eligible candidate for the said post, Mr. Kara was appointed directly from outside. Again in 1988 post of personal Manager was vacant and instead of promoting the applicant being eligible candidate for the said post, Mr. Rama Krishna was appointed directly from outside. Both of them have resigned after 2-3 years of their appointment and despite the existing vacancy at the relevant post, the applicant was deprived of his right to be promoted. [calculation filed by workman].....”.

At the outset it is observed that mentioning of certain facts for the first time in the written synopsis filed after the conclusion of final arguments does not serve any purpose and cannot be considered by the Court. Be that as it may, it is observed that merely because the Award Ex.-P1 mentioned that workman will get all the benefits of this proforma promotion i.e financial difference of high pay with allowances of proforma post and the post held by him and counting of this service period for all other purposes of seniority experience for promotion etc according, does not mean that workman's entitlement for promotions in future stood established. The relief granted to the workman was only to the extent that the period from

19.2.1977 till 31.1.1979 during/for which workman was given notional promotion shall be counted for all purposes of seniority experience for promotion etc. When so understood it cannot be said that workman had a existing/well established right as per Award Ex.P1 to claim his appointment/promotion in place of Mr. Kara or Mr. Rama Krishna or as Deputy General Manager or to claim wages at par with Mr. Kara or Mr. Rama Krishna or as Deputy General Manager. Workman has filed this application under Section 33 C (2) of the Industrial Dispute Act, 1947.”

7. Further at page 46 of the paper-book, the Labour Court has observed as under:-

“In these proceedings under Section 33 C (2) of the Industrial Dispute Act, 1947 this Court cannot adjudicate the entitlement, as such, of the workman for his appointment/promotion at the post which were held by Mr. Kara or Mr. Rama Krishna or the post of Deputy General Manager. Even at the cost of repetition it is observed that the Award Ex.-P1 by itself did not create such a right in the workman to claim promotion in future or salary differences as claimed by workman.

Workman has also claimed a sum of Rs.51,000/- @ 3,000/- per month as arrears on account of revision of new pay scales. First of all it cannot be said that such a right, by itself, of the workman is coming out of the specific terms of award Ex.-P1. Even otherwise workman has not even pleaded as to what pay

scales he was already getting and what were the new pay scales after the revision of pay scales so as to entitle the workman to receive Rs.3,000/- per month from the management from the period from 1.1.1992 to 1.5.1993. Workman could very well have atleast pleaded the pay scales which he was getting and revised pay scales but workman has not even done so. It is also pertinent to note that period of the claims made on account of salary differences of the workman and that of Mr. Rama Krishna is also covered in that of workman and Mr. Kara. And partly the period regarding which claims have been made on account of salary differences in the salary of workman and that of Deputy General Manager is also covered in the period for which salary differences have been claimed by the workman qua Mr. Kara.

In my considered opinion, workman is not entitled to any of the claims as made by him in Annexure-A3 or Ex.P4 on the basis of Award Ex.-P1. None of case laws relied upon by the learned counsel for workman has no application in the facts and circumstances of this case. Issue No.1 is accordingly decided against the workman.”

8. From the reading of the impugned decision dated December 9, 2015 of the Labour Court, it is clear that the Labour Court has dismissed the claim petition on the ground that the petitioner has no existing right for a higher post in place of Mr. Kara or Mr. Rama Krishna or higher monetary benefits

for which he has made a claim. The Labour Court relied upon the judgment of the Supreme Court in *MCD vs. Ganesh Razak & Anr 1995 (1) SCC 235*.

I do not see any illegality in the said conclusion of the Tribunal. Till such time, the petitioner occupies, promoted to the post whose benefits he is claiming, he would not be entitled to the pay/difference of the pay, attached to the said post.

9. I do not see any merit in the petition. The same is dismissed.

V. KAMESWAR RAO, J

JULY 15, 2016/ak