

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13195 of 1995

Date of Decision: 02.02.2017

Punjab State Electricity Board
and others

... Petitioners

Versus

The Presiding Officer, Labour Court,
Ludhiana and others

... Respondents

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

Present: Mr. G.S. Ghuman, Advocate,
and Mr. H.S. Ghuman, Advocate,
for the petitioners.

RAJIV NARAIN RAINA, J.(Oral)

1. The case of respondents No.2 to 5 before the Labour Court in their application presented under Section 33-C (2) of the Industrial Disputes Act, 1947 ("1947 Act") to claim money due was based the circular dated January 13, 1961 issued by the Punjab State Electricity Board (PSEB) granting a special allowance of 50% of the basic pay for performance of arduous nature of duties to Lineman and Junior Engineers. The circular continued to prevail and on January 17, 1984 the special allowance was reduced from 50% to 30% of the basic pay.

2. The aggrieved respondents approached the Labour Court for computation of money due towards 50% of the basic pay from January 01, 1978 to January 16, 1984 which had been wrongly stopped because of a pay revision coming in operation on January 01, 1978. The Labour Court has accepted this plea and allowed the application and declared that the

workmen are entitled to the difference of pay for the claim period @50% extra on their basic pay.

3. It is argued by Mr. H.S. Ghuman, learned counsel appearing for the Board that non-payment of 50% special pay was justified since the pay scale itself was revised bringing the workmen to higher salary and, therefore, there was no justification for giving them the special allowance. The Board in its reply filed before the Labour Court in Application No.529 of 1989 has not justified the withholding of special allowance on any specific plea. All that they urged was that the applicants were not workman because they were drawing monthly salary which was more than prescribed Rs.3000/- per month [prior to amendment] and were working in a supervisory capacity and, therefore, they fell in the exceptions in Section 2 (s) of the 1947 Act. The Labour Court recorded in its order that the issue was not pressed by the Board. If it was not pressed by the Board before the Labour Court, the plea cannot be considered for the first time in writ jurisdiction. It is well settled that a new plea cannot be introduced at the writ stage to make out a new case.

4. Mr. Ghuman then argues that the origin of the right is strung on the Circular of the Board dated January 13, 1961 which give a special allowance for performance of arduous duties at the risk of life. This circular lost its effect on January 01, 1978 when the pay scales were revised by the Punjab Government for the corresponding post and pay revision duly adopted by the Board for its employees. Though this plea has not been taken in the written statement nor pressed before the Labour Court but still it is examined at the insistence of Mr. Ghuman. The circular has not been placed

on record of the writ petition nor was it before the Labour Court. The admitted position is that the claim of the workman was founded on this circular but merely because the pay scale was revised does not mean that the benefit granted under the Circular expired. This is because the special allowance continued in its new *avtar* on January 17, 1984 reduced to 30% of the basic pay. This *ex facie* proves that the claimants had a pre-existing right to 50% special allowance for the period January 01, 1978 to January 16, 1984 and, therefore, there is no error apparent on the face of the order passed by the Labour Court, Ludhiana. I would endorse it as the correct legal approach to the issue determined in favour of the respondents. No other ground was pressed.

5. For the foregoing reasons, I find no merit in this petition and would dismiss it.

(RAJIV NARAIN RAINA)
JUDGE

02.02.2017
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Whether speaking/reasoned Yes

Whether reportable Yes