

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14037 of 1995

Date of Decision: 02.02.2017

The Malout Cooperative Spinning
Mills Ltd. Malout

... Petitioner

Versus

The Presiding Officer, Industrial
Tribunal, Punjab, Chandigarh and others

... Respondents

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

Present: None for the petitioner.

Mr. Tribhuvan Dahiya, Advocate,
for respondents No.4 to 23.

RAJIV NARAIN RAINA, J.

1. A perusal of the order sheet reveals that the original record of the case file received from the Presiding Officer, Industrial Tribunal, Punjab was received in the High Court through letter dated August 12, 2009 from the Labour Commissioner, Punjab, Chandigarh but no entries of receipt of record was made on the reverse of the Tablak as per practice, as per office note. Therefore, the records of the Labour Court were not traceable. This case was admitted on November 27, 1996 and the operation of the impugned award dated July 04, 1994 was stayed. As per office note, counsel had been informed over the telephone about the date fixed of hearing in this case.

2. No one appears for the petitioner while Mr. Tribhuvan Dahiya, learned counsel appears for respondents No.4 to 23. Since a purely legal

issue is involved in this case a decision thereon is not required to be based on record which is missing and this Court finds no necessity to adjourn the case to await appearance of the petitioner or his counsel who has not come forward to assist the Court.

3. Heard Mr. Tribhuvan Dahiya and perused the impugned award passed by the Presiding Officer, Industrial Tribunal, Punjab and the material on file. It may be noted that the legal representatives of respondents No.7 & 11 have been brought on record and amended memo of parties stands accepted on record. The issue referred to the Industrial Tribunal by the appropriate Government in the special references was whether Security Guards of Spinfed are entitled to the pay scale of ₹ 950-1800 w.e.f. January 01, 1986 as was given by the Cooperative Department of the State of Punjab. If the answer is yes, what directions are necessary in this behalf. The second question referred was whether the Security Guards are entitled to any allowance to control the fire and if so, from which date and what other details. The second issue was not pressed before the labour court and stands given up. The admitted position is that the respondents were employed as Security Guards by the Malout Cooperative Spinning Mills Ltd., District Faridabad. However, the dispute was raised and the demand notice was served by the agitating Security Guards on the Managing Director-cum-Chairman, Spinfed, Chandigarh and the Chief Executive of the Malout Mills.

4. The claimants prayed that they be given the pay scale of ₹ 950-1800 and the revised pay scale w.e.f. January 01, 1986 along with other consequential benefits. They said they were employed by the Spinfed and

posted to the Malout Cooperative Spinning Mills. They were in the lower pay when the Punjab Government revised the pay scale of Security Guards to ₹ 950-1800 and the Administrative Department of Cooperation, Punjab had also granted the same scale to its Security Guards. The claim was based on parity of treatment as similar Cooperative Societies and statutory bodies in the State of Punjab had given the pay scale of ₹ 950-1800 to their Security Guards. Their claim in the demand notice was wrongly ignored.

5. The admitted position on file is that they were appointed in the Spinning Mills at Malout and Spinfed was only an Apex body of the Spinning Mills in Punjab. The respondents were paid consolidated salary since the time of the recruitment. The cross-examination of witnesses revealed that Spinfed is an independent body which has nothing to do with the Punjab Government pay scale and the respondents were employees of the Mills and not the Punjab Government. The pay revision did not apply to them automatically.

6. Without there being any documentary evidence placed on record or referred to by the learned Tribunal, the learned Tribunal proceeded to ask an oral question in Court from the representative of the Mills appearing at the time of hearing whether all the employees of the Mills are getting Punjab Government pay scales and the Tribunal was informed that they are getting Punjab Government pay scales w.e.f. January 01, 1986. It is not recorded in the order of the Tribunal as to who was the person who was present in Court to concede to the claim of the respondent-Security Guards. If this was the position obtaining before the Tribunal, the Tribunal ought to have insisted that the statement be made on affidavit as an oral statement

having wide ramifications should not be accepted without evidence substantiated by original record. It is on this assumption that the Tribunal has allowed the reference vide impugned award dated July 04, 1994 and has held the respondent-Security Guards entitled to the pay scale of ₹ 950-1800 w.e.f. January 01, 1986. It would be appropriate to reproduce the operative reasoning of the learned Tribunal which reads as follows:-

"It is not disputed that all the employees i.e. clerical staff and other categories of the employees of the Mill are getting Punjab Govt. scale. I had asked specific question from the representative of the Mill whether all the employees of the Mill are getting Punjab Government scales and I was informed that they are getting Punjab Govt. pay scales with effect from 1.1.1986.

It is quite strange that all the employees of the Mill are getting Punjab Government scale and the only Security Guards have been given low grade and are denied Punjab Government pay scale without any reason whatsoever. The Security Guards are as good employees as clerical staff and officers of the Mills are, when the clerks and officers of the Mill are getting Punjab Government grades why the Security Guards are denied the same. There is no justification in denying the scale to the Security Guards. It is also not disputed that all similarly situated Government and semi-government employees are getting Punjab Govt. scales. Even the Security Guards in these concerns get the pay scale of Punjab Government employees and as such Security Guards of the Mill shall also be entitled to the pay scale of Rs.950-1800 with effect from 1.1.1986. This issue is decided accordingly."

7. The record of the Tribunal is not available for the benefit of this Court. If there was any documentary proof indicating conclusively that Clerical staff and other categories of employees of the Mills are in receipt of Punjab Government pay scales for their category of posts than it would not be safe to conclude in favour of the workman on mere conjectures and

surmises that they had an actionable right or a legitimate expectation.

8. The learned Tribunal has noticed in the award that in cross-examination witnesses deposed that Spinfed is the apex body of the Cooperative Mills and has nothing to do with the Punjab Government or its pay scales. Since the Security Guards were employees of the Mills, the petitioning Malout Mills were under no bounden duty to revise pay scales of the Security Guards and could restrict them to their conditions of service duly accepted by them at the time of employment which was on payment of consolidated salary. It was the categorical stand before the Presiding Officer, Industrial Tribunal, Punjab on affidavit submitted by Spinfed that it had never received the demand notice dated May 23, 1990 and conciliation proceedings were held in Moga between the workmen and the petitioner Malout Mills. Therefore, no dispute came into existence as far as respondent-Spinfed was concerned. The Spinning Mills in the cooperative sector in Punjab were seven namely, the Mills at Kotkapura, Abohar, Mansa, Tappa, Goindwal Sahib, Bathinda and respondent-Malout Mills. These Mills collectively had total staff strength of about six thousand employees of all categories including security guards. It was stated in the affidavit that Spinfed has no concern with the profit and loss of the Malout Mills. The balance sheet of Malout Mills is prepared independently from Spinfed. The Malout Mills are covered by the provisions of the Industrial Employment (Standing Orders) Act, 1946 and the rules framed therein. It has been stated in the affidavit placed at Annex P-5 with the petition that on September 01, 1989 the Punjab Government revised the minimum wages and as per revision the Security Guards were entitled to receive consolidated

salary of ₹ 825/- per month. But on request of the Security Guards of all Mills the pay was enhanced and fixed at ₹ 1000/- per month at the relevant time. Besides pay, the Security Guards were in receipt of Washing Allowance and were given winter and summer uniforms.

9. The Malout Mills came into existence on January 11, 1984 and were incurring losses and the year-wise statement of loss was disclosed in the affidavit in para.12 in tabular form. The audited balance sheets of the Malout Mills from 1985-86 to 1991-92 was attached with the affidavit. The total number of Security Guards involved in the litigation are 20 in number in the Malout Mills and it was pleaded that in case the Court grants the pay revision as per Punjab Government then there would be unrest amongst the 1300 workers who have been paid as per Minimum Wages Act and were similarly situated. This would lead to breach of industrial peace and harmony. The Tribunal appears not to have taken cognizance of the affidavit placed before the Labour Court.

10. Aggrieved by the award, the Malout Mills have approached this Court by way of the present petition challenging the award as suffering from errors. The petitioning Spinning Mill is a juristic person registered under the Punjab Cooperative Societies Act, 1961 and bears separate registration number. So is the case with Spinfed which bears separate number.

11. Not only this, the petitioner has pleaded in this petition that till 1991-92 during the eight years of the existence of the Mills it has suffered loss to the tune of ₹ 11.8 crores which was equivalent to about the project cost of the Mills. It would not be possible according to the petitioner to incur the extra burden of the award. There can be no doubt that Spinfed and

the Malout Spinning Mills are independent juristic persons and have independent existence. The Spinfed does not control the business and affairs of the petitioner-Mills.

12. Still further, a perusal of the demand notice dated April 14, 1990 issued by the Convener, Spinfed Security Guards, Federation, Head Office, Malout was served on Spinfed and not the petitioner-Mills and, therefore, no industrial dispute has come into existence between the employer and employees of Malout Spinning Mills falling under Section 2(k) of the Act. There is not even a whisper in the demand notice served on Spinfed that there were clerical and other staff in the Malout Spinning Mills who have been given the pay revision by the Punjab Government and, therefore, the story orally made before the learned Tribunal at the hearing has no factual basis or legs to stand on. Even the reference has been made of Security Guards of Spinfed and, therefore, the learned Tribunal could not travel beyond the reference and saddle the petitioner with financial liability not incurred.

13. Despite these glaring discrepancies in the case set up by the respondent Security Guards and keeping in view the fact that there was no reference against the petitioner, the learned Industrial Tribunal, Punjab committed a fundamental error in accepting a bald oral statement made before it conceding the claim which was unsubstantiated by evidence or documentary proof to bring the case on parity with imaginary clerical staff and other categories of employees of the petitioner-Mills and decide the dispute in favour of the Security Guards who were paid not only minimum wages but more than minimum wages fixed for unskilled workers on a

request made by them with the petitioner. The Tribunal fell in error in passing an *ad idem* order assuming that it was not disputed fact from which parity was given without even ascertaining the names of persons who were getting Punjab Government scales of pay in the Mills at Malout. Information supplied from the Bar without any legal backing is a dangerous acceptance by blindly assuming facts which were neither pleaded nor proved by evidence.

14. Accordingly, this Court is of the considered view that the impugned award dated July 04, 1994 is not legally supportable as it suffers from manifest errors apparent of the face of the record and fundamental flaws of reasoning and the same is not legally sustainable. The award is set aside. The petition is allowed. It is declared that the respondent-Security Guards can have no actionable claim against the Malout Cooperative Spinning Mills and they are free to press their claims against Spinfed, if at all. The reference order is by itself misdirected and is held inherently invalid against the petitioner Mills and the same is set aside to that extent. This is the reason why I have not thought it necessary to stay my hands from deciding the case for it to sit indefinitely on the rack only because the record of the Tribunal is not found.

(RAJIV NARAIN RAINA)
JUDGE

02.02.2017
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Whether speaking/reasoned Yes

Whether reportable No