

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

IOIN CWP No.13420 of 1997 in/&
CWP No.13420 of 1997 (O&M)
Date of decision: 03.05.2017

Union of India& anr.

.... Petitioners

VS.

Smt. Mahendra & ors.

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Jagdish Marwaha, Advocate
for the petitioner.

Mr. Rajinder Singh, Advocate for
Mr. M.S.Jandiala, Advocate
for the respondents.

Rajiv Narain Raina, J.(Oral)

When this writ was filed by the Indian Railways in 1997, it was noted in the index that similar cases were pending and notice of motion had been issued in them. Notice was secured on this imploration. Out of those writ petitions one was CWP No.15637 of 1996, which stands disposed of on 27.04.1998 with the following order:

“The petitioner-Union of India has filed the writ petition to challenge the order passed by the Labour Court by which it was directed that the arrears of salary be paid to the respondent-workman. The petitioner alleges that the requisite payment has already been made. Consequently, it prays that the order passed by the Court be set aside.

Mr. Singla who appears for the respondent-workman states that in view of the statement of salary as produced by the petitioner, the amount of money as

claimed by him has already been paid to him. Resultantly, the order dated August 2, 1990 a copy of which has been produced as Annexure P-1 and the subsequent orders passed by the Labour Court in the application under Section 33C(2) may be set aside.

It is ordered accordingly. Since the full payment has been made to the respondent-workman, it is clarified that he will not be entitled to recover anything in pursuance of the impugned orders. The writ petition, is accordingly, disposed of. No costs.”

The other case cited and relied as similar/identical in the index was CWP No.15964 of 1996, which has also been dismissed by me recently on 16.02.2017 by passing the following order:

“No-one appears on behalf of the petitioner despite notice in the cause list that adjournments will not be granted in old cases taken up in the urgent list for final disposal.

Since it is an old case, I have proceeded to hear the learned counsel representing respondent No.2 for final disposal and with his help, have perused the record on file.

The Labour Court had returned finding of fact that there was no fault of the claimant for the period 15.09.1992 till 16.06.1993, when the applicant-respondent was being transferred by the department from one place to other without issuing relieving orders or Railway passes for travelling and reporting for duty. The claimant was restored on duty on 17.06.1993 with the intervention of the Labour Court, in the proceedings under Section 33-C (2) of the Industrial Disputes Act, 1947. The Labour Court has allowed the claim application

and granted the arrears of salary for the period 15.09.1992 to 16.06.1993 as money due by holding the right to be pre-existing and was disturbed illegally and arbitrarily by the petitioner-respondent. The ensuing dispute as to non-payment of salary in the peculiar circumstances falls within the jurisdiction of the court in execution proceedings and the Presiding Officer, Labour Court, Bathinda in his impugned order dated 10.06.1994 committed no illegality either on facts or in law to compute money to which the claimant was entitled to as a matter of right by reason of wrongdoing by making the workman a shuttle cock in the guise of transfers, the expenses of which movements were expected by the Railway administration to be shelled out of the pocket of the low paid employee. The Labour Court has rightly allowed the claim application and for good reason. I find no merit in this petition filed by the Union of India and would dismiss it.

It may be noted that the orders of Labour Court was challenged in the first instance by the Railway Administration before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, in O.A. No.167/PB/1995, which proceeding was withdrawn to approach the proper forum. The Tribunal passed the order in the light of the judgment passed by the Supreme Court in Civil Appeal No.12074 of 1995 in SLP No.21776 of 1995.

While dismissing the petition, the respondent, a low salaried employee, is held entitled to interest @ 6% per annum on the unpaid salary till realization.”

It may be mentioned that in CWP No.15964 of 1996 (supra) none appeared for Union of India in the Railways. This petition like the others arises out of an application filed under Section 33C(2) of the Industrial Disputes Act, 1947 on 12.07.1993 by the respondent worker, which has been allowed. The applicant has been held entitled to full pay and allowances and other benefits for the period of suspension. The Management has been directed to compute the same and make the payment within a period of three months from the date of order against which this writ was filed.

Once the order of suspension stood recalled by the management, it does not lie in their mouth to deny the same benefits for the period of suspension in the present case as the right exists and has become pre-existing and vested of the rule of parity of treatment.

The only argument made by learned counsel for the appellant at the hearing is that the order of Division Bench dated 27.04.1998 proceeded on the concession of counsel, is an last ditch argument of desperation and has to be summarily rejected as it appears not to true from the order reproduced above. The Railway administration has to maintain equality of treatment among those who have become equal by the declaration of law.

Accordingly, this writ petition is dismissed for lack of substance.

03.05.2017
sonia

(RAJIV NARAIN RAINA)
JUDGE

1. Whether speaking/non-speaking?
2. Whether reportable?

Yes
No