

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.16553 of 1996
Date of Decision:06.10.2017**

Balwant Singh

... Petitioner

Vs.

The Presiding Officer and others

... Respondents

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

Present : Mr. R.S. Khosla, Sr. Advocate with
Mr. Ishrat Phulka, Advocate for the petitioner.

None for respondents No.2 and 3.

P.B. BAJANTHRI J. (Oral)

Despite giving sufficient time, there is no representation on behalf of respondents No.2 and 3. Pursuant to the order dated 24.8.2017, petitioner sent a registered post on 6.9.2017 communicating the order dated 24.8.2017. Even then there is no representation on behalf of respondents No.2 and 3.

In the instant petition, petitioner has assailed the award passed by the Labour Court dated 22.3.1996 and sought for a direction to the Labour Court to proceed to make an award after considering the reference on merits.

Petitioner is stated to have been appointed on daily wage basis under the Executive Engineer, Sub-Urban Division, Bathinda during the period from 1.12.1984 to 31.1.1988. His services were terminated on 31.1.1988. Petitioner raised a industrial dispute relating to his illegal termination which was subject matter before the Labour Court. Reference No.2250/90 was decided on 26.03.1992 with the following order:

“5. When the case was at the stage of evidence, workman

offered to make statement and the same was recorded wherein he stated that he no longer wanted to pursue the reference as he would pursue his remedy for fresh reference after serving fresh demand notice depicting the correct date of termination.

6. In view of the facts given in the preceding para, this reference is disposed of against the workman the same having been pursued by him. However, no order as to costs.”

In view of the withdrawal of the earlier reference, petitioner sought one more reference which is numbered as Reference No.8/95. The same was decided on 22.03.1996 by the Labour Court while framing the following issues:

“(1) Whether the reference is not maintainable as alleged in the preliminary objections taken in the written statement?

(2) Whether the order of termination of services of the workman is justified and in order?

(3) Relief.”

Thereafter, Labour Court proceeded to pass order to the effect that second reference is not maintainable. Relevant portion reads as under:

“12. In view of my findings on issue No.2, the answer to the reference is that the order dated 1.1.1988 terminating the services of the workman with effect from 31.1.1988 is not legal and valid. The workman is, however, not entitled to any relief as this reference is not maintainable as held with regard to preliminary objection No.1 under issue No.1 because of withdrawal of the previous reference by the workman without permission of the court to have a fresh reference made on the same cause of action. Moreover, the workman had accepted fresh employment under the management in May, 1988, and had remained in service till 31.7.1988, as mentioned in para No.10 under issue No.2. By accepting fresh employment under the management, the workman had lost his cause of action which had accrued to him on termination of this services w.e.f.

31.1.1998. At the time of termination of his services on 31.7.1988, the workman had not completed 240 days of service in 12 calendar months preceding the termination of his services. That is why the workman had intentionally concealed the fact regarding his service under the management from May, 1988 to 31.7.1988. Accordingly, that the workman has got no industrial right to be enforced. In the circumstances, the workman is ordered to bear the costs. The costs of the management are assessed at Rs.1000/-”

Thus, the petitioner is aggrieved by the award passed by the Labour Court dated 22.3.1996 to the extent that second reference is not maintainable.

Learned counsel for the petitioner submitted that time and again Supreme Court and this Court held that second reference is maintainable provided if the first reference is not decided on merits. In support of this contention, he relied on three decisions passed by the Supreme Court as well as this Court. (i) **Virendra Bhandari v. Rajasthan State Road Transport Corporation and others**; 2002(3) S.C.T. 974 (see: para 3 and 4); (ii) **Gurbhej Singh v. State of Punjab and another**; 2003 (5) SLR 272 (see: para 11) and (iii) **Chaman Singh v. Presiding Officer, Labour Court and another**; 1991 (1) S.C.T. 172 (see: Para 3,4 and 5). In view of the principle laid down by the Supreme Court and this Court (cited supra), Labour Court's award dated 22.03.1996 is liable to be set aside.

Undisputed facts are that petitioner worked from 1.12.1984 to 31.1.1988. Question for consideration in the present petition is whether second reference is maintainable when the first reference is not decided on merits and it was withdrawn. Having regard to the principle laid by the Supreme court and this Court in the aforementioned judgments, Labour

Court erred in holding that second reference is not maintainable. Accordingly, award passed by the Labour Court dated 22.03.1996 is hereby set aside. Petitioner is out of service from 31.01.1988 and second award is passed on 22.3.1996. Therefore, at this juncture, it is not appropriate to remand the matter to the Labour Court. In view of the judgment passed by the Supreme Court in **Bharat Sanchar Nigam Limited v. Bhurumal**; 2014 (7) SCC 177 instead of remanding the matter, petitioner be given compensation. Therefore, respondents No.2 and 3 are hereby directed to pay compensation of ₹ 1,50,000/- within a period of three months from the date of receipt of certified copy of this order. Failing which petitioner is entitled to interest @ 6% per annum from today.

Writ petition stands allowed with costs of Rs.10,000/- to be paid by respondents No.2 and 3 from their pockets and not from the Electricity Board. The same shall be deposited with the Advocate Benevolent Fund.

06.10.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**