

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3815 of 1996

Date of Decision: 19.04.2017

Haryana State Electricity Board

...Petitioner

Vs.

Presiding Officer, Labour Court, Faridabad & Anr.

...Respondents

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

Present: Mr. H.S. Gill, Sr. Advocate,
with Mr. Nitin Rampal, Advocate,
for the petitioner.

Mr. Sushil Grover, Advocate,
for the respondent No.2.

RAJIV NARAIN RAINA, J. (Oral)

1. In the face of Ex M.3 being an order passed by the competent authority in the erstwhile Haryana State Electricity Board (presently called 'HPGCL') treating the suspension period w.e.f August 01,1974 to November 08, 1982 as leave of the kind due would divest the Labour Court of authority to allow the application under Section 33 C (2) of the Industrial Disputes Act, 1947, with respondent claiming arrears of salary for the period the respondent remained involved in case FIR No.5 dated 12.01.1972 registered at Police Station Ladwa, District Kurukshetra, under Section 5(2) of the Prevention of Corruption Act read with other Sections of the IPC.

2. The respondent was prosecuted by the Judicial Magistrate First Class and acquitted vide judgment dated April 22, 1982. It appears that the respondent was paid subsistence allowance vide Ex M.4 in a sum of

₹ 64,685.13/- during the period he was an under trial.

3. The question which falls for consideration is as to whether the Labour Court-II, Faridabad could have granted full back wages for the period the employee remained under suspension i.e from August 01,1974 to November 08, 1982. The Labour Court has awarded this amount with 12% interest vide order dated 29.11.1995. When the period of suspension has been treated by order as leave of the kind due then the respondent can have benefit of that administrative order alone and nothing further so long as the order Ex M.3 holds good and true. The right to money had ceased to pre-exist for the period in dispute due to the order.

4. Proceedings under Section 33 C (2) of the ID Act, are in the nature of execution proceedings to compute money due, outstanding and unpaid as an existing right and the Labour Court is not permitted to pass an order which goes behind the executive order and effaces it by creating an administrative order all be itself.

5. Rights can flow only if it is set aside by the Writ Court, the Civil Court or the Labour Court acting under Section 10 (1) (c) of the ID Act. The Labour Court clearly transgressed its jurisdiction in granting relief directing HPGCL to compute money as due and pay the arrears of the salary for the disputed period.

6. For the above reasons, this petition is allowed and the impugned order is set aside due to its fundamental flaw as discussed above, leaving the respondent to seek his remedies, if advised, as are available in law against the order Ex M.3 treating the period as leave of the kind due when it is felt adverse to the interest of the respondent. In which case, this

order will not be treated as an expression of opinion on the merits of the claim as only the issue of jurisdiction was decided.

(RAJIV NARAIN RAINA)
JUDGE

19.04.2017
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>