

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

CWP No.3091 of 1997
Date of decision: 23.03.2017

Gurmail Singh

.... Petitioner

VS

State of Punjab & ors.

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: None for the petitioner.

Mr. Anil Sharma, Addl. AG, Punjab.

Rajiv Narain Raina, J.(Oral)

Challenge in this writ petition is to the order of the learned Labour Court, Patiala dated 14.11.1996 passed in proceedings under Section 33-C(2) of the Industrial Disputes Act, 1947. Part of the claim for salary has been rejected while the other has been allowed and reference answered accordingly.

The case could not be put better than in the words of the learned Labour Court in para 6 and 7 of the award, which reads as follows:

“6. The workman has prayed for computation of the wages for the period from 20.08.1993 to 25.01.1994. This period may safely be divided into two time spans, the first from 20.08.1993 to 31.12.1993 and the second from 01.01.1994 to 25.01.1994.

7. Sh. Subhash Chander MWI Senior Assistant with the management, with reference to the official record has stated that the workman

applied for leave from 20.08.1993 to 31.12.1993 which was sanctioned and he was paid leave salary amounting to ₹ 3,250/- for this period through a bank draft. Ex M1 is the order regarding sanction of leave. This evidence is not seriously challenged by the workman in his cross-examination. However, his explanation is that it was under the directions of Civil Surgeon that he applied for leave, which was sanctioned by the Civil Surgeon. The implication is that he did not voluntarily apply for leave but did so only under the order of the Civil Surgeon. That may be so. However, it is an admitted fact that the leave for the period from 20.08.1993 to 31.12.1993 was sanctioned vide order of the management Ex.M1 to the workman at his own application. It is established by authority that such an order cannot be challenged in the proceedings under Section 33-C(2) of the Industrial Disputes Act, 1947. Therefore, this part of the present application is non-maintainable and this Court has got no jurisdiction to go into the legality or otherwise of the order of the Civil Surgeon Ex. M1. This issue is decided against the workman to the extent indicated.”

Having rejected claim for salary for the first span, the Labour Court drew its attention to the second span and concluded that prayer in favour of the workman against which the State is not aggrieved since it has not challenged that part. The workman has challenged the impugned part of the award which denies him salary for the first span i.e. from 20.08.1993 to 31.12.1993.

No amount of forensic reasoning or legal submissions or any number of grounds taken or can possibly be, would dent the cold logic in the afore-quoted paragraphs of the award made by the learned Labour Court with sharpened skill. The reasoning when read against the facts is crystal clear and the logic irrefutable. The workman could not be permitted to go behind his own application and plead that he did not voluntarily apply for leave after having submitted an application in writing under his signatures asking for leave which was granted accepting his condition.

Palming off the burden on the Civil Surgeon is an act of desperation to take undue benefit because the application could not have been processed under Section 33 C (2) of the Industrial Disputes Act, 1947 due to non-maintainability of the dispute in the face of the order sanctioning leave by the Civil Surgeon. Arguendo, even if the Civil Court was moved it would have met the stonewall of the order allowing leave for the period claimed towards salary in the claim application and the case, if opted in the civil court, would have inevitably been dismissed in the form of suit on the ground of want of duty in the first span with leave taken from leave of the kind due. The result could have been achieved only if only the order was set aside, which the labour court could not in the jurisdiction invoked and has therefore been rightly rejected in the well reasoned order which I fully support as one passed in accordance with law.

I have hardly any doubt in my mind that had the workman appeared today I might have put him to special costs for filing a frivolous and vexatious petition which had no legs to stand on and which deserved to have been dismissed *in limine*.

On hearing the State counsel the petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

23.03.2017
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| 1. <i>Whether speaking/non-speaking?</i> | <i>Yes</i> |
| 2. <i>Whether reportable/non-reportable?</i> | <i>No</i> |