

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

1. CWP No.3459 of 2012

Virender Pal ... Petitioner

Vs.

Presiding Officer and another ... Respondents

2. CWP No.1685 of 2012

Municipal Council, Jind ... Petitioner

Vs.

Presiding Officer and another ... Respondents

Date of Decision:14.11.2017

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

Present : Mr. R.K. Malik, Sr. Advocate with
Mr. Bhupinder Malik, Advocate
for the petitioner-workman.

Mr. C.B. Goel, Advocate
for respondent No.2-Municipal Council.

P.B. BAJANTHRI J. (Oral)

By this common judgment, both the aforementioned writ petitions shall be decided together as the both are arising out of common order.

In these two petitions, Municipal Council, Jind as well as workman have questioned the validity of the order dated 10.10.2011 passed in Application No.2 of 2009 by the Labour Court.

Workman-Virender Pal was appointed as a daily-wager and subsequently his services were regularized while working as a regular employee, his services were dispensed with on 17.3.1996 which was subject matter of Industrial Dispute. Labour Court passed award on 8.8.2000 in favour of the workman in respect of his dispensation from service while holding that there is violation of Section 25-F of the Industrial Dispute Act.

Feeling aggrieved by the award passed by the Labour Court, Municipal

Council, Jind, filed writ petition before this Court. On 25.05.2004, Civil Writ Petition No.7719 of 2001 filed by the Municipal Council, Jind got dismissed. Consequently, Municipal Council Jind, preferred an appeal before the Supreme Court against the order dated 25.5.2004. During pendency of the petition before the Supreme Court, petitioner was taken back to duty on 17.01.2005. Thereafter, on 17.7.2008, Supreme Court held that workman-Virenderpal is entitled to 50% back wages. In this background, claim of the workman-Virenderpal was settled in accordance with the Labour Court award read with decision of the Supreme Court. However, workman-Virenderpal was not extended the benefit of wages for the period from 1.2.2002 to 16.01.2005. Workman has presented application No.2 of 2009 which was decided by the Labour Court under Section 33C(2) of the Industrial Disputes Act, 1947 to the extent that workman-Virender Pal is entitled to a sum of Rs.1,24,000/- i.e. 50% of the amount for the period from 1.2.2002 to 16.1.2005 in view of the directions of the Supreme Court. Hence, these petitions by both workman as well Municipal Council.

Learned counsel for the Municipal Council submitted that claim of the workman-Virenderpal of back wages for the period from 1.2.2002 to 16.01.2005 is belated. Claim cannot be entertained by the Labour Court. He further submitted that in view of the direction issued by the Supreme Court on 17.7.2008, Virenderpal is not entitled beyond 50% back wages. Thus, Labour Court has erred in extending the benefit of wages to Shri Virenderpal.

Per contra, learned counsel for the workman submitted that question for consideration in the present petition whether Virenderpal is entitled to full back wages for the period from 1.2.2002 to 16.1.2005 or not?

In this regard, it is submitted that there is no specific direction in the order of Supreme Court dated 17.7.2008 to the extent that even for the intervening period from date of award till reinstatement workman is entitled to 50% back wages is with reference to the award passed by the Labour Court dated 8.8.2000. Therefore, Virenderpal is entitled to 50% of back wages upto the date of award and not beyond such period also. Since Municipal Council, Jind has not extended full wages for the period from 1.2.2002 to 16.1.2005, therefore, Virenderpal is entitled to full back wages to the extent of Rs.2,48,500/-. Labour Court failed to appreciate that Virenderpal is entitled for full back wages for the period from 1.2.2002 to 16.01.2005 and it is wrongly restricted upto 50% back wages pursuant to the direction of the Supreme Court. 50% back wages has been restricted with reference to the Labour Court award dated 8.8.2000 and not beyond that period. Thus, Labour Court has erred in extending benefit of wages to the extent of Rs.50% is illegal and contrary to the facts.

Heard learned counsel for the parties.

Crux of the matter in the present case is whether Virenderpal is entitled to full-back wages for the period from 1.2.2002 to 16.1.2005 or not?

Admittedly, Supreme Court while passing order dated 17.7.2008 directed that Virenderpal is entitled to 50% back wages. Such order has been passed with reference to the award dated 8.8.2000. Therefore, 50% back wages are required to be examined with reference to the date of dispensing the services of Virenderpal on 17.3.1996 read with the award passed by the Labour Court dated 8.8.2000. Supreme Court has not clarified or directed that Virenderpal is entitled for back wages of 50% upto 17.1.2005 the date on which he has been taken back to duty by the

Municipal Council, Jind. Further, Labour Court erroneously held that Virenderpal is entitled to 50% back wages for the period from 1.2.2002 to 16.1.2005 with the reference to the direction issued by the Supreme court on 17.7.2008. In the absence of the specific direction of the Supreme Court insofar as restricting back wages to 50% through out from the date of dispensation of services of workman- Sh. Virenderpal on 17.3.1996 till 16.1.2005, order dated 10.10.2011 passed by the Labour Court is not sustainable.

In view of these facts and circumstances, order passed by the Labour Court dated 10.10.2011 is set aside. Consequently, workman-Sh. Virenderpal is entitled to a sum of Rs.2,48,500/- as back wages for the period from 1.2.2002 to 16.1.2005. Municipal Council, Jind, is hereby directed to pay the said amount within a period of four months from today alongwith interest @ 6% per annum. If any amount is paid for the above period the same shall be adjusted and balance amount shall be released.

Accordingly, CWP No.3459 of 2012 filed by the workman is allowed and CWP No.1685 of 2012 filed by Municipal Council, Jind, stands dismissed.

14.11.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**