

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

CWP No.19981 of 2016 (O&M)

Date of Decision:31.08.2017

Sanjay

... Petitioner

Vs.

State of Haryana and others

... Respondents

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

Present : Mr. Kanwaljeet Singh Dera Bassi, Advocate for the petitioner.

Mr. Padamkant Dwivedi, Advocate for respondent No.3.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has questioned the validity of award passed by the Labour Court dated 2.9.2016 (Annexure P-3).

The petitioner was appointed as a sweeper in the month of February 2000. His services were terminated on 1.1.2002. Feeling aggrieved by his termination, he raised industrial dispute which was decided in favour of the petitioner on 20.08.2007 whereby respondents were directed to reinstate the petitioner with continuity of service alongwith back wages and all service benefits. The respondents while implementing the award insisted the petitioner for giving up back wages so that petitioner would be reinstated. Consequently, petitioner was compelled to furnish an affidavit in this regard. To that extent, he has filed an affidavit Annexure P-4 on 11.9.2008. In the meanwhile, petitioner was reinstated on 1.1.2008. In this background, petitioner filed a writ petition before this Court for the purpose of execution of the award dated 20.8.2007. This Court was pleased to

dispose of the petitioner's writ petition as dismissed as withdrawn with liberty to resort to the execution procedure under the Industrial Disputes Act, 1947. Thus, petitioner has filed an application before the Labour Court. Labour Court passed an order on 2.9.2016 that petitioner is not entitled for back wages as he had given up the back wages by filing an affidavit Annexure P-4. Hence, the present petition.

Learned counsel for the petitioner submitted that on 20.8.2007, award of the Labour Court was in his favour to the extent of reinstatement with continuity of service and full back wages. Respondents did not implement the award immediately. However, they insisted that if petitioner gives up back wages in that event he would be reinstated. Therefore, petitioner was compelled to file an affidavit to the extent that he has given up the back wages. Petitioner is an illiterate person and he was appointed as a sweeper. For his livelihood, his intention was to take back the employment. Therefore, he was compelled to furnish an affidavit to the extent that he will give up the back wages. Therefore, respondents as well as Labour Court relying on affidavit denied the benefit of award dated 20.8.2007. The same is highly arbitrary and illegal. Thus, order passed by the Labour Court dated 2.9.2016 is liable to be set aside.

Per contra, learned counsel for respondent No.3 vehemently resisted the petitioner's claim stating that petitioner on his own filed his affidavit to the extent that he will give up the back wages. Thus, the respondents have acted upon the petitioner's affidavit. Consequently, they have not filed writ petition. After lapse of time, petitioner cannot claim back wages with reference to the award passed on 20.08.2007. Therefore, rightly the Labour Court considered the petitioner's contention with reference to

affidavit. Hence, petitioner has not made out a case so as to interfere with the award of the Labour Court.

Heard learned counsel for the parties.

Undisputedly, an award was passed in favour of the petitioner on 20.08.2007 insofar as reinstating him with continuity of service and full back wages. If at all the respondents were aggrieved even to the extent of back wages, they could have filed the writ petition. On the other hand, it is evident that respondents have prevailed upon the petitioner to the extent that petitioner shall give up the back wages as is evident from the affidavit. No person will give an affidavit to give up his back wages when judicial order is in his favour unless and until there is coercion and compulsion on such person to furnish an affidavit insofar as giving up back wages. In the affidavit, it is stated that now a compromise has been effected between the petitioner and the Municipal Committee. Terms and conditions were not stated how the compromise has been entered into between the petitioner and the Municipal committee. If the intention of the Municipal Committee-respondent was not to compel the petitioner to give up back wages, in that event, there should have been written agreement or compromise before the Labour Court or this Court. Therefore, affidavit (Annexure P-4) is void and contrary to judicial decision and it cannot be taken into consideration for the purpose of implementation of the award dated 20.08.2007. Moreover respondent is in a better position to command poor worker and respondent cannot abuse power in this fashion. Supreme Court in the case of **Central Inland Water Transport Corporation Limited and another v. Brojo Nath Ganguly and another**; (1986) 3 SCC 156 observed as under:

“101. It was, however, submitted on behalf of the appellants

that this was a contract entered into by the Corporation like any other contract entered into by it in the course of its trading activities and the court, therefore, ought not to interfere with it. It is not possible for us to equate employees with goods which can be bought and sold. It is equally not possible for us to equate a contract of employment with a mercantile transaction between two businessmen and much less to do so when the contract of employment is between a powerful employer and a weak employee.

102. It was also submitted on behalf of the appellants that Rule 9 (i) was supported by mutuality inasmuch as it conferred an equal right upon both the parties, for under it just as the employer could terminate the employees's service by giving him three months' notice or by paying him three months' basic pay and dearness allowance in lieu thereof, the employee could leave the service by giving three months' notice and when he failed to give such notice, the Corporation could deduct an equivalent amount from whatever may be payable to him. It is true that there is mutuality in Rule 9(i)-the same mutuality as in a contract between the lion and the lamb that both will be free to roam about in the jungle and each will be at liberty to devour the other. When one considers the unequal position of the Corporation and its employees, the argument of mutuality becomes laughable."

Hence, the labour court and respondent relying on affidavit of the petitioner insofar giving up back wages would be illegal, arbitrary and violative of Article 14 of the Constitution.

In view of the above facts and circumstances, order passed by the Labour Court dated 2.9.2016 is hereby set aside. Respondents are hereby directed to calculate back wages in terms of the award passed by the Labour Court dated 20.08.2007 and the same shall be released to the petitioner within a period of six weeks from today. However, it is made clear that

petitioner is not entitled to interest on the back wages for the reasons that there is a delay in filing the application of execution of the award dated 20.08.2007.

Petition stands allowed accordingly.

31.08.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No