

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

205

CWP No. 25553 of 2014

Date of decision: 07.07.2017

Parmod Kumar

...Petitioner

Vs.

Presiding Officer Industrial Tribunal Patiala and Another

...Respondents

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

Present: Mr. Sanjay Tangri, Advocate for the petitioner.

Mr. Gunjan Rishi, Advocate for respondent No. 2.

P.B. BAJANTHRI, J.(ORAL)

In the instant writ petition, the petitioner has questioned the award dated 09.09.2014 to the extent that denial of back wages.

The petitioner is stated to have been joined service in the year 1992 and his services were dispensed with w.e.f. 31.08.2008. Thereafter, he raised an Industrial Dispute. On 09.09.2014 learned Industrial Tribunal was pleased to direct the respondents to reinstate the petitioner with continuity of service but without back wages. Thus, the petitioner has questioned the denial of back wages in the present petition.

Learned counsel for the petitioner submitted that Industrial Tribunal on the presumption that the petitioner must be working from 01.09.2008 since he was a typist it is unbelievable that he remained out of job for all these days. It was further submitted that denial of back wages only on presumption is incorrect. Consequently, petitioner is entitled to back wages. In support this contention

learned counsel relied upon a decision of Supreme Court reported in **2013(10) SCC 324 (Para 33) *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed) and Others*** wherein guidelines have been issued under what circumstances workman is entitled for back wages.

Per contra learned counsel for the respondents vehemently contended that petitioner is not entitled for back wages. It was further submitted that award has been implemented, therefore, question of granting back wages do not arise.

Heard learned counsel for the parties.

Question in the present petition is whether the petitioner is entitled for back wages or not? Industrial tribunal denied back wages on the presumption that petitioner being a typist must be working and it is unbelievable that he remained out of job for all these days. Except that nothing is forthcoming like whether the petitioner is gainfully employed from 01.09.2008 till the passing of the award dated 09.09.2014 or not. Respondents' contention that the petitioner's conduct is required to be taken into consideration for the purpose of entitlement of back wages or not. If conduct is taken into consideration during the period from 01.09.2008 till 09.09.2014 in that event petitioner is not entitled to back wages. Past conduct prior to dispensation of the petitioner cannot be taken into consideration. Moreover, no material has been produced to show that petitioner was gainfully employed during the intervening period. Presuming that petitioner was working as a typist. Even then for his livelihood and to maintain his family members he has to do some minimum work for which back wages cannot be denied. In the absence of material to show that petitioner was gainfully employed elsewhere denial of back wages by the Industrial Tribunal is incorrect. Petitioner case is squarely covered by the above cited decision.

In view of these facts and circumstances award dated 09.09.2014 is modified to the extent of without back wages. Petitioner is entitled to back wages of 75%. The same shall be calculated and disbursed to the petitioner within a period of 4 months from today. If back wages is not paid within the stipulated period in that event petitioner is entitled to 6% interest on back wages.

Accordingly, petition stands allowed.

July 07, 2017

Poonam (II)

(P.B.BAJANTHRI)
JUDGE

Whether speaking/ reasoned: Yes

Whether Reportable: No