

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8016 of 2012

Date of Decision: 10.1.2017

Director Hospitality-cum-Chief Executive
Officer Panchayat Bhawan Society, Chandigarh

... Petitioner

Versus

Presiding Officer Industrial Tribunal-cum-
Labour Court, U.T. Chandigarh & anr.

... Respondents

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

Present: Mr. PK Mutneja, Advocate,
for the petitioner.

Mr. OP Batra, Advocate,
for respondent No.2.

RAJIV NARAIN RAINA, J.(Oral)

The challenge in this petition is to the ex parte award passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T., Chandigarh. The sum total of the award dated 13.7.2011 reads as follows:-

“ Heard. Vide my separate award of even date, the reference is ex parte allowed. Impugned office order No.452 dated 08.07.1994 passed by the Director Hospitality Department-cum-member Governing Body Panchayat Bhawan Society, Chandigarh is set aside. Sh. Daya Ram Yadav is deemed to have been appointed as Assistant Supervisor w.e.f. 25.05.1994 to 25.06.2005 with all consequential benefit attached to the post of Assistant Supervisor. It is however clarified that pay scale of Sh. Daya Ram Yadav shall remain Rs.1500-50-2000-60-2060-70-2550-75-2700.

Arrears of consequential benefits if any shall remain limited to the extent of 3 years preceding

the date of demand notice dated 01.02.2006. The management shall comply with the award within 3 months from today or within 2 months from the publication of this award whichever is earlier. Appropriate Government be informed. Copy of this order this Award be also sent to learned District & Sessions Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.”

It is the case of the petitioner-management that the respondent-workman by mistake was designated and appointed as Assistant Supervisor, Governing Body Panchayat Bhawan, Chandigarh, on the retirement of one Sh. Harkesh Chaudhary. At that time the respondent-workman was working as Junior Assistant in the same organization. The office order was issued on May 25, 1994. Soon thereafter, on realizing that a mistake had been committed in appointing the respondent as Assistant Supervisor by designation, the management rectified the mistake and passed corrigendum office order dated July 8, 1994 withdrawing the earlier order with immediate effect. These two documents have been placed on the writ file as Annex P-1 and P-2.

Mr. Mutneja submits that the respondent employee raised a demand notice pretending to be one espoused by the Panchayat Bhawan Workers Union and raised the dispute with the management which led to reference to the Labour Court, Chandigarh. However, he withdrew the demand notice before the Labour Court and sought its permission to approach the forum again in the hope of a settlement. Thereafter, he sat back

for 10 years and again served a demand notice on August 19, 2004 in the same form as earlier i.e. Panchayat Bhawan Workers Union (Daya Ram). This demand notice led to a settlement between the parties and the respondent-workman was designated/appointed as Supervisor with immediate effect i.e. June 26, 2005. In view of this, there was no occasion for reference of the dispute for adjudication. He again struck back on February 1, 2006 with the same demand but modified that his designation/appointment should be given retrospective effect from May 25, 1994 which, as said earlier, was the date when the office order was passed which was withdrawn on July 8, 1994 by the management. This dispute could not be resolved in conciliation and led to reference to the Labour Court which has passed the impugned award as reproduced above. The short question for determination is whether the petitioner is entitled to retrospective promotion. For this relief, the respondent workman faces an obstacle which he would find hard to surmount. Firstly, back-dated promotion is sought after a decade, which if granted, will inherently lead to consequential retrospective seniority which if granted will result in disturbing the settled rights of others and therefore, the prayer is not justified and the contention in support of the plea is rejected. See P.S. Sadasivaswamy v. State of Tamil Nadu, AIR 1974 SC 227, where the Supreme Court has indicated that a dispute as to promotion should be raised within 6 months or not beyond one year because it tends to unsettle settled rights by passage of time in an upwardly mobile cadre.

Secondly, the office order withdrawing the appointment order in 1994 has not been challenged and set aside by any Court or by the Labour Court in the award and therefore, the petitioner would not achieve success

in securing relief and also be granted arrears of consequential benefits. The submission of Mr. Batra appearing for the respondent workman confining his prayer limited to 3 years preceding the date of demand notice dated February 1, 2006 is not tenable. Any such direction issued would be illegal.

In view of what has been said above, if the petitioner's rights, if any, stand extinguished by efflux of time then they cannot be revived by treating the claim as a recurring cause of action. Promotion is not a recurring cause of action the running of which never stops except at the hands of limitation. Moreover, the management was ex parte in the labour court. Without going into the reasons of being proceeded against ex parte and asking Mr. Mutneja to explain non-appearance of his client, I would not remit this matter to Labour Court only to waste time on the issue which is clearly settled and on this, I have heard Mr. OP Batra, learned counsel for the respondent-employee, who has tried to vindicate the award of the Labour Court by saying that it amounts to payment of merely 3 years arrears of difference of salary and thus its financial impact is not much when it stands substantially reduced. This is not an argument to accept as a credible one. The court cannot distribute largesse as the labour court award does. The respondent's claim is unfounded. The claim is stale and badly hit by delay and laches, waiver and acquiescence. A right to promotion and consequential seniority must be inherent, accrued and vested to claim monetary benefits with the principal relief to which there is no actionable right in this case and no legal obligation on the petitioner Society. Even the espousal of the cause without authority of the union of workers is dubious to bring the same within section 2 (k) of the Industrial Disputes Act, 1947.

I would, therefore, allow the petition there being substantial

merit in it and set aside the ex parte impugned award dated 13.7.2011 leaving the parties to bear their own costs.

(RAJIV NARAIN RAINA)
JUDGE

10.01.2017
monika

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