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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4221-2015 (O&M)
Date of decision : 22.3.2018

Zonal Manager, Punjab and Sind Bank	 Petitioner
Versus	
Sarabjit Singh	 Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R. Kartikey, Advocate for the petitioner.

Mr. S.S. Rana, Advocate for respondent.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

CM-1957-CII-2017

Learned counsel for respondent seeks to withdraw the present application.

Dismissed as withdrawn.

CR-4221-2015

Impugned in the present revision petition is the order dated 19.5.2015 (Annexure P-1) passed by learned Civil Judge (Senior Division), Jalandhar (Executing Court), vide which Executing Court while executing the award passed by the Presiding Officer, Central Government Industrial Tribunal cum Labour Court-I, Chandigarh, it was held that the decree holder is deemed to have joined duty on 2.6.2011 and is also entitled to wages from 2.6.2011 till date. The objections filed by the judgment debtor were accordingly dismissed. Judgment debtor was directed to make the payment within 15 days.

Heard.

It comes out that the Presiding Officer, Industrial Tribunal Central Government cum Labour Court-I, Chandigarh passed an award on 4.2.2011, whereby respondent-workman was ordered to be reinstated in service within a period of one month from the date of publication of the award.

Admittedly, both the parties have filed a writ petition against the said award in which employer claims that workman is not entitled to reinstatement and workman claims that he is also entitled for back wages. In the said case, no order under Section 17-B of the Industrial Disputes Act, 1947 was passed by this Court.

Before the Executing Court, an execution was filed stating that the decree holder-workman went on 2.6.2011 to join his duty as per the award and submitted the joining report but the judgment debtor did not allow him to join duty. Further, he again went to the office of the judgment debtor on 24.11.2014 but he was not allowed to join duty. Before the Executing Court, objections were filed by judgment debtor stating that decree holder never came to the office on 2.6.2011 or 24.11.2014 to join duties. He was called upon to join duty on 6.4.2015.

Vide the impugned order dated 19.5.2015 (Annexure P-1), the Executing Court of Civil Judge (Senior Division), Jalandhar took the view that the award was enforceable w.e.f. 6.5.2011 on the expiry of 30 days from the date of its publication. Consequently, the decree holder-workman is treated to have joined on 2.6.2011.

I am of the view that the said order is not sustainable in the eyes of law. When an award is passed, the workman-respondent is supposed to report for duty and if he states that he has reported for duty but he was not allowed to join the duties, he has to move the Executing Court for implementation of the award. When the employer denies that the respondent-workman had reported for duty on a particular date, it is a question of fact. Therefore, the averments made by the workman cannot be presumed to be correct. There is no deemed joining of duty on the expiry of 30 days of the publication of the award unless the award directs so. If according to the decree holder, he had reported for duty twice, on two dates i.e. 2.6.2011 and more than three years later on 24.11.2014 and it is denied by the employer, the Executing Court should have proceeded to enquire into the matter and decided the same after allowing the parties to produce documents/lead evidence so as to determine as to whether the averments are correct or not? In the meanwhile, the interim orders of joining the decree holder-workman could have been passed and the award implemented. However, impugned order dated 19.5.2015 (Annexure P-1), merely, by saying that the decree holder-workman is deemed to have joined duty from 2.6.2011 on the assumption that 30 days period from the publication of the award has expired, cannot be sustained in the eyes of law and the back wages from 2.6.2011 could not be allowed which otherwise were not allowed in the award.

As such, the impugned order dated 19.5.2015 (Annexure P-1) passed by learned Civil Judge (Senior Division), Jalandhar (Executing Court) is set aside. The Executing Court is directed to inquire as to whether the decree holder-workman offered himself for duty on the dates alleged by

him and as to whether the same was intentionally declined by the employer and if so, which relief is to be given to the decree holder-workman?

This Court has been informed that decree holder-workman has already joined the duty. Let the above noted matter be decided by the Executing Court after holding inquiry and passing a speaking order.

Allowed with above observation.

Since, the main petition is allowed, the miscellaneous application, pending, if any, stands disposed of.

(KULDIP SINGH)
JUDGE

22.3.2018
preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No