

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

244

**CWP-14114-2016 (O&M)
Date of decision:15.02.2018**

Divisional Manager, CTU & Director Transport,
Union Territory, Chandigarh

...Petitioner

Versus

The Presiding Officer, Labour Court,
Union Territory, Chandigarh and another

.... Respondents

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

Present: Mr. Sanjeev Ghai, Advocate for the petitioner.

Mr. Amit Kaith, Advocate for respondent No.2.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has assailed the award passed by the Labour court dated 18.05.2015 (Annexure P-3).

2. Respondent No.2 was appointed as a Helper on 23.02.1980. While working as such, he was involved in a criminal case relating theft of certain materials from the office of the petitioner for which FIR was filed on 31.08.1981. Arising out of the same proceedings he was arrested on 08.09.1981. Consequently, he was placed under suspension. Suspension was revoked on 26.03.1987. In the meanwhile in the criminal proceedings he has been acquitted on 30.09.1985. For the purpose of regulating the suspension period respondent No.2 had appraoched labour court wherein order has been passed in his favour on 16.03.1992 and it was implemented

by the petitioner. During the intervening period, juniors were stated to have been promoted to the post of Assistant Fitter and Fitter on 12.02.1985 and 01.05.1987. On this issue respondent no. 2 raised an industrial dispute and it was decided on 06.08.2009. Labour court passed an order in favour of respondent No.2. Petitioner implemented the award of the labour court dated 06.08.2009 while promoting respondent No.2 to the post of Assistant Fitter and Fitter with retrospective date from 12.02.1985 and 01.05.1987 respectively on 28.07.2010. Thereafter, for not extending the monetary benefits from 12.02.1985 and 01.05.1987 in the respective cadre up to 28.07.2010 respondent raised one more dispute which was decided in favour of the respondent on 18.05.2015. Hence the present petition by the petitioner.

3. Learned counsel for the petitioner pointed out that in the earlier dispute labour court has framed issue whether respondent is entitled to be promoted as Assistant Fitter w.e.f. 12.02.1985 and Fitter w.e.f. 01.03.1989 with consequential relief of pay and other benefits along with interest. Whereas labour court extended the benefit of retrospective promotion. However, no relief has been granted in respect of pay and other benefits along with interest for the intervening period from retrospective promotion to both the cadres. Consequently, explanation 5 of Section 11 of the CPC is applicable. In other words, respondent cannot approach court time and again in piecemeal relief. It was further submitted that respondent has not worked in the post of Assistant Fitter and Fitter during 1985 and 1989 till 28.07.2010. Consequently, principle of no work no pay is applicable.

Hence he is not entitled for pay and other benefits. It was also submitted that having regard to the conduct of the respondent that he was involved in criminal case, he was arrested and placed under suspension and he has been extended the benefit of salary during the suspension period. Therefore, he is not entitled to claim monetary benefits for the retrospective promotion. Thus, labour court has erred in extending the benefits of monetary benefits.

4. Per contra, learned counsel for the respondent submitted that CPC is not applicable for the Industrial Dispute. Therefore, question of *res judicata* principle is not applicable. Hence there is no infirmity in the award passed by the Labour court dated 18.05.2015. It was further submitted no work no pay principle is not attracted in the present case. Since petitioner's have prevented respondent No.2 in discharging the duties of the higher post due to pendency of the criminal case. Once in a criminal case if a person is acquitted consequently, he is entitled for all service benefits including monetary benefits. Thus, petitioners have not made out a case so as to interfere with the award passed by the labour court dated 18.05.2015.

5. Heard learned counsel for the parties.

6. Crux of the matter in the present petition is whether respondent No.2 is entitled to monetary benefits for retrospective promotion granted on 28.07.2010 for the post of Assistant Fitter from 12.02.1985 and for Fitter from 01.05.1987 till 28.07.2010 or not? No doubt respondent No.2 was involved in criminal case in which he has been acquitted. Once he has been acquitted he is entitled for consequential benefits like service benefits including monetary benefits. Rightly, labour court has framed the following

issues:-

“4. From the pleadings of the parties, following issues were framed by my learned Predecessor:-

(1) Whether the demand raised by the workers' union in the demand notice is genuine and justified, if so, to what effect and to what relief he is entitled to, if any?OPW.

(2) Whether the reference is not maintainable?OPM.

(3) Whether the workman is entitled to be promoted as Assistant Fitter with effect from 12th February, 1985 and Fitter with effect from 1st March, 1989 with consequential relief of pay and other benefits along with interest?OPW.”

Whereas relief has been granted as under:-

“In view of the above findings on the issues, this reference is allowed and answered that the workman is entitled to be considered for promotion as Assistant Fitter from the date his juniors were promoted as Assistant Fitter i.e. 12th February, 1985. If he is promoted as Assistant Fitter with effect from 12th February, 1985 then he has also right to be considered for the post of Fitter with effect from 1st May, 1987 from the date when his juniors were promoted. The management is directed to consider the case of the workman for promotion within three months of publication of award in the Government Gazette, Appropriate Government be informed. File be consigned to the record room.”

While granting relief labour court has not extended benefit of pay and other benefits along with interest in terms of issue framed. Thus, respondent No.2 should have challenged the validity of the award passed by the labour court dated 06.08.2009 to the extent of not granting benefit of pay and other benefits along with interest for retrospective promotion to the post of Assistant Fitter and Fitter. Instead of challenging the award he has merely approached petitioner and petitioner has extended benefit of retrospective promotion while denying monetary benefits on 28.07.2010. Respondent No.2 has raised one more dispute relating to monetary benefits. Once the labour court has already framed issue relating to entitlement of pay and other benefits along with interest for retrospective promotion and the same has been denied, question of raising one more dispute is incorrect. Respondent should have filed a writ petition insofar as denial of arrears of pay for retrospective promotion. Even to this day award of the labour court dated 06.08.2009 is not challenged insofar as denial of arrears of pay in the promotional posts. Therefore, labour court has erred in entertaining the 2nd dispute relating to pay and other benefits which were already subject matter of 1st dispute which was decided on 06.08.2009, while framing issue.

7. In view of these facts and circumstances, award passed by the labour court dated 18.05.2015 (Annexure P-3) is set aside. CWP stands allowed.

15.02.2018

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Whether speaking/reasons

Whether Reportable:

**(P.B.BAJANTHRI)
JUDGE**

Yes/No

Yes/No