

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-20298-2015 (O&M)

Date of Decision:-18.01.2018.

Krishan Lal

.....Petitioner

Versus

Presiding Officer and others

.....Respondents

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

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Present: Mr. Aman Vashisht, Advocate for the petitioner.

Mr. Raman B. Garg, Advocate and  
Ms. Gitanjali, Advocate for the respondents.

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**P.B. BAJANTHRI, J. (Oral)**

In the instant writ petition, petitioner has prayed for the following relief:-

*“i) a writ, order, direction in the nature of writ of Certiorari quashing the Order dated 20.07.2015 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar (Annexure P-1) vide which an application under Sub Section 2 of Section 33(C) of the Industrial Disputes Act, 1947 (Annexure P-2) was dismissed without going into the merits of the case and against the facts of law; AND.....”*

Petitioner joined service with the respondent-Management as a Ward Boy on 7.8.1998. Petitioner and 18 employees' services have been dispensed on 01.05.2002. Thereafter, in an industrial dispute, award was passed in favour of the employees, consequently, petitioner was reinstated

with 50% back wages on 03.05.2005. Thereafter, 18 persons whose grievance is identical to that of petitioner, their reference was allowed on 18.07.2005 in similar terms like that of petitioner to the extent of reinstatement with 50% back wages. Respondent-Management preferred writ petition in which they have suffered order before this Court. It seems that the respondent-Management for the purpose of implementing award imposed oral condition that if the petitioner and others entered into agreement relating to giving up 50% back wages, they would be reinstated. Petitioner and 18 other employees agreed for entering into agreement. There were two separate agreements prepared and entered into. One is relating to the petitioner and respondent-Management and the other one is between 18 employees and respondent-Management. 18 persons (employees) they have pursued the matter by filing application under Section 33-C (2) of the Industrial Disputes Act, 1947 (for short 'the 1947 Act') for implementation of the award. Thus, their cases were attained finality before this Court in CWP-5336-2012 in the case of *Sheela Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar, District Hisar and another*. Whereas the petitioner's application was rejected on the ground of delay. Further in CWP-5336-2012, matter was remanded to the Tribunal for execution of the award. Due to different agreement between the petitioner and 18 other employees, Labour Court distinguished the case of the petitioner to that of 18 employees. Hence, the present petition insofar as challenging the order passed by the Labour Court.

Learned counsel for the petitioner submitted that entering into agreement between the petitioner and the respondent-Management would be

in CWP against the award dated 03.05.2005. Similarly situated persons like 18 employees who have also entered into agreement that they would be giving up back wages, slightly there is a difference between the two agreements. Insofar as petitioner's agreement is concerned, there is no rider that agreement would be subject to result of writ petition. Therefore, there is no much difference insofar as factual aspects are concerned. Consequently, the respondent-Management cannot discriminate petitioner insofar as extending the benefit of 50% back wages. It was also submitted that Labour Court has not appreciated that award dated 03.05.2005 has attained finality before this Court in CWP filed by the respondents-Management so as to extend the benefit of 50% back wages.

*Per contra* learned counsel for the respondents while resisting the claim of the petitioner trying to distinguish with reference to the agreement to the extent that there is no rider in the agreement to the extent that agreement is subject to result of CWP-7770-2006. Therefore, petitioner's case cannot be compared with the 18 employees. Moreover, there is a delay of 7 years. Therefore, no interference is called for in respect of award passed by the Labour Court. It was also submitted that petitioner has suppressed relating to entry into agreement before the Labour Court. Therefore, relief sought in the present petition by the petitioner is not tenable.

Heard the learned counsel for the parties.

Undisputed facts are that both petitioner and 18 employees' services were dispensed. Only date of award, agreement and decisions before the Court of law are different. Factual aspects among the petitioner and 18 employees are completely identical. The respondents' contention

that there is a separate agreement and there is no rider in respect of petitioner's agreement that does not take away the benefit of 50% back wages which have been extended to the petitioner and 18 other employees. Insofar as question of delay is concerned, it is to be noted that it is not a case of seniority or promotion so as to contend that 3<sup>rd</sup> party right has accrued. Therefore, contention of delay is hereby rejected. Insofar as not placing agreement before the Labour Court is concerned, it is to be noted that application under Section 33-C(2) of the 1947 Act was filed for the purpose of execution of the award dated 03.05.2005, so question of suppression of placing agreement before the Labour Court under Section 33-C(2) of the 1947 Act may not be so relevant. That apart, Management is common for petitioner as well as 18 employees question of entering different agreement and to contend that there is no rider clause in the petitioners agreement would be too technical. Moreover conduct of the Management is to be taken into consideration like Management suffered orders before Labour Court and this Court and decisions are binding on both parties. Even though employees have come forward to enter into agreement for giving up back wages on the score that he had no real choice. Management is bound by judicial pronouncement. Therefore, any agreement entered into would be void. Terms of contract or agreement can be read and enforced only in consonance with law, as held by the Supreme Court in case of **Balkrishna S. Dalwale Vs. Vithabai C. Rathod (2010) 13 SCC 291** while interpreting Section 10 of Contract Act, 1872. Supreme Court in the case of **Central Inland Water Transport Corporation Ltd. and another Vs. Brojo Nath Ganguly and another (1986) 3 SCC 156** in para

*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 employee'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 clause 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."*

Supreme Court in the case of **Ramana Dayaram Shetty Vs.**

**The International Airport Authority of India and others** reported in AIR

**1979 SC 1628** held as under:-

*"It must therefore follow as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refused to enter into relationship with any one, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified or some rational and non-*

*discriminatory ground.”*

Therefore, order dated 20.07.2005 (Annexure P-1) passed by the Labour Court is set aside. Respondents are hereby directed to disburse 50% back wages pursuant to the award dated 03.05.2005 within a period of 3 months from today.

Petition stands allowed.

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

**January 18, 2018.**

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.