

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 15.12.2018****CWP No.26656 of 2013 (O&M)**

The Management of Kharga Canteen Ambala Cantt. Through its Deputy
Chairman & another

...Petitioners

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.P.Singh Ahluwalia, Advocate, for the petitioners.

Ms. Shruti Jain Goyal, DAG, Haryana.

Mr. B.S.Saini, Advocate, for respondent No.4.

RAJIV NARAIN RAINA, J.

1. This petition has been filed assailing the order passed by the
Labour Commissioner, Haryana on 26.07.2013 (Annex P-13).

2. The services of respondent No.4/workman were terminated. He
raised a dispute by serving a demand notice. The dispute was referred to the
Labour Court, Ambala. The Labour Court by its award dated 01.02.1994
ordered reinstatement of the workman with continuity of service and with
full back wages.

3. The petitioner-Management challenged the award dated
01.02.1994 by filing CWP No.7982 of 1994, which was dismissed by this
Court on 28.07.2009. Special Leave Petition carried to the Supreme Court
was also dismissed. However, the petitioner was neither reinstated in service
nor paid his back wages as ordered by the Labour Court, Ambala.

4. This led the workman to file an application under Section 33-C(1) of the Industrial Disputes Act, 1947 before the competent authority i.e. the Labour Commissioner, Haryana claiming back wages up to March, 1995. The Labour Commissioner, Haryana issued a recovery certificate amounting to ₹1,38,490/- vide order dated 05.11.1996 against the management. This recovery certificate was again challenged by the Management before this Court by way of CWP No.18947 of 1996. The writ petition was dismissed with costs vide order dated 28.07.2009. The operative part of the order reads as follows:

“The workman has been kept at bay for more than 22 years by the unreasonable attitude of the management. The writ petition itself is most untenable that denies to the workman of what he was found entitled as per the award that was concluded in the year 1994. The writ petition is dismissed, with exemplary cost, which is assessed at ₹25,000/- payable to the workman.”

5. Thereafter, the workman again filed an application dated 12.05.2010 claiming back wages for the period from April, 1995 to March, 2010. The Labour Commissioner issued notice to the Management to offer them an opportunity of hearing. The Management filed its reply to the claim statement denying the claim of the workman stating that the award was fully implemented by the Management by reinstating the workman w.e.f. 04.07.1987 and thereafter his services were terminated w.e.f. 01.09.1991 vide order dated 18.05.1995 on completion of 15 years of service as per Standing Orders of the Company; stating that the workman had challenged his termination by filing O.A.No.413-HR-2006 before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, which was

dismissed holding that the O.A. is not maintainable. This was the second termination.

6. Concededly, the plea of the management retiring the workman on completion of 15 years of service as per Standing order was specifically rejected by this Court vide order dated 28.07.2009 passed in CWP No.18947 of 1996 filed against the recovery certificate dated 05.11.1996. The fresh application under Section 33-C(1) of the Act for claiming back wages for the subsequent period was held to be rightly maintainable as there is no bar in the Act. In the first application, the claim was until March, 1995, whereas in the second application, the claim was from April, 1995 to March, 2010.

7. The Labour Commissioner, Haryana by the impugned order dated 26.07.2013 has held the fresh application to be maintainable and I find no error in this conclusion, as the rights created by the award continued to run in favour of the workman. The age of retirement of the workman had to be treated as 58 years in the absence of any settlement between the workman and the management. The workman's date of birth is 23.02.1971 and he would be entitled to serve up to the age of 58 years i.e. up to February, 2029. The claim was within the age of 58 years. That is how the claim has been accepted and the Management ordered to pay a sum of ₹9,26,896/- to the workman as money due and determined by the award.

8. Section 33-C(1) comes in play where any money is due to a workman from an employer under a settlement or an award, then he can without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a

certificate for that amount to the Collector, who shall proceed to recover the same as arrears of land revenue.

9. Besides, there is no law which permits the employer to terminate the services with retrospective effect. It appears that reference to Annex A-2 is an afterthought and does not deserve to be reviewed or revisited keeping in mind the chequered history of the litigation. Many stages were available to the Management to place their calculations for consideration of the authority being part of money due under the Award.

10. In view of the above, I find this petition devoid of merit since the award rendered by the Labour Court, Ambala had attained finality up to the Supreme Court. This is a frivolous and vexatious petition, which is ordered to stand dismissed with costs of ₹50,000/- to be paid to the workman within a period of two months from the date of receipt of certified copy of this order.

11. The amount representing 50% of the amount deposited before the Labour Court as per directions shall be released to the petitioner and the balance amount is open to recovery.

15.12.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>