

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

CWP No. 27657 of 2018

Date of Decision: 14.11.2018

Municipal Corporation, Faridabad

...Petitioner

Vs.

Ld. Presiding Officer, Industrial Tribunal cum Labour Court-I,
Faridabad and another

...Respondents

2. CWP No. 27747 of 2018

Municipal Corporation, Faridabad

...Petitioner

Vs.

Ld. Presiding Officer, Industrial Tribunal cum Labour Court-I,
Faridabad and another

...Respondents

3. CWP No. 27762 of 2018

Municipal Corporation, Faridabad

...Petitioner

Vs.

Ld. Presiding Officer, Industrial Tribunal cum Labour Court-I,
Faridabad and another

...Respondents

4. CWP No. 28090 of 2018

Municipal Corporation, Faridabad

...Petitioner

Vs.

Ld. Presiding Officer, Industrial Tribunal cum Labour Court-I,
Faridabad and another

...Respondents

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

Present: Mr. Rishabh Gupta, Advocate
for the petitioner.

RAJIV NARAIN RAINA, J. (Oral)

1. These are four connected writ petitions filed by the

Municipal Corporation, Faridabad assailing the order of the Presiding Officer, Labour Court, Gurugram dated 01.09.2017, whereby the claim for difference of arrears of salary has been allowed with 6% interest per annum to actual realization in favour of the respondent employees.

2. The Court *a quo* has held the applicants entitled to money due by way of computation of balance of arrears of wages paid for the period January 17, 1997 to January 11, 2001 in applications presented under Section 33 C (2) of the Industrial Disputes Act, 1947. In CWP No. 27657 which is one of the cases in this bunch, the principal amount of Rs. 49,839/- has been determined as due and payable and the sum would carry interest @ 6% per annum till payment, as said before. In the other three petitions, the amounts are roughly the same.

3. There is no dispute regarding the fact that by appointment letter Ex. W/I, Ex. M-1 dated 17.01.1997 which is common to other employees in their terms and conditions, the applicants were appointed as Sweepers in the grade/pay-scale of Rs 750-12-870-EB-14-940+usual allowances to work in the offices of the Corporation. The applicants were retrenched from service after following the due procedure prescribed under Section 25F of the Act as per statement made in Annex. P-3 in the present representative writ petitions, inasmuch as the salary/wages payable in lieu of one month's notice and retrenchment compensation in a sum of Rs.5,865/-were made over. The respondents/applicants have not challenged the order of retrenchment

and that part of the lis has attained finality.

4. What remains to be figured out is the period of service of each of the applicants to bring them relief of payment is by and large the period between 17.01.1997 to 11.01.2001. The Labour Court has found on evidence on record that the claimants were not paid their salary according to pay-scale given to them in their appointment letters. Instead, they were paid salary less than their entitlement and that is why the balance amount has been asked for and therefore computed as money due by the court below in the present execution proceedings.

5. Learned counsel appearing for the petitioner/Corporation is unable to show that the claimants were paid salary as per their entitlement in terms of their appointment letter which condition of service was binding on the parties. Such a claim for money became a pre-existing right executable under Section 33C(2) of the Act.

6. The learned counsel in stoutly resisting the claim of the claimants-respondents submits that there is a huge delay in approaching the Labour Court arguing that the retrenchments took place in 2001 while the application was brought in 2013 after a lapse of twelve years and on account of this, the impugned orders deserve to be set aside and the writ petitions allowed.

7. I have considered this contention and find hardly any substance in it. It has been explained by the 5-Judge Bench of the Supreme Court in its path finding ruling defining the scope of

jurisdiction of the labour court in proceedings under Section 33 C (2) of the Act were thrashed out in The Central Bank of India Limited Vs. P.S. Rajagopalan, 1964 AIR (SC) 743 holding that there is no limitation prescribed for an application under Section 33C (2) and normally claim should not be rejected on that ground. This law has been reiterated time and again by the Supreme Court and different Courts.

8. Mr. Rishab Gupta appearing for the Corporation has in his attempt to challenge the order picked out a sentence in paragraph No. 19 of the judgment in *Rajagopalan* the observation that if an employee is dismissed or demoted and it is his case that the dismissal or demotion is wrongful, it would not be open to him to make a claim for recovery of his salary or wages under Section 33C (2).

9. It is not the case of the respondents that they were wrongfully dismissed or retrenched. They have accepted that decision but have limited their claim in the instant proceeding for arrears of difference of salary/wages because they were not paid according to the pay-scale admissible to them. It follows from the observation of the Supreme Court that where dismissal is challenged, then obviously the relief of arrears of salary/difference of salary would depend on the fate of the retrenchment. If the retrenchment is set aside as illegal then back-wages would follow. This is not the situation obtaining in these cases. Therefore, reliance on the judgment is misconceived as it is distinguishable on facts though the principles of law enunciated are

brilliant.

10. Having read the impugned order and perused the paper book with the assistance of the learned counsel for the Corporation, I find no palpable error apparent to the face of the record or any legal infirmity in the order passed by the learned Labour Court computing money due to the workers and would as a result dismiss these petitions.

11. Concluding his case, Mr. Gupta argues that even assuming balance of salary was to be paid; even then, interest should not be awarded on the principal amount as it would be unjust. This contention is also not acceptable since the Corporation was at fault in not giving to the claimants their original dues as per pay-scale allowed in the appointment letters. No one has argued that the condition of pay scale was a mistake of fact.

12. Therefore, the interest element on balance of unpaid dues or what is illegally withheld part of salary without just cause or legal justification would follow automatically by virtue of contract of employment and such interest cannot be made to run inequitably to the detriment of the claimants from any futuristic date except from when it was required to be paid. If the Corporation owes money to its aggrieved ex-employees, which fact is not capable of being disputed on the materials on record, then it does not redound to the credit of the Corporation or behove it to urge before this Court that though money is due but interest is not payable by reason of delay in approaching the

appropriate Forum. Delay is not an inhibiting factor to deny money due which is capable of being computed in terms of money in a proceeding under Section 33C (2) of the Act. There is no limitation prescribed in the said Section. It is a recurring cause of action where loss is occasioned every day. If the Corporation has shirked in its pious obligation to pay salary in terms of the contract of employment, then the meter of interest has kept running to its detriment along with the principal money due till realization. I would therefore, reject this argument on interest as legally untenable that such clubbed sum of money is not payable to the respondents for work done while in service.

13. With the observations made above, I find no merit in these petitions which are ordered to stand dismissed in limine.

(RAJIV NARAIN RAINA)
JUDGE

14.11.2018

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Whether speaking/reasoned: Yes

Whether reportable : Yes