

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

**CR No.7126 of 2017(O&M)
Date of Decision: 09.04.2019**

Phool Chand

.....Petitioner

Versus

**M/s Mohan Dai Oswal Cancer Treatment and Research
Foundation**

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Petitioner in person.

Mr. Vikas Bali, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 30.12.2016 passed by the Authority under payment of Wages Act and order dated 27.09.2017 passed by Additional District Judge, Ludhiana.

[2]. The grievance of the petitioner is that he has not been paid wages for the period during which he was in service. He has rendered more than 10 years of service prior to March, 2007 and his services were never terminated, but he was not permitted to enter his work place, nor he was ever placed under suspension. Petitioner sought benefit of Sections 9 and 15 of

the Payment of Wages Act on the ground that he was never permitted to join the duties. Absence from the duty and non-participation in the inquiry proceedings culminated in the order of termination was never produced in Court. The said order was never communicated to the petitioner. Petitioner never absented from the work voluntarily and his services were verbally terminated.

[3]. Petitioner was appointed as Senior Laboratory Technician on a permanent post on 01.06.1996. He was charge-sheeted on 23.08.2006, 12.09.2006, 04.10.2006 and 12.10.2006. Disciplinary proceedings were challenged by the petitioner before the Civil Court, Ludhiana.

[4]. Trial Court vide order dated 24.03.2007, directed the petitioner to participate in the inquiry proceedings. In March, 2007, the petitioner was never allowed to enter the premises to attend his duties and therefore, he could not participate in the inquiry proceedings. The letter issued by the petitioner was refused by the Department. Thereafter, petitioner filed an appeal before Additional District Judge. The order of the trial Court dated 24.03.2007 was upheld by the Lower Appellate Court vide order dated 09.08.2007.

[5]. Thereafter, petitioner sent a demand notice under Section 2-A of the Industrial Disputes Act on 05.03.2008,

seeking permission to join his duties. The said notice was replied by the Department, claiming that the same was not maintainable as the services of the petitioner were neither terminated, nor suspended at that time. Petitioner raised an industrial dispute before the Labour Court on 29.01.2009 for the purpose of payment of his salary and dues. Department contested the case on the ground that the petitioner was not entitled to the wages or suspension allowance as his services were neither suspended nor terminated by the Department.

[6]. An interim application filed by the petitioner before the Labour Court, seeking permission to join the duties was disposed of by the Labour Court vide order dated 20.10.2009 by directing the management to complete the inquiry within two months. Thereafter, petitioner filed writ petition No.16272 of 2009, challenging the order passed by the Labour Court. The said writ petition was disposed of on 12.11.2009 upholding the order passed by the Labour Court. The High Court observed that the application filed by the petitioner for grant of interim relief did not refer to any specific provision under which the petitioner was entitled to claim his wages as services of the petitioner were never terminated. Liberty was granted to the petitioner to approach the Authority under relevant provision for the said relief.

[7]. Thereafter, petitioner filed an application under Section 15(3) of the Payment of Wages Act before the competent Authority. Petitioner was told to file application under Section 33(c) (2) of the Industrial Disputes Act before the Labour Court where the main case under Section 2-A of the Industrial Disputes Act was pending. Accordingly, the petitioner filed an application under Section 33(c) (2) of the Industrial Disputes Act, wherein the petitioner was informed that the order of termination has already been passed against the petitioner. Faced with this situation, the petitioner withdrew the main case under Section 2-A of the Industrial Disputes Act as well as application under Section 33(c) (2) of the Industrial Disputes Act with a liberty to file application before the appropriate Authority. The aforesaid exercise was done on 07.07.2010. On 08.07.2010, the petitioner filed an application under Section 15(3) of the Payment of Wages Act, seeking payment of wages for the period during which he remained employed with the Department.

[8]. Vide order dated 27.08.2010, the Authority had observed that the Department did not produce the termination order of the petitioner and some other observations were also made in respect of non-payment of wages and entry in the premises. Labour Court dismissed the application on the ground

of principle of 'no work no pay'. Petitioner preferred an appeal before the Additional District Judge. Additional District Judge vide order dated 23.05.2011 upheld the order passed by the Labour Court.

[9]. Thereafter, petitioner filed CR No.3647 of 2011, challenging the order of the Additional District Judge. The said revision petition was dismissed on 01.06.2012, holding that the petitioner was not entitled for wages as per provision of Section 15(2) of the Payment of Wages Act. Operative part of the order dated 01.06.2012 passed by the High Court in CR No.3647 of 2011 runs as under:-

“A perusal of the above said order indicates that despite the orders passed by the Lower appellate court dated 20.10.2009, the petitioner had failed to participate in the enquiry proceedings, as a result of which the respondent- management had completed the enquiry proceedings ex-parte. The petitioner having not remained on duty w.e.f. March 2007 till the date of his termination, he is not entitled to the wages claimed by him. The above said order was upheld in appeal u/s 17 of the Act.

The petitioner, appearing in person, has argued that he had not been permitted to enter the place of work to perform his duty without there being any suspension or termination order, therefore, his claim for wages cannot be declined on the principle of no work no pay. He has also submitted that the order

passed by the High Court in CWP 16272 of 2009, the cause of action had accrued to the petitioner while dismissing his claim u/s 33-C (2) under the Industrial Disputes Act.

Learned counsel for the respondent has submitted that termination order dated 2.2.2010 has not been challenged by the petitioner and his petition under Section 33-C(2) of the Industrial Disputes Act having been withdrawn; he having not worked for the period from March 2007 till 2010, the authorities below have rightly dismissed his claim.

I have considered the contention of petitioner who has appeared in person. The main emphasis has been laid by the petitioner on the observations made by the High Court while disposing of his writ petition seeking relief under Section 33 (c) (2) of the Payment of Wages Act, 1936. The observation that the workman shall be entitled to pursue such remedy as per law qua the claim for wages which have been denied to him, is concerned, will not ipso facto confer a right upon the petitioner to claim the back wages. The right of the petitioner regarding his entitlement of any wages has to be construed in the light of the facts and circumstances of each case. If the petitioner had been denied his back wages as per the provisions of the Payment of Wages Act, 1936. Section 15 (2) of the Act provides that the workman is entitled to the release of back wages in case unauthorized deductions have been made or there has been delay in payment of wages.

The petitioner claims that since March 2007, he had not been allowed to enter the premises for his

establishment as such he was entitled to a direction for payment of back wages.

The petitioner has not disclosed the details of his earlier litigation. The services of the petitioner have been terminated after an inquiry. The Labour and Conciliation Officer under Payment of Wages Act has rightly observed that on account of conduct of the petitioner having failed to participate in the inquiry proceedings and enquiry proceedings having been concluded against him, he was not entitled to claim back wages having failed to establish that he worked since March 2007 till the date of his termination. It has been observed that it is not a case of delay in release of the wages. On the directions of the Court, the copies of the enquiry reports have been made available. A detailed list of cases/ complaints filed by the petitioner before different forums has also been placed on record as annexure R-4.

In view of the abovesaid circumstances, there is no ground to interfere in the order dated August 27, 2010 passed by the authority under the Payment of Wages Act and the order dated May 23, 2011 passed by the Additional District Judge dismissing the application of the petitioner for payment of wages from March 2007 onwards.

Dismissed.”

[10]. Thereafter, petitioner filed SLP No.21721 of 2012 in the Hon'ble Supreme Court which was dismissed on 14.08.2012. Even review petition No.2314 of 2012 was also dismissed on

29.11.2012. A curative petition was filed by the petitioner on the ground that the factum of the petitioner being on duty till 2010 was an admitted fact and his services were never terminated, nor suspended, rather he was not permitted to enter the premises after March, 2007, therefore, he was entitled to payment of wages from March, 2007 onwards.

[11]. On 20.08.2015, learned Registrar of the Hon'ble Supreme Court lodged the writ petition. The Hon'ble Apex Court vide order dated 05.07.2016 dismissed the petition against the order of the Registrar and the office report. The Hon'ble Apex passed the following order:-

“Heard Mr. V. Mohana, learned Senior Counsel appearing for the petitioner and petitioner-in-person in the Court today.

It appears that in this matter there is no scope for passing any order in favour of the petitioner against the order so passed by the Registrar, in view of the extant rules of this Court. Accordingly, the writ petition is dismissed.

However, as it appears from the facts as narrated, the petitioner was stated to be verbally terminated from his service on 02.02.2010 although he has specifically stated that he has been attending his

work since March, 2007. According to him, without any reason, the employer of the petitioner restrained him from discharging his duties.

In view of that, we feel that the cause of justice will be served if the petitioner is given liberty to file a representation before his employer, seeking his service monetary entitlements in law.

Accordingly, we grant liberty to the petitioner to file representation immediately and his employer, after considering the same, shall take necessary steps and if he is entitled to get the wages from March, 2007, the same shall be paid to him immediately in accordance with law.

We direct the employer to consider such representation within a period of three weeks from the date of filing of such representation by the petitioner.”

[12]. Perusal of the aforesaid order would show that the Hon'ble Supreme Court found that there was no scope for passing any order against the order passed by the Registrar and the writ petition was dismissed. On the prayer made by the petitioner that his services were verbally terminated on 02.02.2010 and he was attending the work, therefore, without meaning anything on merits, the Hon'ble Apex Court observed

that the cause of justice will be served if the petitioner is given liberty to file representation before his employer, seeking his services monetary entitlements in accordance with law. Accordingly, liberty was granted to the petitioner to file representation immediately and the employer was obligated to take necessary steps. If the petitioner is found entitled to get the wages from March, 2007, the same was to be paid to him immediately in accordance with law.

[13]. Thereafter, petitioner again filed an application dated 04.08.2016 under Section 15 read with Section 9 of the Payment of Wages Act for payment of wages including other benefits from March, 2007. The application was contested by the respondent on the ground that the earlier application was dismissed by the Authority under Payment of Wages Act vide order dated 27.08.2010. Even the said order was upheld by the Additional District Judge on 23.05.2011 and by the High Court in CR No.3647 of 2011 on 01.06.2012. By referring to previous proceedings, the Authority under Payment of Wages Act, dismissed the claim of the petitioner vide order dated 30.12.2016 as not maintainable and to be hit by principle of *res judicata*.

[14]. Petitioner filed an appeal under Section 17 of the Payment of Wages Act against the order dated 30.12.2016

before the Additional District Judge, Ludhiana and the same has also been dismissed vide order dated 27.09.2017. The present revision petition has been preferred by the petitioner against the aforesaid orders.

[15]. Petitioner in person has vehemently submitted that dismissal of the application by the Authority under Payment of Wages Act as well as by the Additional District Judge on the ground of *res judicata* is fully illegal as the permission was granted by the Hon'ble Apex Court vide order dated 05.07.2016.

[16]. Perusal of the previous history of the case shows that the Courts in hierarchy did not agree with the petitioner and CR No.3647 of 2011 was dismissed on merits. Order dated 27.08.2010 passed by the Authority under Payment of Wages Act and order dated 23.05.2011 passed by the Additional District Judge were not interfered in the revision petition and the revision petition was dismissed on 01.06.2012. Even SLP No.21721 of 2012 was dismissed by the Hon'ble Apex Court on 14.08.2012. Thereafter, review petition was also dismissed on 29.11.2012. It was only in a curative petition, the petitioner challenged the order of the Registrar of the Hon'ble Apex and the order dated 05.07.2016 came to be passed by the Hon'ble Supreme Court. The order of the Registrar was not interfered with, however, liberty was granted to the petitioner to file

representation before the competent Authority who was obligated to take necessary steps in accordance with law on the subject in issue.

[17]. Perusal of the record would show that representation dated 12.07.2016 filed by the petitioner has been rejected by the Authority, reference of which finds mentioned in reply to the representation dated 12.07.2016. After giving detailed facts of the case, the Authority replied that petitioner is neither entitled to any salary, nor any relief in view of facts disclosed in the reply and the representation was rejected. The factum of dismissal of representation has been acknowledged by the petitioner in para No.5 of the application dated 04.08.2016 under Section 15 read with Section 9 of the Payment of Wages Act without making any challenge to the said order.

[18]. The Concept of Finality of Judgment has been explained by the Hon'ble Apex Court in **Indian Council for Enviro-Legal Action vs. Union of India and others., 2011(3) R.C.R. (Civil) 779**. The maxim '*interest Republicae ut sit finis litium*' is to the effect that the litigation must end after a long hierarchy of remedies at some stage. It is necessary to put a quietus. It is rare that in an adversarial system, despite the judges of the highest court doing their best, one or more parties may remain unsatisfied with the most correct decision. Opening

door for a further appeal would be opening a flood gate which will cause more wrongs in the society at large at the cost of rights. The conclusion is that the controversy between the parties must come to an end at some stage and the judgment of the higher court must be permitted to acquire finality. It would be improper to allow the parties to file application after application in the endless process. Finality of judgment is absolutely imperative and great sanctity is attached to the finality of the judgment.

[19]. Allowing the parties to reopen the concluded judgments on the basis of some untested material would be an abuse of process of law and the same would have far reaching adverse consequences on the administration of justice. A settled thing should not be allowed to be unsettled. The judgment passed by the Hon'ble Apex Court is not amenable to the judicial review that too at the stage of execution on the basis of some material which was never the subject matter of substantive litigation upto the Hon'ble Apex Court. Even correctness of the decision on merits after it has become final upto the Hon'ble Apex Court cannot be questioned by invoking Article 32 of the Constitution of India. The principle of finality of litigation is based on high principle of public policy. It is equally important to prevent unscrupulous litigant from taking undue advantage through the

process of the Court. It is an onerous duty and obligation of the Court to ensure undue enrichment is not drawn by the losing party by exercising the process of the Court, even after finality of litigation upto the Hon'ble Apex Court. While curbing the aforesaid tendency, the Court would be fully justified in imposing punitive costs where legal process has been abused. Doctrine of *stare decisis* is very valuable principle of precedent which cannot be departed in the ordinary circumstances. The view expressed by the Hon'ble Court in **Manganese Ore (India) Ltd. vs. The Regional Assistant Commissioner of Sales Tax, Jabalpur (1976) 4 SCC 124, Green View Tea & Industries vs. Collector, Golaghat and another, 2002(2) R.C.R. (Civil) 362** and **M. Nagabhushana vs. State of Karnataka & Others, 2012(1) R.C.R. (Civil) 807** can be relied in the aforesaid context.

[20]. In view of aforesaid position, I find no justification to interfere in the impugned orders. This revision petition is accordingly dismissed. However, the petitioner, if so advised, may take recourse to the legal proceedings against the dismissal of the representation in accordance with law.

09.04.2019

Prince

(RAJ MOHAN SINGH)
JUDGEWhether reasoned/speaking
Whether reportableYes/No
Yes/No