

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

Sr. No.112

C.R. No.756 of 2019

Date of decision: 01.02.2019

Mahabir Singh

....Petitioner

versus

Headmaster, Govt Primary School, Village Mahra, Tehsil and District,
Sonepat and another

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Ramesh Goyat, Advocate
for the petitioner.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 09.03.2018 passed by the Civil Judge (Senior Division), Sonepat (for short – the Executing Court) through which the petitioner's execution application has been dismissed. Also under challenge is order dated 21.08.2018 dismissing in default the petitioner's application filed by him seeking restoration of his execution application.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the petitioner was working on fixed salary as a part time Kahar (Water-Carrier) in Government Primary School, Village Mahra. His services were terminated which action of the respondent was challenged by the petitioner before the Labour Court. Through Award dated 19.09.2014, the Labour Court held the petitioner entitled to reinstatement with continuity of service with 50% back wages from the date of his demand notice. The respondents challenged the aforesaid Award before this Court through **CWP No.534 of 2015 – Block**

Education Officer, Sonipat and another vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and another, which petition was dismissed on 17.03.2015 by a learned Single Judge of this Court. Against the judgment of the learned Single Judge, the respondents preferred an intra-court appeal being LPA No.874 of 2015 - Block Education Officer, Sonipat and another vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and another, which was also dismissed by a Division Bench of this Court on 10.08.2018.

Thereafter, the petitioner filed an execution petition seeking to execute the aforesaid Award dated 19.09.2014 passed by the Labour Court. On being put to notice, the respondents filed a reply before the Executing Court wherein it was submitted that the awarded backwages had been sent to the petitioner through cheque dated 30.09.2016 which the petitioner had declined to receive. It was further submitted that in the year 1995, the petitioner was engaged as Kahar (Water-Carrier) and had worked on the same post till his services were terminated in the year 2009. The post of Kahar (Water-Carrier) was a part time Class-IV post and the duty of the incumbent on such post was to provide drinking water to the students but since presently clean drinking water has been provided in all the Schools, the post of Kahar (Water-Carrier) had been abolished by the State Government. Therefore, in compliance with the aforesaid award of the Labour Court, the petitioner was offered the post of part time Sweeper which was an equivalent post and in the same cadre as Kahar (Water-Carrier) which he had declined to accept.

After considering the aforesaid facts, through order dated 09.03.2018, the Executing Court dismissed the petitioner's execution

application. The application preferred by the petitioner seeking restoration of his execution application was also dismissed in default by the Executing Court on 21.08.2018.

Learned counsel for the petitioner submitted that the petitioner never declined to receive the awarded back wages as the cheque sent by the respondents was never received by him and that such payment was duly received by the petitioner during the execution proceedings. He further submitted that in compliance with the award of the Labour Court, the petitioner should be reinstated only on the post of Kahar (Water-Carrier) and not on any other post.

The submissions made by learned counsel for the petitioner have been considered but no merit in the same is found.

The post of Sweeper which has been offered to the petitioner is admitted to be of the same grade and class as the post of Kahar (Water-Carrier).

On the date of termination of the petitioner's services in the year 2009, he was serving as Kahar. Through Award dated 19.09.2014, the petitioner was ordered to be reinstated. It is the specific case set up by the respondents before the Executing Court that in the year 2014, there was no post of Kahar (Water-Carrier) as all such posts had been abolished due to providing of clean drinking water by the Government in all schools. No replication to such a stand was filed by the petitioner before the Executing Court. Even before this Court, no material has been placed nor even an argument has been raised to contradict the stand of the respondents with regard to non-availability of any post of Kahar (Water-Carrier). That being so, in execution of the award of the Labour

Court dated 19.09.2014,no fault is found with the offer made by the respondents.

Dismissed.

(DEEPAK SIBAL)
JUDGE

February 01, 2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No