

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5610 of 2019

Date of Decision: 01.03.2019

Harish Kumar Dahiya

... Petitioner

Versus

Municipal Corporation Faridabad
and another

... Respondents

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

Present: Mr. Shreenath A. Khemka, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.

1. This petition has been filed challenging the order of the Labour Court-I, Faridabad dated April 05, 2016 dismissing the application under Section 33-C (2) of the Industrial Disputes Act, 1947 ("1947 Act") as not maintainable. The Labour Court has held that the petitioner is not entitled to any amount other than what was received by him on the basis of a judgment and order dated March 12, 2001 passed by this Court in CWP No.11780 of 2000 awarding 75% of the back wages from September 13, 1989 to January 16, 2001. The litigation was between the same parties.

2. By the previous award of the Labour Court dated February 09, 2000 which was subject matter of the aforesaid case, the petitioner became entitled to reinstatement but without back wages. That award was passed in an industrial reference against an order of termination from service passed by the Municipal Corporation, Faridabad on July 11, 1986. At the time of termination the petitioner was drawing ₹1200/- per month as salary as on ad hoc Fireman to which post he was incumbent for the first time on February

19, 1982. Against the order of termination in 1986 the petitioner raised a dispute by serving a demand notice on September 13, 1989 on the management claiming reinstatement to service and accompanying benefits. As a result of the award and conclusion of the aforesaid writ petition, the petitioner was called to join back on duty in deference to the award. He re-joined ad hoc service on January 19, 2002. He was paid ₹1,33,000/- by the management as final settlement of wages due in terms of the orders of this Court in the said writ petition finally decided on March 12, 2001. The petitioner says he had by then started suffering from severe pulmonary maladies.

3. His services were again dismissed on November 03, 2004 after inquiry. The petitioner did not challenge the dismissal order till after nine years when he approached the Labour Court under Section 33-C (2) of the 1947 Act claiming that he had not been correctly paid wages he was entitled to as pay enhancements on par with other Fireman as per the Grade Pay.

4. The only dispute before the Labour Court was whether the applicant had been paid 75% back wages as awarded to him. It was applicant's own statement that he was paid the amount representing the arrears of wages @₹1200/- per month which salary he last drew at the time of termination.

5. The Labour Court noticed that the grievance of the applicant before it was that he had been paid arrears as a daily wager whereas he was on ad hoc employee and should have been paid according to the Grade Pay of the post of regular Fireman. The fact of the matter was that the petitioner was an ad hoc appointee and paid at the fixed rate of ₹1200/- per month. On

the evidence available, the Labour Court found that there is no documentary evidence on the file as to what is the Grade Pay of Fireman on ad hoc basis or regular and daily wage basis at the relevant time. The Court held that the applicant has not been able to show any basis for computing ₹30,26,164/- in his favour, which is amount demanded/claimed in the application under Section 33-C (2). The application has been rejected on the ground that amount payable under court orders admittedly stand paid

6. The petitioner has approached this Court with the following substantial prayers:-

“A. Writ of Mandamus, directing the Respondent to pay:

(i) Correct sum due as back wages to the Petitioner u/s 33C (2) of the I.D. Act 1947.

(ii) Full wages due for the time period of employment 2002-2004 u/s 2 (rr) of the I.D. Act 1947.

(iii) Interest @ 12% p.a. from the date the aforesaid amounts were due, i.e. 16.01.2001 and 03.11.2004.

B. Writ of Mandamus, directing the Respondent to settle the wrongful dismissal of the Petitioner in 2004, for an ex gratia sum of INR 1,00,000.

C. Award of INR 25,000 on humanitarian grounds towards cost of litigation, especially considering the Petitioner's chronic medical history and twice dismissal.”

7. Mr. Khemka appearing for the petitioner contends that this is a case of incorrect computation of back wages. He refers to Section 2 (rr) (i) of the ID Act which defines 'wages' as any entitlement that a workman is entitled to for the time being. This section only excludes bonus and

employee's contribution to Provident Fund and Gratuity from the definition of wages. Therefore, there can be no doubt, he says, that the grade pay is wage contemplated under Section 2 (rr) which means all remunerations capable of being expressed in terms of money. Section 2 (rr) reads as follows:-

"Section 2 (rr): "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes--

- (i) such allowances (including dearness allowance) as the workman is for the time being entitled to;*
- (ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food- grains or other articles;*
- (iii) any travelling concession;*
- (iv) any commission payable on the promotion of sales or business or both;*

but does not include--

- (a) any bonus;*
- (b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;*
- (c) any gratuity payable on the termination of his service"*

8. He contends on the basis of this definition that "judicial computation of back wages" must be based on the same parameters. He contends that the expression "wages" under Section 2 (rr) has been defined in disjunction to "wages last drawn" under Section 17-B of the 1947 Act.

However, because the claim of back wages is not under Section 17-B,

therefore, the conception of the term cannot be restricted to “wages last drawn” but must be on the equitable parameters of wages under Section 2 (rr). Therefore, the computation of 'back wages' from September 13, 1989 to January 16, 2001 on the basis of 'wages last drawn' is incorrect in law. The payment of INR 1,33,000 as full and final settlement of 'back wages' is grossly inadequate to rights in law. Instead, the Petitioner's entitlement should be computed as per the Grade Pay available to Firemen from September 13, 1989 to January 16, 2001, as that was the correct 'wage' the Petitioner was entitled to u/s 2 (rr).

9. Mr. Khemka argues on the strength of his pleadings in the writ petition that such a proposition of law found its mention in the case of *Novartis India Ltd v. State of West Bengal & Ors.* Civil Appeal No. 7011 of 2008 by the Hon'ble Supreme Court. One of the issues raised was that back wages should be calculated keeping in view the revised scale of pay, and not on the basis of last pay, without consequential benefits. In this context, the obiter of the Supreme Court in paragraph 41 of the judgment is of particular note:

“There is another aspect of the matter which cannot be lost sight of. The Industrial Court had directed calculation of back wages on the last pay drawn. Its attention, however, was not drawn to the fact that in the meantime revision in wages had taken place. On the date of their superannuation, they were entitled to a much higher pay as the revision in wages had taken place to which the workman was entitled to.”

10. In the facts of the case, the Supreme Court refrained from exercising its mandamus jurisdiction, however, it did take active judicial notice of the law in this regard observing as under:-

“In view of the fact that the same attained finality, this Court is not inclined to exercise its jurisdiction under Article 142 of the Constitution of India for the purpose directing payment of back wages on the basis of revised scale of pay and, thus, it will not be fit and proper to interfere with the impugned judgment while noticing the law in this behalf.”

11. Thus there can be no doubt, that in *Novartis India Ltd v. State of West Bengal & Ors. (supra)* the Supreme Court has noticed the law; whilst also speaking to the larger jurisprudential conscience embodied in Labour Law.

12. I have considered this aspect. I do not think it necessary to engage in a discourse on the jurisprudential difference between 'wages' in Section 2 (rr) and the expression 'wages last drawn' in Section 17-B of the ID Act. The two serve different purposes. Section 17-B operates only in litigation before the High Court or in appeal to the Supreme Court when an award of reinstatement is stayed by an interim order. In the present case neither the labour Court nor the High Court can be understood to have altered the status of the petitioner from ad hoc to one of regular hand and equate the two for purposes of pay/salary/wages/emoluments last drawn or by whatever name called. The contention is therefore rejected as it would not effect the outcome of case as proposed hereafter in the succeeding paragraphs.

13. As far as the dismissal in 2004 is concerned the petitioner claims that he was not paid a single rupee for the length of his service from the date of re-joining service from January 19, 2002 till the second dismissal on November 03, 2004 claiming that the dismissal was unlawful and he had

not been paid during the subsistence of the employment relationship. On a reading of the application filed in 2013 under Section 33-C (2) of the 1947 Act I find no such prayer therein regarding the period 2002 to 2004. I find in para.4 the averment that the petitioner is entitled to get back wages up to January 27, 2002. New plea may not be entertained appears to be the law unless there are compelling reasons to give what may naturally follow. That extent is not visible to me in this case as I am not sitting in the first instance.

14. This Court in the order dated March 12, 2001 in CWP No.11780 of 2000 had partly allowed the writ petition and held the petitioner entitled to back wages to the tune of 75% to the date of demand notice. However, there is no direction as to how the back wages would be computed and this would only mean that the wages the petitioner was earning on the date of termination @₹1200/- per month as an ad hoc Fireman was the salary in view. The petitioner served during the first period from February 1982 to July 1986 and raised a dispute for the first time in 1989 after a delay of about three years. The trial took another decade to conclude in the award of reinstatement with continuity of service but without back wages till the High Court interfered and award modifying the award and granting 75% of the back wages.

15. If it was the case, that the petitioner was a regular employee then obviously something could have been said in the argument of Mr. Khemka but I find that the contract of employment though not placed on record was admittedly on fixed salary of ₹1200/- per month and he was not a permanent employee or member of the service and, therefore, he would

not be entitled to any further amount unless the contract employment is altered which is not the case here nor can be done in writ jurisdiction. Hence the contention based on bare section and in the light of the definition of 'wages' in the 1947 Act though different from Section 17-B cannot be expanded to change the nature of employment from ad hoc to regular except on the plea of 'equal pay for equal work' and succeeding on its basis by an adjudication in full fledged proceedings, say under Section 10 of the Act or in an appropriate case in writ jurisdiction. But the plea of 'equal pay for equal work' when contested is not available or maintainable in execution proceedings under Section 33-C(2) of the Act, See my judgment in State of Haryana & Anr vs. The Presiding Officer, Labour Court, Rohtak & Anr. 2016 (2) S.C.T. 720= 2017 (1) RSJ 143 holding that the principle of EPEW cannot be applied by the labour court in proceedings under Section 33-C (2) of the ID Act as it is beyond its domain while acting as a court of execution of pre-existing rights.

16. That apart, even the salary admissible to regular Fireman was not documented before the Labour Court in the proceedings to help court form an opinion on merits and accordingly calculation of back wages on the last pay drawn in my view taken in the facts of this case will not take into account revision in wages/pay scales unless the status of the petitioner is changed to suit his claim.

17. Though there are no time limits prescribed in presenting application under Section 33-C (2) of the 1947 Act but still the approach to Labour Court or for that matter any court of law should be within reasonable time. It is well settled that where limitation is not prescribed

there should also be no delay and laches in approaching Court. The petitioner did not challenge his dismissal of November 2004 and sat back for almost nine years before he approached the Labour Court for computation of money due as claimed. In these circumstances, it is not possible to interfere in the order of the Labour Court holding the application as not maintainable. There is even further delay of short of three years in presenting this petition challenging the order dated April 05, 2016 in February 2019 without any explanation for the onward delay.

18. Reliance on case law by Mr. Khemka has to be dealt with. In Piara Lal v. Lt. Governor and others, 2001 (1) SCT 655 (Delhi) the claimant was a Conductor with Delhi Transport Corporation and was removed from service by an illegal order in 1985. The Labour Court by its award rendered in 1995 declared the dismissal illegal and unjustified and held Piara Lal to be entitled to reinstatement to his job with continuity of service and full back wages. In such circumstances, the Delhi High Court held that the claim under Section 33-C (1) of the 1947 Act before the Labour Commissioner for full back wages would obviously mean all entitlements to pay and allowances which Piara Lal would have drawn from time to time but for his unlawful termination and accordingly back wages cannot be calculated for the entire period from 1985 to 1996 on the basis of salary and allowances which that petitioner drew in 1985. Piara Lal was held legally entitled to increments, DA, revision in pay scale etc. as were granted to other employees from time to time with the category of petitioner, namely, in the cadre of Conductor.

19. In my view, reliance on this judgment is not appropriate as the

facts are distinguishable. The Court at Delhi was dealing with a regular hand illegally terminated with punishment of dismissal from service and, therefore, the claim by legal fiction would follow to its logical conclusion as if the order had never been passed. The present petitioner in his service was not placed like Piara Lal in DTC. Here the labour court had denied back wages altogether and awarded only reinstatement in its discretion while moulding the relief. Reinstatement was maintained by our Court but the award was modified to award 75% back wages. There was no direction of how the back wages were to be computed. Reinstatement only meant that the workman was put back to his original status i.e. a Fireman on ad hoc basis on fixed salary. That status can only be changed by the employer and not the court. Assuming he was paid fixed salary at then prevalent minimum wages prescribed under the Minimum Wages Act, 1948 the petitioner in his application could have claimed wage revision during the relevant period when he was forced out of service. But he did not do so nor did he lead evidence to base his claim. Instead, he claimed comparable salary of a regular Fireman running up a tall bill of ₹30,26,164/- in the application. Or on the other hand he could have based his claim on the principle of *quantum meruit* enshrined in equal work for equal pay (Article 39 (d) of the COI) proving satisfactorily that during the claim period he had discharged the full duties and responsibilities of the post of Fireman, for court to disregard his terms and condition of employment. But he did not opt for this path asking for judicial determination. There are also no pleadings to this effect for this Court to hazard an opinion.

20. Based on his research on precedents, Mr. Khemka has relied on

another decision of the Delhi High Court in Ansal Properties and Industries Ltd. v. Neelam Bhutani, 2018 (3) SCT 817 (Delhi) also a Labour Court matter arising from proceedings under Section 33-C (2) of the 1947 Act. This decision follows the dictum in *Piara Lal* case (see para.27 of the report) in a factual setting which compares with *Piara Lal's* case and is also of no help to the petitioner in answering his prayers for the reasons already stated above while dealing with *Piara Lal's* case.

21. As a result of the above discussion and for the reasons assigned in the course of the order including delay and laches, I find no cogent ground to interfere with the order of the Labour Court as it does not suffer from any fundamental error of fact or law apparent on the face of the record. The impugned order is maintained.

22. Thus, the petition fails and is dismissed in limine as I find absence of reasons to put the other side to notice.

(RAJIV NARAIN RAINA)
JUDGE

01.03.2019
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Whether speaking/reasoned Yes

Whether reportable Yes/No