

CWP-9022-2019

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

CWP-9022-2019

Date of Decision: 26th November, 2019

Hardeep Singh

...Petitioner

Versus

The Batala Cooperative Sugar Mills Limited & another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. B.S. Jaswal, Advocate
for the petitioner.

Mr. Rahul Sharma, Advocate
for respondent No.1.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this writ petition is to the award dated 07.11.2003 (Annexure P-1) passed by the labour Court, Amritsar, whereby, petitioner has been granted the benefit of reinstatement in service with all benefits except back-wages, for which liberty was granted to him to file an application under Section 33-C (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act').

2. It is the contention of the learned counsel for the petitioner that the petitioner is entitled to back-wages when the services of the petitioner has been found to be terminated illegally by the Tribunal. He contends that since the petitioner was already granted liberty to claim back-wages under Section 33-C (2) of the Act, petitioner did not approach this Court prior to

filing of the present writ petition in March, 2019.

3. On the other hand, learned counsel for respondent No.1 contends that as per the liberty which has been granted by the Labour Court, Amritsar, petitioner had filed an application under Section 33-C (2) of the Act, which was allowed by the Industrial Tribunal, Gurdaspur, vide award dated 05.12.2013 (Annexure P-4), which was challenged by the respondents by filing Civil Writ Petition i.e. CWP No.3836 of 2014, titled as 'The Batala Cooperative Sugar Mills Limited Vs. Hardip Singh & another', which was dismissed by the learned Single Judge, vide order dated 03.03.2014, against which Letters Patent Appeal No.478 of 2014 was preferred. Respondents had also challenged the award dated 07.11.2003 by filing CWP No.6306 of 2004 in this Court, which was admitted and no stay was granted with regard to the reinstatement of the petitioner and in pursuance thereto, petitioner was reinstated in service. The Division Bench of this Court not only called for the admitted writ petition and decided the same along with Letters Patent Appeal No.478 of 2014 but in para 23 of the said order, it has also been said that the petitioner has not challenged the correctness of the award dated 07.11.2003 and allowed the award to attain finality as far as it denies back-wages to him. Petition for Special Leave to Appeal preferred against the Division Bench order dated 03.09.2015 (Annexure P-5) stands dismissed by the Hon'ble Supreme Court vide order dated 07.02.2018 (Annexure P-6). He, thus, contends that the prayer made in the present writ petition cannot be accepted, firstly because of the belated approach and the petitioner by filing the present writ petition challenged an award which is dated

07.11.2003 especially when having accepted the same preferred an application under under Section 33 -C (2) of the Act, which award passed in his favour having been been set aside, no right whatsoever is left out to the petitioner to challenge.

4. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the impugned award as well as various orders which have been passed by this court including the order dated 03.09.2015 (Annexure P-5) passed by the Division Bench, which has attained finality upto the Hon'ble Supreme Court.

5. A perusal of the Division Bench judgment dated 03.09.2015 (Annexure P-5) would leave no manner of doubt that rights, if any, accrued to the petitioner have been finalized. The claim under Section 33-C (2) of the Act, as was awarded in his favour vide award dated 05.12.2013 (Annexure P-4), has been set aside. The award passed by the Labour Court, Amritsar, dated 07.11.2003, which was challenged through a writ petition by the respondents has also been partly set aside, wherein, liberty was granted to the petitioner to claim his back-wages under Section 33-C (2) of the Act. If that be so, the claim which is being sought to be made in this writ petition by the petitioner by impugning the award dated 07.11.2003 (Annexure P-1) would not be sustainable as the matter has already been adjudicated upon by the Division Bench which has passed an order dated 03.09.2015 and the benefit of reinstatement as per the award has been granted to the petitioner. The claim which is being sought to be made of back-wages also having been finalized with the said order dated 03.09.2015

(Annexure P-5), the said claim is not sustainable. For ready reference, paragraphs 22 and 23 of the judgment dated 03.09.2015 (Annexure P-5) are reproduced herein:-

“22. From an overview of the cited judgments it is manifestly clear that a Labour Court, while answering a reference under Section 10(i)(c) of the Act, holding a workman entitled to reinstatement in employment without back wages, cannot reserve him liberty to file an application under Section 33C (2) of the Act, to lay a claim to the same and the Labour Court/Industrial Tribunal cannot take up an exercise under Section 33C (2) of the Act to adjudicate the question whether the workman is entitled to back wages and, if yes, to what extent.

23. The learned Single Judge, in the impugned order has also referred to **Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalya (D.Ed.), (2013)10 SCC 324** to support workman’s claim for back wages. We are afraid, workman’s claim for back wages cannot sustain firstly because, as here-in-before stated, such a claim could not be maintained under Section 33-C(2) of the Act and secondly because the workman has not challenged the correctness of award dated November 07, 2003 and has allowed the said award to attain finality in so far it

denies back wages to him. Therefore, the judgment in the case of **Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalya (D.Ed.)** (supra) cannot work to the benefit of the workman.”

6. The present writ petition is also belated for the reason that the petitioner has challenged the award dated 07.11.2003 (Annexure P-1) after a period of 16 years. Although the counsel for the petitioner has sought to explain the delay by asserting that he had, under a *bona fide* belief, filed an application under Section 33-C (2) of the Act as per the liberty granted vide award dated 07.11.2003 and therefore, had no occasion to approach this Court. This argument of the learned counsel for the petitioner goes against him as the petitioner had accepted the award which has been passed by the Labour Court, Amritsar and therefore, now at this belated stage, he cannot avail of the said remedy.

7. The writ petition, therefore, being devoid of any merit, stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

26th November, 2019
Harish

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No