

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

Sr. No.216

**CWP No.16749 of 2016
DECIDED ON: 05.09.2019**

GURBACHAN SINGH

...PETITIONER

VERSUS

BHAKRA BEAS MANAGEMENT BOARD AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Madan Mohan, Advocate, for the petitioner.
Mr. Anil Sharma, Advocate, for respondents.

ARUN MONGA, J. (ORAL)

Petitioner herein seeks issuance of a writ in the nature of certiorari to quash the order dated 03.11.2015 (Annexure P-11), whereby his claim for continuity in service on reinstatement and other benefits have been rejected.

2. Learned counsel for the petitioner submits that he was appointed as T/Mate on 13.10.1978 and retrenched on 03.04.1980. Petitioner challenged his retrenchment and pursuant to Award dated 02.09.2009, he was taken back into service and allowed to join on 08.12.2012 but no benefit of continuity of service was given to him.

3. A bare perusal of Award dated 02.09.2009 (Annexure P-1) reflects that the award is silent about continuity of service. I am unable to persuade myself for accepting the arguments of the learned counsel for the petitioner that once the petitioner was reinstated in service vide Award dated 02.09.2009 (Annexure P-1) his reinstatement has to be by a necessary implication construed that the reinstatement was with continuity of service.

4. On the other hand, learned counsel for the respondents submits that in somewhat similar circumstance, where an Award was passed by the Labour Court without stating whether or not the employee was reinstated with or without continuity of service, the Hon'ble Supreme Court of India in case titled as '**Andhra Pradesh State Road Transport Corporation & Ors. vs. Abdul Kareem, 2005(3) SCT 668**' decided the question in the following terms:-

10. *The principle of law on point are no more res integra. This Court in S. Narsagoud (supra) succinctly crystallized principle of law in Paragraph 9 of the judgment on Page SCC 215:*

“We find merit in the submission so made. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. In our opinion, the employee after having been held guilty of unauthorized absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorized absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service.”

11. *Reverting to the facts of the case at hand, as already noticed, the Labour Court specifically directed that the reinstatement would be without back wages. There is no*

specific direction that the employee would be entitled to all the consequential benefits. Therefore, in the absence of specific direction in that regard, merely because an employee has been directed to be reinstated without back wages, he could claim a benefit of increments notionally earned during the period when he was not on duty or during the period when he was out of service. It would be incongruous to suggest that an employee, having been held guilty and remained absent from duty for a long time, continues to earn increments though there is no payment of wages for the period of absence.”

5. A perusal of the judgment *ibid* leaves no manner of doubt that since the Award of the Labour Court did not grant any continuity of service and the petitioner had acquiesced to the same as he never challenged the non-grant of continuity in service by filing an appeal or SLP against the Award. At this stage, to seek the relief by way of present writ petition is hit by *res judicata*, as admittedly the petitioner had earlier filed a writ petition, though to the limited extent of seeking backwages but even the same was also withdrawn to pursue his remedy under the Industrial Disputes Act.

6. In view of the above, petitioner is held not entitled to continuity of service. The present petition is disposed of with a direction to the respondents to grant all other consequential benefits/relief as arise from the award if not already accorded to the petitioner and disburse the same to him along with interest @ 6% p.a. within a period of three months from the date of receipt of certified copy of this order.

Disposed of accordingly.

05.09.2019

Ankur

**(ARUN MONGA)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No