

CWP No.25490 of 2018 -1-

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

**CWP No.25490 of 2018 (O&M)
Date of decision : 24.01.2019**

Sia Ram

...Petitioner

Vs.

The Presiding Officer, Industrial Tribunal, Amritsar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Vipul Aggarwal, Advocate for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

1. I have not an iota of doubt on reading the papers on file that the settlement dated 22.07.1999 by way of affidavit of the petitioner foregoing his claim under the award dated 10.12.1998 for reinstatement and back wages from 30.11.1993 was signed by free will without compulsion provided he is given fresh appointment on the terms and conditions as deemed fit by the management was not open to challenge in proceedings under Section 33-C(2) of Industrial Disputes Act, 1947 (for brevity 'the Act'). The claim had ceased to be a pre-existing right because of the act and conduct of the workman himself. The petitioner in his subsequent letter on the settlement in respect of the award, wrote a letter to the Managing Director of the Punjab State Seeds Corporation Ltd., Chandigarh dated 23.07.1999 stating the reason for entering compromise on affidavit that he was exhausted from contesting the case and did not want any more litigation and therefore, he asked for

fresh appointment under the settlement without duress and in perfect state of mind. He also undertook not to claim any benefit of previous service from the initial date of joining i.e. 26.12.1977 till the fresh date of joining in the Corporation. He had foregone his previous service in his own interest.

2. Notwithstanding the affidavit, the petitioner challenged the settlement by way of filing CWP No.16945 of 2000, but that petition was disposed of by an order passed by Division Bench without notice to Management observing as follows:

“After hearing the learned counsel for the petitioner, we dispose of this writ petition by directing the respondent to implement the award dated 10.12.98. Copy Annexure P/1 passed by the Labour Court in favour of the petitioner, within a period of two months of receipt of copy of this order from this Court or production of certified copy by the petitioner, whichever is earlier. The decision be taken by passing a speaking order which shall be conveyed to the petitioner.”

3. Aggrieved, the Management entered an application for recall of the order as it was not heard. Ultimately, the writ petition was disposed of by order dated 09.03.2010. The Court was of the view that disputed questions of fact were involved regarding the settlement which could not be gone into in writ jurisdiction. The petition was dismissed, however, on the asking of the workman, liberty was granted to him to approach the appropriate forum for redressal of his grievance as was made in the petition. Liberty was granted to avail remedy in

accordance with law for the same cause of action as has been espoused by him in the present petition.

4. The petitioner was advised to prefer an application under Section 33-C(2) of the Act which has been dismissed on the ground that no evidence was led on coercion and duress to undo the settlement.

5. It is very doubtful whether Labour Court in proceedings under Section 33-C(2) of the Act could enter the dispute regarding the settlement as an existing right to compute money due. The settlement had taken away the fruit of the award except insofar as reinstatement was concerned which plea was accepted and the petitioner was taken back in service by way of fresh appointment after 14 years. The Labour Court could not limit its examination to pre existence of the disputed right without actually entering findings on the settlement and its validity, which could more appropriately be dealt with either in proceedings under Section 10(1)(c) of the Act by raising a dispute or in a civil court.

6. Therefore, without expressing any opinion on the evidence part of the lis regarding the settlement in the order of the Tribunal, liberty is granted to the petitioner to seek redress in an appropriate Forum where the issue of settlement can be thrashed out by leading evidence. I have no doubt in case the petitioner seeks legal redress against the settlement the competent forum would see whether the provisions of Section 14 of the Limitation Act, 1963 apply to overcome delay as the petitioner had been pursuing a remedy bona fide in a forum

which could not have yielded relief to him.

7. As a result, the petition is dismissed. While dismissing the petition and without putting the stamp of the Court on the order of the Presiding Officer, Labour Court, Amritsar, the petitioner is given liberty to seek legal redress in an appropriate forum. In case the appropriate forum is approached within two months from today, that period would also be taken into consideration by the forum while it deals with limitation, delay or laches. It was perhaps this window that was left open when final order was passed on 09.03.2010 by this Court in the petitioner's case. The petitioner was ill-advised to approach the Labour Court in an application under Section 33-C(2) of the Act. The settlement could not be undone in those execution proceedings.

24.1.2019

Meenu/Vimal

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No