

(123+124) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 17.10.2019

1. CWP No.29853 of 2019

Pepsu Road Transport Corporation, Patiala and anr. ...Petitioners

Versus

P.O., Industrial Tribunal, Patiala and anr. ... Respondents

2. CWP No.29887 of 2019

Pepsu Road Transport Corporation, Patiala and anr. ...Petitioners

Versus

P.O., Industrial Tribunal, Patiala and anr. ... Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Anil Kumar Sharma, Advocate for the petitioners.

B.S. Walia, J. (Oral).

[1] This order shall decide CWP No.29853 of 2019 and CWP No.29887 of 2019 as the parties as well as point in issue in both cases is common. Facts of the case are being taken from CWP No.29853 of 2019.

[2] Brief facts of the case leading to the writ petition are that vide award dated 13.01.2014 passed by the Industrial Tribunal, Patiala (hereinafter referred to as the Tribunal), respondent No.2 (hereinafter referred to as the workman) was ordered to be reinstated in service whereupon the workman submitted his joining report to the General Manager, Barnala Depot, Pepsu Road Transport Corporation (hereinafter referred to as petitioner No.2) but was told that work would be provided to

Transport Corporation (hereinafter referred to as petitioner No.1) and that he should enquire about the same after 15 days. The workman approached petitioner No.2 on expiry of 15 days but was informed that no communication had been received from the office of petitioner No.1 and he was asked to come back after 15 days to ascertain the outcome of his request. On expiry of 15 days, the workman again approached petitioner No.2 to join duty but to no avail. Thereafter on 25.07.2014, the workman approached petitioner No.1 to enquire about being taken back on duty and learnt that no communication had been received by petitioner No. 1 from the office of petitioner No.2 for providing duty to the workman. The workman was advised to submit joining report directly in the office of petitioner No.1 whereupon, the workman submitted joining report in the office of petitioner No. 1 on 25.07.2014 vide diary receipt No.3227 dated 25.07.2014 with copy to petitioner No.2 vide receipt No.652 dated 28.07.2014 followed by reminder dated 23.09.2014 vide receipt No.5595 dated 23.09.2014 and reminder dated 16.02.2015, both to petitioner No.1 to take him back on duty with copy to petitioner No.2 but again to no avail and it was only on 29.07.2015 that the workman was allowed to join duty.

[3] In the aforementioned circumstances, the workman filed two application's under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) i.e. for payment of wages w.e.f. 01.02.2015 to 28.07.2015 @ Rs.23,576/- per month (i.e. total Rs.1,39,884.26/-) along with interest @ 18% per annum, while the other application (qua which CWP No.29887 of 2019 has been filed) claim was for payment of wages from 07.04.2014 to 31.01.2015 @ Rs.23,576/- per month (i.e. total Rs.2, 08,431.33/-) along with interest @ 18% per annum on the aforesaid amount w.e.f. date of entitlement till date of payment.

[4] The tribunal, vide separate order dated 20.03.2019 and 15.03.2019 impugned in the petitions, on the basis of evidence led by the parties, held that there was no dispute amongst the parties that after the publication of the award on 16.04.2014, the workman submitted joining report Ex. W-3 in the office of petitioner No.2 on 07.05.2014 followed by numerous reminders to both petitioners but was taken back on duty only 29.07.2015. The Tribunal held that joining report submitted by the workman to petitioner No.2 was admitted not only in the written reply but also by MW-1 Rajpal Singh in his affidavit Ex.MW-1/A, thus it was apparent that although the workman was willing to perform duty after the passing of the award and that he was not taken back on duty till 29.07.2015 and on the aforesaid basis, held that the conduct of the management clearly revealed that it was not inclined to take back the workman on duty whereas the workman was interested in joining duty as soon as possible, therefore, the principle of “no work no pay” would not apply. Reliance was placed by the Tribunal on the decision in **Panipat Cooperative Sugar Mills Limited v. Presiding Officer, Labour Court, Ambala and others, 2011 (4) SCT 17 (P&H)**. In said case, the Labour Court found denial of employment to the workmen at the relevant time unjustified, consequentially, the workmen entitled for payment of wages for the period they were unjustly denied employment. Challenge to the order granting wages to the workmen, was dismissed and maintainability of the claim application under Section 33-C (2) of the Act upheld by relying upon a Division Bench judgment in CWP No.18810 of 1995. Relevant extract of the decision in CWP No.18810 of 1995 is reproduced as under:-

“It is a settled proposition of law that where the services of the workman are illegally terminated without justification, he is entitled to reinstatement with full back wages..... Instead of implementing the award in letter

and spirit, they chose not to pay back wages to which respondent No.2 (workman) was entitled”.

Hon’ble Punjab and Haryana High Court made exception to the rule of ‘no work, no pay’ by holding that

*“It would be perfectly legitimate to make exception to situation when the person was willing to work but was not allowed to work, to be treated ‘as if he had worked’, as noted by the Hon’ble Supreme Court in **Commissioner, Karnataka Housing Board v. C. Muddaiah**, 2007 (4) SCT 452:2007 (5) Recent Apex Judgments (RAJ) 573 : (2007) 7 SCC 689”.*

*Hon’ble Apex Court in **Commissioner, Karnataka Housing Board’s** case (Supra), held that:*

“Even in absence of statutory provision, normal rule is “no work no pay”. In appropriate cases, however, a court of law may, may must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The court, in a given case, may hold that the person was willing to work but he was illegally and unlawfully not allowed to do so. The court may in the circumstances, direct the authority to grant him all benefits considering “as if he had worked”. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a court of law and if such directions are issued by a court, the authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case)”.

[5] Reliance was also placed by the Tribunal on the decision in

Gurdaspur, 2004 (2) RSJ, 725 wherein the department failed to provide duty to the workman from 29.12.1975 to 03.07.1979 due to no fault of the workman and the application by the workman u/S 33-C (2) of the Act for wages for the aforementioned period was allowed by the Labour Court, while the writ petition filed by the management was dismissed.

[6] Sole submission of learned counsel is that orders dated 20.03.2019 and 15.03.2019 impugned in the writ petitions are unsustainable and the workmen not entitled to relief as they had not served for the period for which claim for wages had been allowed.

[7] I have considered the submission of learned counsel.

[8] Admittedly, the workman reported for duty after the passing of the award but despite repeated reminders was not taken back on duty till 29.07.2015. In the circumstances, the plea of 'no work no pay' would not apply for denying payment of wages. The workman was taken back on duty by the management only after the lapse of sufficient period of time for reasons not attributable to the workman and for reasons best known to the management. In the circumstances, the workman had a pre-existing right to get wages for the period after he reported for duty to the management. Thus, no fault can be found with the orders passed by the Tribunal.

[9] Finding no merit in the submission on behalf of the petitioners, the writ petitions are dismissed in limine.

17.10.2019
Amit

(B.S. Walia)
Judge

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.