

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

**Civil Revision No.7655 of 2019 (O&M)
Date of Decision: 03.12.2019**

**Vaish Public School
Vs
Sanjay**

**.....Petitioner
.....Respondent**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Yashdeep Nain, Advocate
for the petitioner.

Mr. Sandeep Singal, Advocate
for the caveator.

RAJ MOHAN SINGH, J.

[1]. Notice of motion.

[2]. Learned counsel appearing on behalf of the caveator
accepted notice.

[3]. With the concurrence of learned counsel for the parties,
I have heard this case on merits and proceeded to decide.

[4]. Petitioner has laid challenge to the order dated
05.10.2019 passed by the Civil Judge (Junior Division) Rohtak,
vide which the application filed by the petitioner for recalling the
attachment order was dismissed and for quashing of attachment
warrant dated 15.11.2018.

[5]. Respondent sought reference of dispute before the
Presiding Officer, Industrial Tribubal-cum-Labour Court, Rohtak
(for short 'the Tribunal') to the effect that whether the termination

of services of workman Sh. Sanjay is justified and, if not, to what relief he is entitled for?

[6]. The Tribunal vide award dated 31.01.2017 held that the termination of services of the respondent was in violation of Section 25-F of the Industrial Dispute Act, 1947 (hereinafter to be referred as 'the Act') and he was held entitled to reinstatement in service with full backwages, continuity in service and all other consequential benefits.

[7]. Thereafter, the respondent filed an execution application under Section 11, Sub-sections 9 & 10 of the Act for execution of award on the premise that he was reinstated on 01.09.2017 and an amount of Rs.3,29,003/- was paid, whereas payable amount to the respondent was Rs.6,80,383/- and, therefore, petitioner was held liable to pay the remaining amount of Rs.3,51,380/- which has been illegally withheld. Respondent also prayed that in case of failure on behalf of the petitioner, the petitioner be sent to civil imprisonment.

[8]. Vide order dated 15.11.2018, the Civil Judge (Senior Division), Rohtak directed the bailiff/authorized officer to attach immovable property of the petitioner-School, unless the petitioner pays the aforesaid amount together with cost(s) of the attachment.

[9]. Petitioner-School filed an application for passing appropriate orders for recalling the order of attachment on the ground that the respondent was allowed to join the duties on 01.09.2017. Backwages amounting to Rs.3,28,993.08 were paid out of which an amount of Rs.39,479/- was deducted on account of PF contribution. The petitioner has paid salary of Rs.2500/- per month for 109 months i.e. from 01.01.2008 to 31.01.2017 i.e. the date of award and the said amount came to be Rs.2,72,500/-. For seven months from 01.02.2017 to 31.08.2017, the salary as per minimum wages @ Rs.8,070.44 per month was calculated to the tune of Rs.56,493.08. Total salary to the tune of Rs.3,28,993.08 was calculated, out of which PF contribution to the tune of Rs.39,479/- was deducted and net payment to the tune of Rs.2,89,514.80 was paid to the respondent. The remaining amount by the respondent was claimed to be illegal.

[10]. The calculation submitted before the trial Court are suggestive of the fact that the backwages have been calculated on the basis of minimum wages since 01.04.2006 to 31.08.2017 by the decree holder. Factum of last salary to the tune of Rs.2500/- per month is not disputed on record. There is no evidence on record that monthly wages of the respondent was on increasing note. Had the respondent not been terminated, he

would have not earned beyond Rs.2500/- per month.

[11]. It is a settled principle of law that when the order of termination is found to be illegal, the workman is entitled to full backwages unless and until divergence is pleaded by the management to show that the workman was ever gainfully employed during that period, when he remained out of job. Full backwages have to be calculated on the basis of last pay drawn.

[12]. Vide the impugned order, the Civil Judge (Junior Division) has calculated the arrears of backwages on the basis of minimum wages for unskilled worker fixed by the Government of Haryana for the period starting from April 2006 to 31.08.2017 excluding the period from 24.07.2007 to 29.09.2007.

[13]. In **Canara Bank, Lucknow vs. Central Government Industrial Tribunal-cum-Labour Court, 2001(1) CLR 173**, it was observed that the award may be for full backwages or partial backwages or with no backwages while reinstating the workman, but when the Labour Court expresses some special reference as a term for reinstatement, the same has to be interpreted according to the expression used therein. If the payment of backwages is a qualified connotation in the award, it has to be interpreted to the extent as contemplated therein to

qualify the payment of wages to the extent as it has qualified by the expression used in the award. If the backwages are qualified by any expression, it cannot be said that it is superfluous or redundant, but at the same time, it has to be examined from the expression whether there is any apparent contradiction in the expression used or not. This has to be interpreted according to the expression used in the award.

[14]. In the award, there is no such reference of backwages as lastly drawn by the respondent. In such an eventuality, whether the respondent is entitled to include all the components as per Section 2(rr) of the Act would be a question to be answered by the executing Court. Proper computation has to be made on the basis of entitlement of the workman in respect of those components mentioned in Section 2(rr) of the Act.

[15]. According to Section 17-B of the Act, the interpretation of wages lastly drawn has to be appreciated. The award is silent with regard to applicability of minimum wages prevailing at the relevant time. The reinstatement with backwages at the rate which lastly drawn has to be appreciated at the rate at which the workman had drawn on the date of termination. Whether the wages even though may be at that rate would include all the components as mentioned in Section 2(rr) of the Act has to be seen by the executing Court afresh on the basis of material on

record. The aforesaid determination would be a question of fact, dependent upon the actual wage lastly drawn by the respondent at the time of termination of his service. Whether he was entitled to all the components as mentioned under Section 2(rr) of the Act at the relevant time or not would be a factor to be determined and thereafter the same has to be applied in accordance with law. In any case, the executing Court would be required to revisit the order and determine whether respondent was entitled to any such amount beyond Rs.2500/- per month (wages lastly drawn) in terms of Section 2(rr) of the Act or on the basis of minimum wages. If the respondent is found entitled to the aforesaid amount, the calculations be carried out and thereafter fresh order be passed in accordance with law preferably within a period of three months from the receipt of certified copy of this order.

[16]. In view of aforesaid observation, this revision petition is accepted. The impugned order dated 05.10.2019 passed by the Civil Judge (Junior Division) Rohtak is set aside. The matter is remanded to the executing Court to revisit the order in view of the observations made hereinabove.

December 03, 2019

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No