

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

204

CWP No.1618 of 2013 (O&M)
DECIDED ON : 20.01.2020

Municipal Corporation, Ludhiana

...Petitioner

versus

Presiding Officer, Labour Court-cum-Industrial Tribunal, Ludhiana
and another.

...Respondents

CORAM : HON'BLE MR. JUSTICE GIRISH AGNIHOTRI

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

Ms. Samanjeet Kaur, Advocate
for respondent No.2.

GIRISH AGNIHOTRI, J. (ORAL)

Present petition was filed by the petitioner-Municipal Corporation, Ludhiana, inter alia, praying for issuance of writ in the nature of certiorari to quash award dated 20.07.2012 (Annexure P-5).

Vide award dated 20.07.2012 (Annexure P-5), the Industrial Tribunal, Ludhiana, had given findings and relief to the effect that the termination of the services of the workman is illegal. It was ordered that the workman shall be reinstated into the service on same terms and conditions. It was also observed as under:-

“He is, however found not entitled to full back wages as he himself is responsible for the delay of about 7 years for which, he cannot be allowed the benefit of his own fault.”

The submission of the counsel for the petitioner is that from the above observations of the Labour Court it is evident that no back wages were directed by the Labour Court.

This Court however, is of the view that the directions do not appear to be very clear. From the perusal of the award, it appears that the intention of the Labour Court was to grant some back wages as the workman was himself responsible for delay of seven years.

Be that as it may, for the reasons recorded henceforth, this may become insignificant.

The contention of the petitioner deserves to be accepted by this Court, is that the Hon'ble Supreme Court in various judgments including the judgment reported as '2013(2) JT 231, titled as Assistant Engineer, Rajasthan Dev. Corp. and Anr. Vs. Gitam Singh' has recorded that since the workman therein was engaged as a daily wager and had worked for 8 months, Labour Court failed to exercise its judicial discretion appropriately. The award of reinstatement with continuity of service and 25 % back wages was held to be not sustainable and was set aside.

This Court is therefore, of the considered view that the award of reinstatement cannot be sustained and the workman can be suitably compensated for non compliance of the statutory provisions of Industrial Dispute Acts.

The records of the case shows that notice of motion was issued in this case on 25.01.2013. This Court had stayed the operation of the award. The workman had moved an application under Section 17-B supported by an affidavit. The reply to the said application has also been filed. In para 3 of the reply it has been only stated that respondent-workman

may kindly be put to strict proof of the fact that he was not employed anywhere during this period. Therefore, it is apparent from above that if the wages last drawn are calculated to be payable under Section 17-B of the Act from the date of the order dated 25.01.2013, till date the amount itself would come to approximately Rs.2 lakhs.

Therefore, this Court holds the workman entitled for the same. The respondent may calculate the exact amount and release the same within four weeks from the date of receipt of certified copy of the order.

In order to award a suitable compensation, it needs to be noticed that the specific case pleaded by the workman was that his services were regular and continuous. He met with an accident on 20.02.1995 and two of his right hand fingers had to be amputated.

The Labour Court has then observed that the date of the accident of the workman is during the course of his employment which is evident from the certificate issued by CMC Ludhiana dated 06.06.1996 showing him to be a disabled man. It is further observed that the date of the accident i.e. 23.02.1998 as mentioned by the workman in claim statement, seems to be a pure typographical mistake (which is evidently dated as 20.02.1995) from Annexure P-6. These observations have been made in para 11 of the award.

Counsel for the respondent further submits that it is a matter of fact that no separate compensation for the disability so suffered by the workman has been awarded/taken by him till date.

This Court in view of the above circumstances, is therefore, of the considered opinion that ends of justice would be met in case total sum of Rs.5 lakhs is awarded to the workman as full and final compensation (minus

the wages already calculated and paid under Section 17 B of the Act), which would be in lieu of award given by Labour Court.

Writ petition is disposed of in the above terms.

January 20, 2020
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(GIRISH AGNIHOTRI)
JUDGE

Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO