

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

**CR No.2031 of 2020**

**Date of decision : January 13, 2021**

**The Executive Engineer/Stores**

**..... Petitioner**

**Versus**

**Shri Rinku Rana**

**..... Respondent**

**(IN VIRTUAL COURT)**

**CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

**Present:-** Mr. R.D. Bawa, Advocate for the petitioner.

Mr. Naren Pratap Singh, Advocate for the respondent.

**RAJBIR SEHRAWAT, J. (ORAL)**

Petitioner is challenging the order dated 03.10.2019 and the order dated 13.12.2019, whereby, in the proceeding of the execution of the Award passed by the Industrial Tribunal-cum-Labour Court, Panipat (for short 'the Labour Court'), the Court below has ordered payment of revised wages to the respondent; pursuant to his reinstatement, and has further ordered that such payment be made from the date of Award passed by the Labour Court.

The main facts, as involved in this case, are that the respondent-workman was engaged by the petitioner-management as a Data Entry Operator in the month of November, 2009. Thereafter the service of the respondent-workman was terminated w.e.f. 11.10.2011. The respondent-workman raised an industrial dispute. The petitioner-management disputed

its liability to reinstate the respondent-workman or to make any payment of wages or compensation to him by submitting that his service was never terminated, rather the contract of the respondent-workman was not extended any further. Ultimately, the Labour Court passed an Award in favour of the respondent-workman; awarding therein the reinstatement of the respondent-workman in service with continuity of service and 50% of back wages from the date of filing of the demand notice. Thereafter, statedly, the respondent-workman was reinstated by the petitioner-management w.e.f. 14.03.2017. He has been continuing as such since then. However, the respondent-workman was being paid by the petitioner-management only the amount of wages which he was last drawing prior to termination of his service. The respondent-workman preferred an execution petition before the Executing Court at Panipat seeking the revised wages from the petitioner-management. The said application was allowed by the Executing Court and the respondent-workman was held entitled to the revised pay scale from the date of Award dated 16.08.2016. Further direction was issued to place on record the demand draft in favour of the respondent-workman for the amount of arrears arising from that date on account of difference between the actual wages paid to him post reinstatement and the revised wages to which the respondent-workman was held entitled. It is against this order; that the present petition has been preferred.

Arguing the case, learned counsel for the petitioner has submitted that the Award in favour of the respondent-workman had granted him the benefit of reinstatement with payment of 50% of back wages. The petitioner had preferred CWP No.24023 of 2016 before this Court;

challenging the said Award. The High Court had granted stay only against the payment of back wages and the part of the Award qua reinstatement was not stayed by the High court. Accordingly, the petitioner reinstated the respondent-workman w.e.f. 14.03.2017. However, as per the mandate of Section 17-B of the Industrial Disputes Act, 1947 (for short 'the Act'), the petitioner paid to the respondent-workman an amount equal to the wages last drawn by him at the time of termination of his service. Hence it is submitted that the order passed by the Executing Court is totally illegal and operates against the mandate of Section 17-B of the Act. Therefore, the same is liable to be set aside. Counsel has further submitted that the Executing Court could not have gone beyond the mandate of Section 17-B of the Act while calculating the amount payable to the respondent-workman.

On the other hand, learned counsel for the respondent-workman has submitted that the respondent-workman has been put on job by the petitioner-management. The petitioner-management itself has admitted before the Executing Court that the wages for the post of Data Entry Operator, on which the respondent has been reinstated, were revised vide Notification dated 12.08.2013. As per the said Notification, a person working on the post of Data Entry Operator is now being paid an amount of ₹13,500/- per month. Since the respondent-workman is actually performing the duties of post of Data Entry Operator, therefore, he is entitled to the salary of the post, the duty of which the respondent is performing. Hence, it is submitted that the Executing Court has rightly issued the direction to the petitioner-management to grant the revised wages to the respondent. There is no illegality or impropriety in the order passed by the Executing Court.

Hence, the present petition deserves to be dismissed.

Having heard the learned counsel for the parties, this Court of the view that for proper appreciation of the aspect, it would be appropriate to have a reference to the language of Section 17-B of the Act, which is reproduced herein below:

***“17B. Payment of full wages to workman pending proceedings in higher courts.—Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:***

***Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be.”***

A bare perusal of the abovesaid provision of the Act makes it clear that the payment of 'wages last drawn' to a workman is a duty cast upon the employer in case the employer intends to delay the implementation of the Award by approaching the High Court or the Supreme Court by way

of writ petition or any other proceeding. This provision has been created by the legislature as a protection and as a minimum guarantee of wages to the concerned workman. Therefore, the responsibility of the employer to make the payment of 'wages last drawn' by the workman before termination of his service is not dependent or related to any interim order passed by the High Court. This responsibility of the employer to make such payment is a liability, per se, arising only from the factum of filing of the writ petition by the employer; which is to continue during the duration of pendency of such writ petition. There cannot be any escape from this liability under any circumstances for any reason whatsoever; except by seeking an order from High Court or the Supreme Court, as the case may be, under proviso to this Section, since there cannot be any estoppel against a statute. Therefore, reliance of the counsel for the petitioner upon the order of the High Court qua staying the back wages, is totally misplaced. Otherwise also, neither the High Court has stayed the reinstatement of the respondent nor has issued any direction or order to make the payment of wages last drawn by the respondent-workman. Hence, the issue of payment of salary to a workman, after reinstatement, has to be considered independent of the interim order passed by the High Court.

As mentioned above, it is clear from the language of the statute that the responsibility of the employer to make the payment of the 'wages last drawn' to the reinstated workman is absolute liability cast upon the employer. This liability is cast upon the employer, irrespective of the fact whether any interim order qua the Award under challenge has been passed by the High Court or not; during pendency of the petition. Rather, the

language of Section 17-B of the Act does not contemplate the situation of reinstatement of a workman during pendency of the writ petition filed by the employer. The aspect of reinstatement of a workman has been left totally at the discretion of the employer/establishment. It is for the employer to take a call on the issue; whether it would like to make the payment of 'wages last drawn' by the workman without getting any work from him or to reinstate him and to get work of the post from him. However, once this discretion has been exercised by the employer/establishment for reinstatement of the workman; then from the date of such reinstatement the workman would be, obviously, entitled to the wages which are meant to be paid for incumbent of such a post. Needless to say that wages payable to an employee are attached to the duties and responsibilities of the post and not to a legal situation pertaining to any dispute between the establishment and the employee. Therefore, the workman is fully entitled to get the wages meant for the said post, if the employer has chosen to get work of that post from such a workman. After having chosen to take the work of the post from the workman through his voluntarily exercise of discretion, the employer cannot take shelter under the provision of Section 17-B of the Act which talks of payment of wages to a workman; debar the performance of any duty of any post by the workman after filing of the writ petition by the employer. The issue of payment of wages after such reinstatement to a reinstated workman; during pendency of the writ petition, is an independent aspect and has to be taken as such. Therefore, the respondent-workman would be fully entitled to the salary of the post, on which he has been reinstated, from the date of his reinstatement till he is kept on duty by the petitioner-

employer/establishment.

However, this Court finds that the Executing Court has allowed the revised wages to the respondent-workman from the date of Award; instead of granting the said benefit from the date of his actual reinstatement. Since the petitioner-employer is already before the High Court against the Award and the issue of reinstatement is also subject to the decision of the writ petition, therefore, the grant of revised wages for the period before the actual reinstatement, at this stage, may not be germane to law. There was no necessity for the Executing Court to create a situation where the workman might have to return the money in the situation of writ petition being allowed by the High Court; ultimately. Hence, the direction of the Executing Court to that extent deserves to be modified.

Accordingly, this petition is partly allowed and the order passed by the Executing Court is modified to the extent that the direction to make the payment of the revised wages to the respondent-workman 'from the date of Award' shall be read as payment of revised wages to the respondent-workman 'from the date of his actual reinstatement' till he continues performing duties of the post.

With the abovesaid modification, the order passed by the Executing Court is upheld. This petition is disposed of in the abovenoted terms.

**(RAJBIR SEHRAWAT)**  
**JUDGE**

**January 13, 2021**

sarita

Whether speaking / reasoned

Yes

Whether Reportable:

Yes