

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(203)

Civil Revision No. 2393 of 2020
Date of Decision : September 2, 2021

Phool Chand

...Petitioner

Versus

M/s Mohan Dai Oswal Cancer Treatment and Research Foundation
and another

...Respondents

(through video conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Petitioner in person.

Mr. Vikas Bali, Advocate for respondent No. 1.

Harsimran Singh Sethi J. (Oral)

Present civil revision petition has been filed by the petitioner challenging the order dated 30.07.2016 (Annexure P-3) passed by respondent No. 1 by which the claim of the petitioner for the grant of salary from March, 2007 till February, 2010 has been rejected and order dated 13.12.2019 (Annexure P-4) passed by the authority under the Payment of Wages Act, 1936 (hereinafter referred to as 'Act of 1936') as well as order dated 31.07.2020 (Annexure P-5) passed by the learned Additional District Judge, Ludhiana rejecting the civil appeal preferred by the petitioner against the above mentioned two orders i.e. Annexures P-3 and P-4.

The facts leading to filing of the present revision petition are as
under :-

The petitioner was appointed as a Senior Laboratory Technician by respondent No. 1 on 01.06.1996. He was charge-sheeted by his employer more than once and initiation of the said disciplinary proceedings was challenged by the petitioner before the Civil Court, Ludhiana. The trial Court directed the petitioner to participate in those disciplinary proceedings vide order dated 24.03.2007. Aggrieved against the said order of trial Court, petitioner preferred an appeal before the Additional District Judge and vide order dated 09.08.2007 Lower Appellate Court upheld the order dated 24.03.2007.

Petitioner raised a demand notice on 05.03.2008 seeking wages and on rejection of the said demand, the petitioner raised an industrial dispute for his entitlement of wages. Respondent No. 1 herein, contested the claim of the petitioner on the ground that he was not discharging his duties and hence, he is not entitled for the wages. Ultimately, the Labour Court on 20.10.2009 rejected the claim of petitioner but directed the management to complete the enquiry against him within a period of two months. The said order was challenged by the petitioner before this Court by filing CWP No.16272 of 2009, which was disposed of by this Court upholding the order passed by the Labour Court.

Thereafter, the petitioner filed an application under Section 15 (3) of the Act of 1936 before the competent authority. During the said proceedings, the petitioner was directed to approach the Labour Court, where his main dispute was pending by filing appropriate application. Accordingly, the petitioner filed an application under Section 33(c) (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act'), wherein the petitioner was informed that his services have been terminated.

Keeping in view the said situation, the main case under Section 2-A as well as application filed by the petitioner under Section 33(c) (2) of the 1947 Act was withdrawn by the petitioner to avail appropriate remedy.

Thereafter, the petitioner again approached the authorities under the Act of 1936 by filing an application under Section 15(3) on 08.07.2010 seeking the payment of the wages from March 2007 till February, 2010, i.e. upto the date his services were terminated. The said claim was rejected by the competent authority under the Payment of Wages Act on 27.08.2010 on the ground of 'No Work No Pay'. The said order passed by the authorities under the Act of 1936 was challenged by the petitioner by way of appeal before the Additional District Judge, but without any success, as the said appeal was dismissed on 23.05.2011.

Not being satisfied, the petitioner filed a Civil Revision No. 3647 of 2011 before this Court, which was also dismissed on 01.06.2012 holding that he is not entitled for the wages keeping in view the provisions of Section 15(2) of the Act of 1936. The relevant part of the said order is as under :-

“A perusal of the above said order indicates that despite the orders passed by the Lower appellate court dated 20.10.2009, the petitioner had failed to participate in the enquiry proceedings, as a result of which the respondent-management had completed the enquiry proceedings ex-parte. The petitioner having not remained on duty w.e.f. March 2007 till the date of his termination, he is not entitled to the wages claimed by him. The above said order was upheld in appeal u/s 17 of the Act.

The petitioner, appearing in person, has argued that he had not been permitted to enter the place of work to perform

his duty without there being any suspension or termination order, therefore, his claim for wages cannot be declined on the principle of no work no pay. He has also submitted that the order passed by the High Court in CWP 16272 of 2009, the cause of action had accrued to the petitioner while dismissing his claim u/s 33-C (2) under the Industrial Disputes Act.

Learned counsel for the respondent has submitted that termination order dated 2.2.2010 has not been challenged by the petitioner and his petition under Section 33-C(2) of the Industrial Disputes Act having been withdrawn; he having not worked for the period from March 2007 till 2010, the authorities below have rightly dismissed his claim.

I have considered the contention of petitioner who has appeared in person. The main emphasis has been laid by the petitioner on the observations made by the High Court while disposing of his writ petition seeking relief under Section 33 (c) (2) of the Payment of Wages Act, 1936. The observation that the workman shall be entitled to pursue such remedy as per law qua the claim for wages which have been denied to him, is concerned, will not ipso facto confer a right upon the petitioner to claim the back wages. The right of the petitioner regarding his entitlement of any wages has to be construed in the light of the facts and circumstances of each case. If the petitioner had been denied his back wages as per the provisions of the Payment of Wages Act, 1936. Section 15 (2) of the Act provides that the workman is entitled to the release of back wages in case unauthorized deductions have been made or there has been delay in payment of wages.

The petitioner claims that since March 2007, he had not been allowed to enter the premises for his establishment as such he was entitled to a direction for payment of back wages.

The petitioner has not disclosed the details of his earlier litigation. The services of the petitioner have been terminated

after an inquiry. The Labour and Conciliation Officer under Payment of Wages Act has rightly observed that on account of conduct of the petitioner having failed to participate in the inquiry proceedings and enquiry proceedings having been concluded against him, he was not entitled to claim back wages having failed to establish that he worked since March 2007 till the date of his termination. It has been observed that it is not a case of delay in release of the wages. On the directions of the Court, the copies of the enquiry reports have been made available. A detailed list of cases/ complaints filed by the petitioner before different forms has also been placed on record as annexure R-4.

In view of the abovesaid circumstances, there is no ground to interfere in the order dated August 27, 2010 passed by the authority under the Payment of Wages Act and the order dated May 23, 2011 passed by the Additional District Judge dismissing the application of the petitioner for payment of wages from March 2007 onwards.

Dismissed.”

Not satisfied with the order passed by this Court in Civil Revision No. 3647 of 2011, the petitioner preferred an SLP being SLP No. 21721 of 2012 which was also dismissed on 14.08.2012. Thereafter, a Review Petition No. 2314 of 2012 was preferred by the petitioner, which was also dismissed on 29.11.2012.

After not being successful in the Review Petition, petitioner filed a curative petition before the Hon'ble Supreme Court of India. Though, the Hon'ble Supreme Court of India dismissed the said curative petition on 05.07.2016 but gave liberty to the petitioner to file a representation before the employer regarding his claim for salary from

March, 2007 onwards till he was dismissed from service in February, 2010. Thereafter, the petitioner filed a representation with respondent No. 1 which was also rejected by respondent No. 1 on 30.07.2016 (Annexure P-3).

After rejection of representation by respondent No. 1, petitioner again approached the authorities under the Act of 1936 claiming the same relief i.e. the wages for the period from March, 2007 till February, 2010, which had already been declined on 27.08.2010 and the said order had attained finality upto the Hon'ble Supreme Court of India.

Once again, the authorities under the Act of 1936 rejected the claim of the petitioner vide order dated 30.12.2016. The petitioner once again started the process of appeal before the Additional District Judge, Ludhiana, which was also rejected on 27.09.2017. Not being satisfied even upto that stage, petitioner preferred a Civil Revision No. 7126 of 2017, which was also dismissed by this Court vide order dated 09.04.2019. The relevant portion of the order passed by this Court in Civil Revision No. 7126 of 2017 is as under :-

“[19]. Allowing the parties to reopen the concluded judgments on the basis of some untested material would be an abuse of process of law and the same would have far reaching adverse consequences on the administration of justice. A settled thing should not be allowed to be unsettled. The judgment passed by the Hon'ble Apex Court is not amenable to the judicial review that too at the stage of execution on the basis of some material which was never the subject matter of substantive litigation upto the Hon'ble Apex Court. Even correctness of the decision on merits after it has become final upto the Hon'ble Apex Court cannot be questioned by invoking Article 32 of the Constitution of India. The principle of finality

*of litigation is based on high principle of public policy. It is equally important to prevent unscrupulous litigant from taking undue advantage through the process of the Court. It is an onerous duty and obligation of the Court to ensure undue enrichment is not drawn by the losing party by exercising the process of the Court, even after finality of litigation upto the Hon'ble Apex Court. While curbing the aforesaid tendency, the Court would be fully justified in imposing punitive costs where legal process has been abused. Doctrine of stare decisis is very valuable principle of precedent which cannot be departed in the ordinary circumstances. The view expressed by the Hon'ble Court in **Manganese Ore (India) Ltd. vs. The Regional Assistant Commissioner of Sales Tax, Jabalpur (1976) 4 SCC 124, Green View Tea & Industries vs. Collector, Golaghat and another, 2002(2) R.C.R. (Civil) 362 and M. Nagabhushana vs. State of Karnataka & Others, 2012(1) R.C.R. (Civil) 807** can be relied in the aforesaid context.*

[20]. In view of aforesaid position, I find no justification to interfere in the impugned orders. This revision petition is accordingly dismissed. However, the petitioner, if so advised, may take recourse to the legal proceedings against the dismissal of the representation in accordance with law.”

By taking a clue from a particular line in the order dated 09.04.2019 (Annexure P-2) passed by this Court in Civil Revision No. 7126 of 2017, the petitioner once again started the same process of litigation from scratch by approaching the authorities under the Act of 1936 third time by challenging the order passed by respondent No. 1 dated 30.07.2016 (Annexure P-3) rejecting the representation filed by him.

Once again, the said application was declined by the authorities under the Act of 1936 vide order dated 13.12.2019 (Annexure P-4) as well as an appeal preferred before the Additional District Judge, Ludhiana, was

also dismissed on 31.07.2020 (Annexure P-5). These orders are under challenge in the review petition along with order dated 30.07.2016 (Annexure P-3) by which representation filed by the petitioner was rejected by respondent No. 1.

I have heard the petitioner, who has appeared in person as well as learned counsel appearing on behalf of respondent No. 1.

The claim of the petitioner in respect of the salary has been rejected by the authorities three times but the petitioner had approached authorities for same grievance time and again despite being unsuccessful upto the Hon'ble Supreme Court of India.

Petitioner, who appears in person, concedes that after rejection of his claim by the authorities regarding claim of wages, same has attained finality upto Hon'ble Supreme Court of India but submits that the Hon'ble Supreme Court of India has granted him liberty to file representation before employer, which has given him a right to agitate the same claim again before the authorities and authorities are under obligation to reconsider his claim.

In fact, while raising the said argument, the petitioner is forgetting a fact that the liberty to file representation with the employer was granted by the Hon'ble Supreme Court of India on 05.07.2016 and the representation filed by the petitioner with the employer was rejected by the employer on 30.07.2016 and it was only thereafter, the petitioner again approached the authorities under the Act of 1936 claiming the said benefit of salary, which was rejected by authorities under Act of 1936 on 30.12.2016 and even the appeal filed by the petitioner against the said rejection was dismissed by the Additional District Judge, Ludhiana on

27.09.2017. Even the Civil Revision No.7126/2017 filed by the petitioner against the order dated 30.12.2016 and appellate order dated 27.09.2017 came to be dismissed by this Court on 09.04.2019. All these above stated orders were passed by the authorities concerned, including this Court, after the representation of the petitioner stood rejected by respondent No. 1 on 30.07.2016.

The petitioner in the garb of challenging the order passed on representation by respondent No.1 dated 30.07.2016, initiated the same process for the third time claiming same relief, which is not at all permissible. Once, the petitioner, after the rejection of his representation on 30.07.2016, availed the remedies upto this Court and his Civil Revision No.7126/2017 was dismissed on 09.04.2019, he could not have started the same process of litigation once again and that too for the third time. This in fact is an abuse of process of law.

In fact, the argument of the petitioner that he is to be treated in service for the payment of wages from March, 2007 onwards till his services were terminated on 02.02.2010 has been considered in detail by this Court while passing order in Civil Revision No. 3647 of 2011 and the said claim has been rejected, which order has already been reproduced in the preceding paragraphs.

Once, this Court did not interfere with the order passed by the authorities under the Act of 1936 declining claim of the petitioner and the said order attained finality upto the Hon'ble Supreme Court of India, liberty granted by the Hon'ble Supreme Court of India in curative petition to approach the employer was only a concession. The said liberty is actually being misused by the petitioner, which is clear from the facts narrated

hereinbefore as after the said liberty granted by the Hon'ble Supreme Court of India, the petitioner has approached the same authorities with the same prayer more than once, which is not permissible.

Once, this Court has already considered the same plea of the petitioner for the grant of wages from March, 2007 to February, 2010 while deciding Civil Revision No.3647 of 2011 and rejected the said claim and thereafter in Civil Revision No.7126 of 2017 once again this Court found that the petitioner is not entitled for any relief regarding the claim of wages from March, 2007 till February, 2010, no ground is made out to interfere with the order dated 30.07.2016 (Annexure P-3) passed by respondent No.1-Employer rejecting the claim of the petitioner as raised by filing a representation dated 12.07.2016 and also with the rejection of his claim by respondent No.2 vide order dated 13.12.2019 (Annexure P-4) as well as order dated 31.07.2020 (Annexure P-5) passed in appeal.

Dismissed.

September 2, 2021
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No