

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CWP- 11450-2001 (O&M)****Date of decision: July 13, 2022**

Amar Singh

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:** Mr. O.P.Goyal, Senior Advocate with
Mr. Parul Aggarwal, Advocate,
for the petitioner.

Mr. R.D. Sharma, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Grievance of the petitioner in the present writ proceedings is qua non-acceptance of his demand raised vide his legal notice dated 13.09.2000 (Annexure P-7) wherein he sought the following:-

- i) *There is no break in his service and he continues to be in service during the period from the day of termination of his service, to the date of setting aside the termination order.*
- ii) *That he is entitled to the arrears of pay and allowance during this period of six years from 1991 to 02.12.1997."*

2. The genesis of seeking aforesaid relief relates back to an earlier demand notice dated 10.01.1992 (Annexure P-1) whereby he sought his reinstatement in service and upon the same being declined, vide a reference dated 15.07.1992, made by Chandigarh Administration the matter was referred to the Labour Court. Labour Court after conducting the entire trial and going through the respective evidence adduced by the parties set aside the termination of the workman on the ground that the General Manager, who had passed the termination order impugned therein, was not the competent authority and did not have the power to terminate the services of the petitioner. Accordingly, the Labour Court set aside the impugned termination order stating that since the same is on a technical ground, therefore, the competent authority was at liberty to pass any further appropriate orders, if so advised. While doing so, the prayer of the workman, which was specifically with regard to reinstatement with continuity of service and all attendance benefits, though not declined, it is a fact that

the same was not allowed which has created an ambiguity as to whether the petitioner was granted the benefit of reinstatement with continuity of service along with back wages as is now being claimed in the present writ proceedings.

3. Pursuant to the award of the Labour Court, the petitioner submitted his joining report and was reinstated vide office order dated 16.09.1999 (Annexure P-5). Thereafter, he continued to serve until attaining the age of superannuation. At the same time, he kept pursuing his case with regard to payment of back wages and eventually order dated 28.02.2000 was passed by the General Manager holding that he is not entitled to any arrears from the date of termination till the date of joining.

4. I have heard rival contentions of the learned counsels, I am of the view that it is too belated a stage for the petitioner to turn around by taking the benefit of the Labour Court award and thereafter to seek the claim of back wages for the period he admittedly, was not in service on the ground that Labour Court had since allowed the reference, therefore, it should be allowed in the absence of there being any specific reference qua the same that he was reinstated with continuity along with back wages. In fact, the position herein is to the contrary inasmuch as in para 2 of the award, it has specifically been noticed by the Labour Court that the workman had prayed for reinstatement with continuity and all attendance benefits which clearly shows that the labour Court was mindful of what was being prayed for by the workman and against the same, the relief had been given which as noted hereinabove was confined only to the extent that his termination had been set aside on technical grounds, with liberty to the competent authority to pass appropriate orders.

5. Subsequently appropriate order was passed denying him the benefit of continuity of service. I am of the view that in the absence of any specific recitals and/or direction by the Labour Court to grant continuity, the same cannot be presumed by way of any legal fiction beyond what is prayed for especially when there is a prayer qua the same which despite having been noted in the award was not specifically allowed. Labour Court award was admittedly, never challenged by the

petitioner and the same has attained finality. Even qua the negative part of not granting the relief of back wages with continuity of service, it appears that at the relevant time, workman was satisfied with the positive part of the labour Court award inasmuch as setting aside his termination with liberty to the competent authority to pass fresh orders. That apart even the instant writ petition seeking the back wages was filed after more than 3 years of the award of the Labour Court. The delay though is being justified on the ground that since the competent authority pursuant to the Labour Court award declined the claim of arrears/back wages only in the year 2000 and that was when the need arose and petitioner was compelled to file the instant petition. The fact remains that the subsequent order was passed pursuant to the award rendered by the Labour Court, wherein prayer for continuity and back wages were not granted despite having been prayed for.

6. Apart from the technicalities above, a perusal of the award also reveals that even though there was a prayer qua continuity and back wages, no evidence was adduced by the workman regarding the back wages to bring on record that the petitioner at the relevant time remained gainfully employed or otherwise.

7. As an upshot of the discussion above, writ petition is dismissed.

(ARUN MONGA)
JUDGE

July 13, 2022

Vandana

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No