

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

CWP-9419-2014 (O&M)
Date of Decision: 20.10.2023

RAM DUTT JOSHI

...Petitioner

Versus

THE PRESIDING OFFICER, THE CENTRAL GOVERNMENT
INDUSTRIAL-CUM-LABOUR COURT-II, CHANDIGARH
AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Kshitij Sharma, Advocate
and Mr. Subhkarman Singh Gill, Advocate
for the petitioner.

Mr. Aalok Jagga, Advocate
and Mr. Harshit Anand, Advocate
for the respondents.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Ram Dutt Joshi) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of *certiorari* for quashing of Award dated 29.11.2012 (Annexure P-19) passed by the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh (here-in-after referred to as 'the Tribunal'); whereby, the reference of industrial dispute raised by the petitioner regarding withdrawal of Driver's allowance to the petitioner, has been answered against him.

Petitioner further seeks quashing of order dated 01.09.2001 (Annexure P-7) passed by Assistant General Manager, Vijaya Bank, Regional Office, New Delhi, directing the Senior Branch Manager,

Chandigarh for not paying any special allowance, as applicable to Drivers, to the petitioner.

Petitioner also seeks a direction to respondent No.2-Bank to grant consequential monetary relief along with interest upon quashing of order dated 01.09.2001 (Annexure P-7) as well as the Award dated 29.11.2012 (Annexure P-19).

2. Briefly, the petitioner raised an industrial dispute regarding withdrawal of Driver's allowance to him. The said dispute was referred for adjudication to the Tribunal below. Petitioner claimed that he had been appointed and working on the post of Driver-cum-Peon in respondent No.2-Bank since 01.04.1975 and lastly, he was transferred to the SCPB Branch, Chandigarh and subsequently, vide an order dated 01.09.2001 (Annexure P-7) passed by the Assistant General Manager, the special allowance admissible to the petitioner as Driver was unilaterally withdrawn from him. Petitioner claimed that he was getting special pay by working as Driver with different branches of respondent No.2-Bank since his joining as Driver-cum-Peon with the bank. He claimed that he was getting Rs.923/- p.m. as special allowance for discharging the duties of the Driver. Petitioner claimed that no opportunity to show cause against the withdrawal of the special allowance, admissible to a Driver, was afforded to him. Petitioner further alleged that he was discharging the duties of the Driver till the date of raising the industrial dispute, by submitting that the SCPB, Chandigarh Branch, where the petitioner was posted, had two cars and he was not permitted to make entries in the log book; whereas other similarly situated employees, who were also appointed as Driver-cum-Peon but who were not working as Driver, were still getting special allowance. Petitioner

claimed that the special pay was an integral part of the pay and allowance attached to the post of Driver; therefore, the same could not have been withdrawn as the same amount to change in service conditions and in terms of Section 9-A of the 1947 Act, no such change could be made without issuing notice to the petitioner. Accordingly, prayer was made for grant of special allowance to the petitioner.

3. The afore-said claim of the petitioner was contested by the respondent No.2-Bank on the plea that the petitioner was appointed as a Driver-cum-Peon; however, in the appointment letter itself, it was clearly mentioned that he would be entitled to Driver allowance for the period, for which, his services are utilized as a Driver. It was further clarified that when the services of the petitioner as a Driver were not required by the Bank, then he was to work as a Peon, in which case, he would not be paid Driver allowance. It was stated that the appointment letter was very clear and unambiguous and the petitioner had joined the afore-said post after accepting the said term and condition of the appointment letter; therefore, he was estopped from challenging the terms and conditions of his appointment. It was stated that the petitioner was transferred vide order dated 30.08.2001 in SC and PB, Chandigarh Branch to work as a Peon and vide letter dated 01.09.2001 (Annexure P-7), it was only clarified to the Branch Manager concerned that the workman is not eligible to draw the special allowance applicable to the Drivers. It was stated that letter dated 01.09.2001 was only a clarificatory letter and not an order withdrawing the special allowance. It was also stated that letter dated 01.09.2001 was only concerning the current assignment of the petitioner and not with regard to his future service in entirety and the bank may post the petitioner as a Driver in his next

assignment or may utilize his services as a Driver in his current assignment too, if service exigencies so warrant. The respondent No.2-Bank categorically denied the claim of the petitioner that his services are being utilized by the Bank as a Driver or that the Driver allowance is being paid to an employee, who was not performing the duties of the Driver. It was also denied that the petitioner was performing the duties of the Driver. It was next stated that there was no violation of Section 9-A of the Industrial Disputes Act, 1947 (for short 'the 1947 Act') and therefore, the petitioner was not entitled to any relief.

4. The learned Tribunal below, after considering the material/evidence available on the record, rejected the claim of the petitioner vide impugned Award dated 29.11.2012 (Annexure P-19).

5. In the afore-mentioned circumstances, the petitioner has filed the instant writ petition before this Court.

6. Learned counsel for the petitioner submits that the learned Tribunal below has erred in law and facts in rejecting the claim of the petitioner. It is submitted that the withdrawal of the Driver's allowance of the petitioner amounts to changing of terms of employment under Section 9-A of the 1947 Act, which cannot be done unilaterally. Learned counsel for the petitioner further submitted that even after the issuance of letter dated 01.09.2001 (Annexure P-7) by which the special pay of Rs.923/- was withdrawn, the petitioner was still working as a Driver thereafter too; therefore, the said benefit has been withdrawn arbitrarily. Learned counsel for the petitioner also submitted that the withdrawal of special allowance was also contrary to the provisions of the Bipartite Settlement.

With the afore-said submissions, learned counsel for the petitioner submitted that the impugned order (Annexure P-7) as well as the impugned award (Annexure P-19) be set aside and necessary relief be granted to him.

7. Per contra, learned counsel appearing for respondent No.2-Bank has opposed the prayer made on behalf of the petitioner, by submitting that after the petitioner has accepted the appointment with specific conditions regarding grant of Driver's allowance only when his services are utilized as a Driver, the same cannot be disputed by the petitioner at this stage. It is submitted that withdrawal of the Driver's allowance does not amount to change in the conditions of service in terms of Section 9-A of the 1947 Act; rather, it was a specific condition in the appointment letter itself that the petitioner would be entitled to draw Driver's allowance only when his services are being utilized as a Driver. It is submitted that the said allowance was withdrawn only for the current assignment when he was posted as a Peon and his services could have been utilized subsequently or on the next assignment as a Driver when he would be entitled to draw the special allowance. Learned counsel for respondent No.2-Bank has further referred to Clause 5.9 of the Bipartite Settlement, to contend that the said clause further clarified that a workman will be entitled to special allowance only so long as he is Incharge of such works or the performance of such duties, which attracts such allowance. It is submitted that the learned Tribunal below has passed a well-reasoned and justified award, which does not call for any interference. Accordingly, prayer for dismissal of the writ petition has been made.

8. I have heard learned counsel for the respective parties and perused the paper-book with their able assistance.

9. In the instant case, concededly, the petitioner was appointed as a Driver-cum-Peon vide appointment letter dated 03.04.1975, which contained a specific condition as under :-

“In case we are not satisfied with your driving, or your services as a driver are not required by the Bank, you to work as a Peon, in which case you will not be paid driver’s allowances.”

10. A perusal of letter dated 30.08.2001 (Annexure P-6) would reveal that the petitioner was earlier working with Regional Office, Chandigarh and thereafter, he was posted to SCRE, Chandigarh to work as a Peon. Vide letter dated 01.09.2001 (Annexure P-7), the Assistant General Manager of the respondent-Bank had written to the Senior Branch Manager, SCPB, Chandigarh stating that the petitioner has been posted in the Branch to work as a peon; therefore, he is not eligible to draw the special allowance applicable to the Drivers. The learned Tribunal below, after considering the claim of the respective parties, has returned the following findings :-

“It will be seen from the appointment letter Annexure P1 that though the workman had been appointed as Driver-cum-Peon but it had been made clear to him that in case his services as Driver are not required by the bank he will have to work as a Peon in which case he will not be paid Driver allowance. The bank has not denied the existence of the vehicles mentioned by the workman and has filed the copies of logbook Paper No.44 to Paper No.49 but has denied that the services of the workman as a Driver were being utilized by the bank after the impugned order. The workman-witness Anil Kumar in his cross-examination

has stated that the workman is not being paid special allowance though his services as Driver are being utilized by the bank but he has clarified his statement by saying that the workman himself had told him about it. The witness further said that earlier the workman had been maintaining the logbook but after 30.4.2001 the workman did not maintain it as his designation had changed to Peon. There is no other evidence to support that Driver are being utilized by the bank. The copies of the logbook filed by the management shows the vehicles are in the name of the officers. There is no evidence to show that the vehicles available in the concerned branch are being used by some other Driver and the services of a Driver are required in the said Branch.

It is therefore clear that the posting of the workman on the post of peon only and non-payment of Driver allowance to him during his posting as Peon is perfectly in terms of the appointment letter Annexure P1 and no change of condition of service is involved in the case. There was no need to serve notice under section 9A of the Act.

The provisions of Bipartite Settlement also do not help the Workman. Para 5.9 of the Bipartite settlement clearly provides that the workman will be entitled for such allowance only so long as he is discharging the duties for which special allowance is meant and whether he can be asked to cease to do such work or discharge such duties and consequently cease to draw such allowance will depend upon the terms of the employment. The terms of employment on workman justify the order of posting him as Peon and stoppage of payment of Driver allowance.

And as it was pointed out by the learned counsel for the management it is not necessarily a permanent engagement for the remaining service period

of the workman. His services as Driver may be required by the bank any time and he may be posted as Driver-cum-Peon entitling him to the special allowance. But presently he is not entitled to any relief. The action of the management in withdrawing the special permanent Driver's allowance drawn by the workman without complying with the provisions of Section 9A of the ID Act is legal and justified. The reference is answered accordingly against the Workman. Let two copies of the award be sent to Central Government for further necessary action."

11. A perusal of the above extracted findings returned by the learned Tribunal below would indicate that the petitioner was posted as a Peon only and non-payment of Driver allowance to him during his posting as a Peon was perfectly in accordance with the terms of his appointment letter and the same does not amount to change of condition of service, as claimed by the petitioner. The learned Tribunal below has further considered the provisions of Clause 5.9 of the Bipartite Settlement to hold that the workman would be entitled to special allowance only so long as he is discharging the duties for which special allowance is meant. Learned Tribunal below has also taken note of the stand of respondent No.2-Bank that the present engagement was not permanent and his services as a Driver may be required by the bank at a subsequent time; accordingly, it has been held that the action of the Management in withdrawing the special Driver's allowance drawn by the petitioner without complying with the provisions of Section 9-A of the 1947 Act, is legal and justified.

12. I have considered the afore-said findings of the learned Tribunal below and it is observed that once there is a specific term in the appointment letter indicating that the special allowance (Driver's allowance)

would be admissible to the petitioner only when he performs the duty as a Driver and in case, his services as a Driver are not required by the Management, he was not to be paid the special allowance.

13. In the instant case, it is apparent from letter dated 30.08.2001 (Annexure P-6) that he was posted in SCRE Branch, Chandigarh as a Peon and therefore, he was not entitled to draw the special allowance meant for the Drivers, which in any case, was only restricted to the then assignment given to the petitioner. Clause 5.9 of the Bipartite Settlement further substantiate the fact that the petitioner was not entitled to the special allowance, more so, when he was not working as a Driver.

Therefore, I do not find any illegality or perversity in the impugned Award, which is based upon appreciation of evidence and as per law. Resultantly, the instant petition fails and the same is, accordingly, dismissed.

14. All pending application/s, if any, shall also stand closed.

October 20, 2023
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(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No