



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

CWP No.7273 of 2024

Date of Decision:09.08.2024

Kulwant Kaur

....Petitioner

VS.

Presiding Officer, Industrial Tribunal, Ludhiana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. P.S.Jammu, Advocate
for the petitioner

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of award dated 25.08.2023 whereby application of the petitioner under Section 33C(2) of the Industrial Disputes Act, 1947 (for short '1947 Act') has been dismissed.

2. The petitioner was terminated by Management on 13.04.2007. He, in the wake of award of Labour Court, was reinstated on 22.05.2019. He believed that he is entitled to Dearness Allowance from the date of termination to date of reinstatement. On the said belief, he preferred application under Section 33C(2) of 1947 Act before Labour Court. The said application has been dismissed on the ground that there was no order to pay claimed amount in the award, thus, application is not maintainable.



3. Mr. P.S.Jammu, Advocate submits that Labour Court has wrongly dismissed application of the petitioner. There were two different awards. The Labour Court did not consider actual and factual position and mechanically dismissed his application.

4. I have heard counsel for the petitioner and perused the record.

5. From the perusal of impugned order it comes out that Labour Court has considered Award dated 30.09.2016 whereby petitioner was ordered to be reinstated. In the Award, he was granted back wages to the tune of 50%. There was no order of payment of Dearness Allowance. The relevant extracts of the impugned order are reproduced as below:-

“6) After hearing the rival contentions of the parties and perusing the file, I am of the considered opinion that there is merit in contentions advanced by the A/R for the applicant/management. Admittedly, reference No.276 of 2012 filed by the respondent/workman was allowed vide Award dated 30.09.2016 by this Tribunal. This Tribunal vide dated 30.9.2016 reinstated the workman into service of the applicant/management with continuity of service and 50% of the back wages. The respondent/workman was directed to return for duty within 30 days from the publication of the award.

7) Apart from this, it is also pointed out that there is no pleading of the respondent/workman in the said reference petition that she was entitled to any Dearness allowance besides the salary. Rather, categorical pleading taken by the respondent/workman in the said reference was that her average pay was Rs.3360/- per month. It is neither the case of the respondent/workman in the said petition that applicant/management was liable to pay any dearness allowance to her w.e.f. 13.04.2007

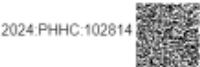


till the date of her reinstatement nor she sought relief regarding the same from the Tribunal in the said reference petition. It is settled proposition of law that under Section 33-C(2) of the ID Act, an applicant/workman can seek the recovery of the wages etc which has been awarded to him/her by way of award/settlement or he/she is having pre existing right to the said wages etc. Here in the present case, the workman neither sought recovery of dearness allowance from this Tribunal in the reference petition No.276/2012 nor the said question of payment of arrears of dearness allowance was admitted one between both the parties.

8) xxxx xxxx xxxx

9) *Having regard to my discussion above, it is held that relief sought in application under Section 33-C(2) of the Industrial Disputes Act is clearly beyond the scope of said application and same cannot be adjudicated in the said application as per ratio of authority Municipal Corporation of Delhi (Supra). There is merit in the application of the applicant/management and accordingly, the same is allowed. Consequently the present application of the respondent/workman filed under Section 33-C(2) of the Industrial Disputes Act, 1947 stands dismissed being devoid of any merit. No order as to costs. File be consigned to record room.”*

6. From the reading of aforesaid extracts of the impugned order, it is evident that Labour Court has denied claim of petitioner under Section 33C(2) of 1947 Act because there was no order qua payment of Dearness Allowance in the Award dated 30.09.2016. The proceedings under Section 33C(2) of 1947 Act are execution in nature. In the absence of determination



of entitlement, the application is not maintainable under Section 33C(2) of 1947 Act.

7. This Court does not find any jurisdictional error or actual infirmity in the impugned order warranting interference.

8. In view of the above facts and findings, the instant petition deserves to be dismissed and accordingly hereby dismissed.

(JAGMOHAN BANSAL)
JUDGE

09.08.2024
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Whether speaking/reasoned:	Yes	
Whether reportable:		No