

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

210

**CWP-1726-1998
Date of Decision: April 01, 2024**

Rakesh Kumar

...Petitioner

Versus

Labour Court, Bathinda and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. H.C. Arora, Advocate,
for the petitioner - Workman.

Mr. Puneet Kansal, Advocate,
for respondent No. 2 - Management.

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SANJAY VASHISTH, J.

1. By way of present writ petition, petitioner – Rakesh Kumar (workman) has assailed the order dated 29.09.1997 (Annexure P-2), passed by the learned Labour Court, Bathinda (here-after referred to as, ‘the Labour Court’), whereby application filed by the petitioner-workman, under Section 33-C(2) of the Industrial Disputes Act, 1947 (here-after referred to as, ‘the Act’), claiming pay-fixation on reinstatement, as a result of earlier award dated 08.09.1993 (Annexure P-1), passed by the Labour Court, has been dismissed.

2. Earlier to the present controversy, the petitioner, being workman, raised an industrial dispute, which was referred to the Labour Court for its adjudication, under Section 10(1)(c) of the Act, vide Reference No. 222/92, dated 05.06.1992. In the said reference, the direct question involved was that “*Whether termination of services of workman is justified*

& in order? If not, to what relief/exact amount of compensation, he is entitled to?”.

The Labour Court answered the said reference in favour of the workman (petitioner herein) by observing as under:-

“RELIEF

9. Reference is answered in the negative; management is enjoined upon to reinstate the workman with continuity of service. So far as back wages are concerned, the same is not allowed, claim for it having been abandoned by the workman in his statement made by him today while closing his evidence. No order as to costs.”

3. It is after passing of the said award that the petitioner filed an application No. 119/94, dated 18.04.1994, under Section 33-C(2) of the Act, for computing of his benefits as he had been reinstated by virtue of the award dated 08.09.1993 (Annexure P-1). He joined the duty on 24.11.1993, and claimed that as per his seniority, he was entitled to be placed in the grade of 1200-2100 w.e.f. 01.01.1986 and further in the scale of Rs.1500-2640 w.e.f. 01.01.1993, as given to other Junior Clerks.

4. The said application has been dismissed by the Labour Court, by observing that *there is no pre-existing right or that the pay scale had been recognised, as sought to be claimed by the applicant*. While observing so, the Labour Court relied upon the judgment of Hon’ble Apex Court in the case of **Municipal Corporation of Delhi v. Ganesh Razak and another**, **1995 Lab IC 330**. The finding record by the Labour Court reads as under:-

“9. I have given my careful consideration to the respective contentions but I find that the present application is neither maintainable nor the applicant has any right to seek the claim as given in the application. As already stated above, the applicant was appointed as Clerk on 18.9.84 vide appointment

letter Ex-R/2 with consolidated pay of Rs. 450/- per month. No doubt, the other Clerks were given the initial start of Rs. 1000/- w.e.f. 1.1.86 and thereafter they were given the scale of Rs. 1200-2100 as deposed by Sh. Roshan Lal Dhingra RWI but there is nothing on the record to suggest that all other clerks who were given the said scale of pay as per order Ex-A/2 were also having the said scale of pay as per order Ex-A/2 were also having the same educational qualification as in the case of the applicant except in the case of Gori Shanker and Om Parkash. In this respect the witness has clarified that in the case of Gori Shanker and Om Parkash, the relaxation regarding their educational qualification was obtained from the Registrar Coop. Societies Punjab. Thus, it cannot be said that the applicant had any pre-existing right or that the respondent had recognised the pay scale sought to be claimed by the applicant. The Hon'ble Supreme Court in 1995 Lab IC 330 (supra) has laid down:-

“That where the very basis of the claim or the entitlement of the workman to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer the dispute relating to entitlement is not incidental to the benefit claim and is, therefore, clearly outside the scope of a proceeding under S. 33C(2) of the Act. The Labour Court has no jurisdiction to first proceed to compute the benefit so adjudicated on that basis in exercise of its power under S. 33C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under S. 33C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.”

10. Similarly in 1997(I) SCT 124, our own Hon'ble High Court has held that question whether workman was entitled to higher pay scale or not cannot be determined in the application under section 33C(2) and the same requires a reference and adjudication u/s 10 of the Industrial Disputes Act, 1947.”

5. The petitioner herein also claimed that he was entitled for the said pay scale after completion of 10 years of service, as the same has been given to other similarly situated employees, namely, Gori Shanker and Om

Parkash, who are also matriculates like him.

In this regard, evidence of Shri Roshan Lal Dhingra, Office Manager (RW-1), is worth to be noticed, who deposed that minimum qualification for the post of Clerk was Graduate, as per letter dated 19.09.1986 (Ex. R/3), issued by the Registrar, Cooperative Societies, Punjab, Chandigarh. Same witness further clarified that in the case of Gori Shanker and Om Parkash, relaxation of educational qualification was obtained from the Registrar, Cooperative Societies, Punjab, Chandigarh.

6. On being asked by the Court, learned counsel for the petitioner was unable to point out any piece of evidence, whereby he could project his plea by saying that the Registrar, Cooperative Societies, Punjab, has relaxed the educational qualification qua the petitioner also.

7. To the view point of this Court, until the petitioner is equipped with the order of relaxation of educational qualification, as has been done in the case of his co-employees, namely, Gori Shanker and Om Parkash, plea addressed by the petitioner is not acceptable. Neither he can claim parity nor has any pre-existing/declared right to raise his claim under Section 33-C(2) of the Act. Moreover, this Court is informed by learned counsel for respondent No. 2 - Management, that the Abohar Cooperative Spinning Mills Limited, Abohar, has already shut down it's business way back in May, 2003. Reference has also been made to the evidence of Sh. Rohan Lal Dhingra (RW-1) [Annexure P-3], where the fact was stated that "*the workman at present is not in our employment. We have terminated his services.*"

8. In view of the fact that (i) there was no pre-existing/already adjudicated right in favour of the petitioner; (ii) the petitioner cannot claim or make out a case of parity vis-a-vis his co-employees i.e. Gori Shanker and Om Parkash; (iii) the Abohar Cooperative Spinning Mills Limited, Abohar, has already shut down more than two decades ago; and (iv) at the time of pendency of the application filed by the petitioner-workman, he had already been terminated, no interference is called for at this stage.

9. Accordingly, the **writ petition stands dismissed.**

(SANJAY VASHISTH)
JUDGE

April 01, 2024
Pkapoor

Whether speaking/reasoned?	✓ Yes/No
Whether reportable?	✓ Yes/No