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

CWP-12497-1999**Date of Decision: 16.12.2024****PUNJAB STATE**

..... Petitioner

*Versus***VIJAY KUMAR AND ANR.**

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Aman Dhir, DAG, Punjab
for the petitioner.

Mr. R.S. Manhas, Advocate
for respondent No.1.

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 03.12.1998 (Annexure P-3) whereby Labour Court has directed to pay a sum of Rs.39,300/- to respondent as salary for the period from 28.06.1996 to 31.07.1997.

2. The respondent-workman was appointed by petitioner vide letter dated 25.06.1996. He was not allowed to join pursuant to appointment letter, thus, he could not serve the petitioner. He filed an application under Section 33C(2) of Industrial Disputes Act, 1947 (for short 'ID Act') before Labour Court seeking salary for the period from 28.06.1996 to 31.07.1997 @ Rs.3,000/- per month. The Labour Court vide order dated 03.12.1998 (Annexure P-3) allowed his application and directed the petitioner-Management to pay a sum of Rs.39,300/- to the



workman. The operative portion of order dated 03.12.1998 (Annexure P-3) reads as:

“8. On the other hand, it has been counter argued by the AR of the applicant that the order dt.25.6.96, Ex.M I, followed by another order dt. 27.6.96 by the XEN, Gurdaspur, clearly establishes the appointment of the workman as Beldar and there was no justification for the management to disallow him to join duty on the plea of non-vacancy of the job. There was no conditional order of appointment that his appointment is subject to availability of the job or sanction of the higher authority. He also urged that before issuing the appointment order of posting, the functionaries are expected to consider the pros & cons of the matter about existence of non existence of the post. The workman cannot be said to be at fault for his forced unemployment when he was willing to join the post.

9. I find substance in the contention raised by the AR of the workman. The genuineness of both the orders has not been questioned about the appointment of the workman as Beldar and as such it was incumbent upon the management to allow him to join duty. If any lapse has been committed by the Executive Engineer in issuing the order Ex.M I dt.25.6.96 and Ex. I dt. 27.6.96 without ascertaining the existence of the post or for want of sanction of the higher authority, in such eventuality, the said functionary i.e. Executive Engineer, Gurdaspur, Sh. Bakshish Singh is personally accountable to the Govt. and the Govt. has right to effect recovery of the amount of wages paid to the workman from the defaulting XEN who issued the appointment letter. As such, I decide this issue in favour of the applicant and against the respondent.

Issue No.2(Relief).



10. In the result, in view of my findings on the above issue, I pass an order directing the respondent to pay a sum of Re.39300/- to the applicant for the period from 28.6.96 to 31.7.97 at the earliest.”

3. Learned State counsel submits that workman did not work during the alleged period, thus, there was no question of payment of salary and in any case, the Labour Court had no jurisdiction to grant salary for the aforesaid period under Section 33C(2) of ID Act.

4. Learned counsel for the respondent submits that he has no contact with his client. He further submits that there is no infirmity in the impugned order. There was lapse on the part of Management, thus, workman was entitled to salary and it is irrelevant whether he had worked or not.

5. I have heard the arguments of learned counsel for the parties and perused the record.

6. From the perusal of record, it is evident that Labour Court has awarded salary for the period from 28.06.1996 to 31.07.1997 though during the said period workman did not work. He was issued appointment letter but never permitted to join. The petitioner is a Government Instrumentality. The respondent-workman was not allowed to join due to lack of vacancy. On the one hand, the workman was issued appointment letter and on the other hand, he was not allowed to join. It shows negligence on the part of officials, however, it cannot create right of salary in favour of the workman especially when it was not a regular job. In any case, the Labour Court in exercise of power under Section 33C(2) of ID Act had no authority to grant salary for the aforesaid period. Section 33C(2) of ID Act is a sort of execution provision. There was no



determination of salary of the workman. Salary is paid for work. The workman was never allowed to join, meaning thereby, he never worked. The reason of non-joining, issuance of the appointment letter, payment of salary etc. were disputed questions which needed to be adjudicated by Labour Court. The question of payment of salary could not be determined under Section 33C(2) of ID Act which is purely execution proceeding.

7. In the wake of above discussion and findings, the impugned Award dated 03.12.1998 (Annexure P-3) is hereby set aside and petition is allowed.

8. It is hereby made clear that if petitioner, pursuant to orders of Labour Court, has already made payment, the workman shall not be liable to return on account of aforesaid order.

(JAGMOHAN BANSAL)
JUDGE

16.12.2024
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No