

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

222

CWP-26282-2015(O&M)
Date of Decision: 20.02.2024

DR. LAKHBIR DHALIWAL

.... Petitioner

Versus

VIJAY GUPTA AND ORS

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

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

Mr. D.P. Sharma, Advocate for respondent No.1.

None for respondent No.3.

SANJAY VASHISTH, J.(Oral)

1. By way of present writ petition, Dr.-Lakhbir Dhaliwal seeks quashing of the impugned award dated 15.09.2015 (Annexure P-1), passed by learned Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh.

2. Vide impugned award dated 15.09.2015 (Annexure P-1), application filed by respondent No.1-Mrs. Vijay Gupta, under Section 33 C (2) of the Industrial Disputes Act, 1947 (for short, the Act of 1947'), was disposed of in her favour, wherein she prayed for issuance of a direction to pay her a sum of Rs.4,38,862/- alongwith interest @ 18 % per annum.

3. It is pleaded that the appointment letter was given by Dr. Lakhvir Dhaliwal-petitioner (respondent No.1 as per the award), who was working under the Control of respondent No.3- The Director General, Indian Council of Medical Research, V.Ramlingaswami Bhawan, Ansari Nagar Post Box No.4911, New Delhi-110029. It is the pleaded case in the application that project was under the Control of respondent No.3-The Director General, ICMR-Indian Council of Medical Research and petitioner used to work on behalf of ICMR-Indian Council of Medical Research. It is further pleaded that it is the ICMR-Indian Council of Medical Research, who issued its circulars from time to time and one such circular dated 16.08.2010 was issued for revising the salary of the petitioner with retrospective effect i.e. from 16.09.2009 to 31.03.2010 and again vide separate circular the salary of the petitioner was revised to Rs.22532 w.e.f 01.04.2010 to 30.06.2011 and, vide another circular dated 03.01.2011, the salary of the petitioner was again revised to Rs.27397/- w.e.f. 01.07.2011.

4. In the claim application under Section 33 C(2) of the Act of 1947, petitioner-Sh. Lakhbir Dhaliwal was impleaded as respondent No.1, by his name and "The Director General, ICMR-Indian Council of Medical Research" was impleaded as respondent No.2.

A bare reading of the claim application also shows that petitioner has nothing to do with making payment of the salary or running of the scheme, rather, he is working under the over all control

of respondent No.3-The Director General,ICMR-Indian Council of Medial Research. Therefore, while considering the prayer in application, learned Labour Court applied its mind to fix the liability to pay the arrears of salary on account of revision at the instance of ICMR-Indian Council of Medial Research. However, there being no specific observation, as to how petitioner is liable to pay the amount, petitioner is before this Court under Article 226 of the Constitution of India.

5. While submitting so, counsel for the petitioner refers to the paragraph Nos. 17 to 20 of the impugned award, which are reproduced herebelow:

“17. Thus considering the facts and circumstances, it is held that the claim of the work person is based on the circular letters Ex.W4and W5, and her application to claim difference in salary is maintainable under Section 33C(2) of the Industrial Disputes Act 1947.

18. Thus, the work person is held entitled to the difference in salary from 16.9.2009 to 31.3.2011 and full salary from 1.4.2011 to 24.2.2012 in accordance with circulars Ex.W4& W5. The work persons is also held entitled to the bonus for 2010-11 and 2011-12 A for Rs. 6604/-. However the work person is not entitled to leave encashment as in her appointment letter in para 5, it is clearly mentioned that work person will not be eligible for leave encashment. Thus her claim for leave encashment is declined.

19. In view of the above, application U/S 33C(2) is allowed. The management respondents are under obligation to pay the difference in salary for the period 16.9.2009 to 31.3.2011 and difference of salary from 1.4.2011 to 24.2.2012 minus what has already been paid to her and Rs. 6604/- on account of bonus as per detail given below:

a) Payment on account of difference of salary from 16.9.2009 to 24.2.2012: Rs.405915/-

Bonus: Rs. 6604/-

Paid during pendency of this petition:

Rs.83250/-

Balance to be paid by the respondents:

Rs.329269/-

20. The present application is disposed off accordingly. The management respondents are directed to pay the above amount within three months from the date of this order. It is also made clear that the above amount is subject to actual calculation on the basis of Ex.W4 and W5.”

6. While issuing notice of motion vide order dated 17.12.2015, operation of the impugned order, qua the petitioner was also stayed. However, there is no dispute that this Court has never stayed the recovery proceedings or the operation of the impugned award qua respondent No.3-The Director General, ICMR-Indian Council of Medial Research.

To seek exoneration of the liability as ordered by learned Labour Court, counsel for the petitioner relies upon the judgment of this Court (Punjab and Haryana High Court), titled as, **‘P.K. Singhi Vs. The State of Haryana and others, 2009(4) SLR 335: Law Finder**

Doc Id #183060' and submits that infact order requires to be operative qua respondent No.3-The Director General, ICMR-Indian Council of Medial Research.

7. In view of the totality of circumstances, respondent No.3-The Director General, Indian Council of Medical Research, V.Ramlingaswami Bhawan, Ansari Nagar Post Box No.4911, New Delhi-110029, who is to be treated as employer of the petitioner and petitioner herein has nothing to do with the employment of respondent No.1.

Neither there is any pleading, nor any evidence on record to the fact that the salary was to be paid by the petitioner. Rather undeniable fact, available on record is that the petitioner has acted on behalf of ICMR-Indian Council of Medical Research and all the revision in the salary of respondent No.1, was done by the ICMR-Indian Council of Medical Research.

8. The view point of this Court is also fortifying with the observations made by this Court in **P.K. Singhi's case (supra)**. For the sake of convenience paragraph No.4 is reproduced hereinbelow:

“4. After hearing Mr. Monga at length and conjoint reading of the aforesaid provisions of law, the contention of the respondents does not seem to be substantiated by law. Though Section 33C(1)(2)(4) of the Industrial Disputes Act provides for mode of recovery of the amount as arrears of land revenue, but this recovery is permissible against the employer. It is not in dispute that the Company was the

employer of the workmen. In so far as the reliance placed upon Section 149 of the Punjab Land Revenue Act, 1887 read with Section 32 of the Industrial Disputes Act, is concerned, these two sections deal with the offences committed by a person for not responding to the summons, notices, order or requisition of the revenue Officials by any person who may be the Incharge of the management of the Company, including Managing Director. But these Sections, by no stretch of imagination, can mean that such Managing Director or Incharge of the Company is personally liable to pay any amount due against the Company other than fine and the same can be recovered from the person or property of the Managing Director/Incharge of the Company, particularly when Company is employer and the employee is entitled to recover the amount from the assets of the Company. In the totality of the circumstances, the action of the respondents is totally illegal, unwarranted, unjustified and without any sanction of law. These petitions accordingly succeed and the respondents are directed not to effect any recovery from the personal property of the petitioner. However, the respondents are at liberty to recover any amount under the award including under Section 33C (2) of the Industrial Dispute 25 Farm any property/assets of the Company, namely, M/s Cable Works (India) Ltd., Plot No. 71, Sector 25. Faridabad.

Disposed of.

A copy of this order be placed on record on each concerned file.

Petitions allowed.'

9. I have gone through the pleadings raised in the writ petition and also the documents appended with it, heard the arguments of learned counsel for the parties and gone through the law cited by counsel for the petitioner.

10. This Court is in agreement with the petitioner, to say that he has nothing to do with the liability imposed by the Industrial Tribunal-cum-Labour Court, rather same would be upon “respondent No.3- The Director General, Indian Council of Medical Research, V.Ramlingaswami Bhawan, Ansari Nagar Post Box No.4911, New Delhi-110029”, who despite effecting of service has not even chosen to appear before this Court, at the time of hearing of the present case. Therefore, writ petition is allowed.

11. Needless to say that the exercise done through present writ petition could also be done by the petitioner by moving an application before the Industrial Tribunal-cum Labour Court to clarify the issue, but realizing the fact that the petitioner is already before this Court for the last more than 9 years, he is not relegated to the original forum. Hence, the present petition is disposed of in terms of the aforementioned observations.

February 20, 2024
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Whether speaking/reasoned
Whether reportable?

[SANJAY VASHISTH]
JUDGE

yes/no
yes/no