

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

101

CWP-7236-2013(O&M)
Date of Decision:15.04.2024

IMPROVEMENT TRUST PANIPAT THROUGH ITS SUB
DIVISIONAL OFFICER-CUM-AUTHORITY IMPROVEMENT
TRUST, PANIPAT

.... Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, PANIPAT AND ANR

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Rajesh K. Sheoran, Advocate for the petitioner.

Mr. Akash Yadav, Advocate for respondent No.2.

SANJAY VASHISTH, J.(Oral)

CM-3607-CWP- of 2024

Present application has been filed under Section 151
C.P.C., for placing on record the affidavit dated 15.02.2024 of
respondent No.2.

In the affidavit, it has been stated that workman has not
been in any employment in any establishment since his termination on
27.12.2002. It is also averred that amount of Rs.1,95,767/- has already
been tendered to him.

For the reasons enumerated in the application, the same is allowed and the affidavit dated 15.02.2024 of respondent No.2 is taken on record.

CM-4223-CWP of 2017

Present application has been filed by respondent No.2 under Section 17-B of the Industrial Disputes Act, 1947 for grant of full wages to the applicant as per the last wage drawn by him.

Today, learned counsel for the petitioner-Management has handed over a demand draft bearing No.907027 for an amount of Rs.2,66,000/-, to learned counsel for respondent No.2 in the Court today. Photocopy of the demand draft is taken on record. Registry is directed to tag the same at appropriate place in the paper-book.

Learned counsel for the petitioner-Management submits that from the date of the order directing the petitioner to make payment under Section 17-B of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947') , till March 2024 complete payment has been made and no arrears are left to be paid.

Learned counsel for respondent No.2 after accepting the demand draft does not dispute the factual aspect regarding the payment made under Section 17-B of the Act.

Since, the present writ petition itself is being decided by separate order, no purpose would be served by keeping the present application pending and same is worth to be disposed of.

Ordered accordingly.

CWP-7236 of 2013

1. Present writ petition has been filed by Improvement Trust, Panipat (Management), by assailing the award dated 22.01.2013 (Annexure P-5) passed by the Industrial Tribunal-cum-Labour Court, Panipat, whereby reference No.98 of 2006 has been answered in favour of respondent No.2-Yogender Kumar (workman).

Vide award dated 22.01.2013, learned Labour Court held the workman to be entitled to reinstatement with continuity of service and 25% back wages from the date of demand notice i.e. 19.07.2005.

2. While assailing the award, learned counsel representing the petitioner argues that the workman has worked only for 239 days and thus, has not completed 240 working days, for being covered under the provisions of the Industrial Disputes Act, 1947 (for short, the Act of 1947'). He was recruited in the service from time to time only for a fixed term of 89 days and was thus, retained in service by maintaining the gap in the service. While referring to the initial appointment letter dated 01.05.2002 (Annexure P-I), he submits that it's a contractual appointment for a period of 89 days starting from 01.05.2002 at a monthly contractual salary of Rs.2550/- per month. Another letter of appointment dated 30.07.2002 (Annexure P-2) is referred for again appointing the workman for 89 days by enhancing the monthly salary to Rs.3500/- per month. On 28.10.2002, another appointment letter (Annexure P-3) was issued for appointing the workman for 89 days.

However, while referring to the communication dated 27.12.2002 addressed by the workman-Yogender Kumar to the Chairman, Improvement Trust, Panipat (Management herein), counsel submits that it is the workman himself who left the charge from the post of technical clerk on 27.12.2002 and also handed over the record. Thereafter, he never attended the office.

The operative part of the communication is reproduced herebelow:

*“Sir,
As I am leaving the charge from the post of
technical Clerk dated 27.12.2002. So I am
submitting whole record in this office.
Yours faithfully,
Sd/-
Yogender Kumar
27.12.2002”*

3. In this backdrop of circumstances, Management submits that infact it was a fixed term appointment and workman never worked continuously for 240 days preceding the last working day in the office of the Management, thus, he won't be covered under the provisions of the Act of 1947. Broadly speaking, the stand of the Management is that it is not a case of retrenchment, rather, abandonment from the service.

4. This Court after going through the reasoning assigned in the award specially in paragraph No. 12 i.e. admission of the witness produced by the Management as MW1, wherein he stated that workman worked with the Management during the period from 01.05.2002 to 27.12.2002 with two breaks, this Court is also in

conformity with the observation made by learned Labour Court that it amounts completion of 240 working days once two breaks are calculated and included in the total working days. Otherwise also, there are admissible holidays for which all the workman are entitled, therefore, this Court can also very well reach to the conclusion of holding that the workman has completed 240 working days in the Management office, thus, this Court also upholds the finding recorded by learned Tribunal that action of termination of service of workman is in violation of Section 25 F of the Act of 1947, however, while dealing with the writ petition, the other circumstances are also examined. After the termination of workman with effect from 27.12.2002 demand notice was issued on 19.07.2005 i.e. after expiry of more than 20 years. Thus, instead of reinstatement, the grieve of the workman can be satisfied by ordering the Management to pay him some lump sum amount of compensation towards all the reliefs awarded by the learned Labour Court.

5. There is no dispute that during the pendency of present writ petition before this Court workman has been paid the wages under Section 17-B of the Act of 1947 twice i.e. at one occasion Rs.1,95,676/- and today by way of demand draft an amount of Rs.2,66,000/-. Thus, there is no dispute that total amount of Rs.4,61,676/- has already fallen into the pocket of the workman by virtue of Section 17-B of the Act of 1947.

6. After the passing of the period of more than two decades, this Court does not find any special reason to force the Management to take the workman back in service, therefore, another sum of Rs.2,00,000/-(two lacs) would also be paid to the workman towards satisfaction of all the reliefs i.e. reinstatement, continuity in service and the back wages etc, awarded by learned Tribunal accruing to the workman through the impugned award.

7. Let an amount of Rs.2,00,000/- on account of lump sum compensation be paid to the workman by the petitioner-management on or before 02.07.2024.

8. In case, said amount of Rs.2,00,000/- (two lacs) is not paid within the stipulated period, petitioner-Management shall be liable to pay interest @ 6% per annum over the said amount of Rs.2,00,000/- (two lacs) with effect from 02.07.2024 and onwards.

With the aforementioned observations, the present writ petition is disposed of.

April 15, 2024
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Whether speaking/reasoned
Whether reportable?

[SANJAY VASHISTH]
JUDGE

yes/no
yes/no