

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.W.P. No. 11216 of 2010 (O&M)
Date of decision: 10.9.2012

The Sub Divisional Officer

.. Petitioner

v.

Satish Kumar and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Roopak Bansal, Additional Advocate General, Haryana.
Mr. S. N. Yadav, Advocate for respondent No. 1.

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Rajesh Bindal J.

The State has challenged the award of the Labour Court dated 12.6.2009 passed in an application filed by the respondent-workman under Section 33 (c) (2) of the Industrial Disputes Act, 1947 (for short, 'the Act').

Learned counsel for the petitioner raised two fold arguments namely that in terms of earlier award passed by the Labour Court in favour of the respondent workman on 6.3.2002, he was entitled to ₹ 2,44,651/- but he has been directed to be paid ₹ 2,51,620/-. Secondly, the Executing Court could not go beyond the award. The proceedings before the Labour Court under Section 33 (c) (2) of the Act are in the kind of execution. The learned Labour Court while passing the award on 6.3.2002, which was under execution, did not grant interest to the respondent-workman but still vide the impugned award, the learned Labour court has directed payment of interest. Hence, the same is totally beyond jurisdiction.

On the other hand, learned counsel for the respondent-workman submitted that it is a case in which the respondent workman is being harassed by the petitioner. He was appointed as key man in August, 1992. His services were terminated on 25.2.1994, in violation of the provisions of the Act. He raised an industrial dispute. The matter was referred to the Labour Court. The award was passed in favour of the respondent-workman by the Labour Court on 6.3.2002 directing his reinstatement with continuity of service and full back wages but still the same was not complied with. The management filed Civil Writ Petition No. 5014 of 2003 in this court which was dismissed on 20.4.2004. Even the SLP filed before Hon'ble the Supreme Court was also dismissed in the year 2005. It was only thereafter that the respondent workman was taken back in service.

It was further submitted that the respondent workman was required to be paid back wages at least immediately after the decision of this Court or Hon'ble the Supreme Court, but the same was not paid and the respondent workman had to file an application before the Labour Court for the purpose and the amount was paid only on 15.4.2008. The plea raised by the management explaining the delay was that the matter remained pending before the authority for sanction. The respondent workman in the present case had claimed and has been awarded interest only for the period from 4.8.2005 till the amount paid to him and not from 6.3.2002 when the award was passed in his favour.

Learned counsel for the respondent workman further submitted that the conduct of the management is evident from the fact that none represented the management before the Labour Court in the proceedings and they were proceeded against ex-parte. The object only is to harass the low paid employees.

Heard learned counsel for the parties and perused the paper-book.

The undisputed facts are that the services of the respondent workman having been dispensed with in violation of the provisions of the Act, award was passed in his favour by the Labour Court on 6.3.2002 directing his reinstatement with continuity of service and full back wages.

Civil Writ Petition No. 5014 of 2003 filed by the petitioner management before this court was dismissed on 20.4.2004. Though no exact date is forthcoming on record as to on which date the SLP filed by the management was dismissed by Hon'ble the Supreme Court, but the stand of learned counsel for the respondent workman was that it was only after the dismissal of the SLP filed by the petitioner management against the judgment of this court dated 20.4.2004 that the respondent workman was taken back in service on 4.8.2005. He was required to be paid back wages immediately. In terms of the award of the Labour Court, the respondent workman was entitled to reinstatement back in service with full back wages. But even after he was reinstated on 4.8.2005, the back wages were not paid. He had to approach the Labour Court by filing application under Section 33 (c) (2) of the Act in the year 2007.

Though initially the management was represented before the Labour Court and even filed reply stating that after the workman was taken back on 4.8.2005, arrears of back wages to the tune of ₹ 2,44,651/- were also paid on 15.4.2008. But the fact remains that subsequent thereto the management remained unrepresented and had to be proceeded against ex-parte on 15.5.2009 and the award was passed by the Labour court on 12.6.2009.

As far as the issue regarding amount of back wages due to the petitioner is concerned, though the respondent claimed a sum of ₹ 2,51,620/- but the management paid him ₹ 2,44,651/-. There is a difference of merely ₹ 6,969/-. Considering the fact that the amount is too small, this court would not like to interfere with in this regard.

As far as the issue raised by the petitioner regarding award of interest to the respondent workman on delayed payment of back wages is concerned, no doubt, while directing reinstatement of the workman back in service along with full back wages on 6.3.2002, the learned Labour Court did not pass any order regarding interest. However, the fact remains that neither the respondent workman was taken back in service after the award was passed nor the back wages were paid. It was only on 4.8.2005 that the respondent workman was taken back in service when the management lost

upto Hon'ble the Supreme Court. Even thereafter, no steps were taken to clear the back wages due to the respondent workman. He had to approach the Labour Court. It was during the pendency of the application before the Labour Court that the back wages were paid to the respondent workman.

Despite the fact that the award of the Labour Court passed on 6.3.2002 in favour of respondent workman was upheld upto Hon'ble the Supreme Court, still, he had only been taken back in service on 4.8.2005 and not paid back wages, in my opinion, under the facts and circumstances of the case, no illegality has been committed by the learned Labour Court in awarding interest to the respondent workman from 4.8.2005 till the amount was paid to him.

The award does not call for any interference by this court in exercise of extraordinary jurisdiction. Accordingly, the writ petition is dismissed.

Before parting with the order, this court would like to place on record the manner in which various departments in the State are conducting cases pertaining to the workmen. It is seen that services of the workman even after working for a number of years are dispensed with without complying with the requisite provisions of the Act as if the officers working in different departments are not aware of the provisions applicable when day in and day out they are dealing with the cases under the Act.

The time has come to fix responsibility of the officers concerned in case they violate the mandatory provisions of the Law. In fact, they are not loosing anything. It is only the State exchequer which suffers or a low paid workmen who continues fighting in courts for a number of years. The award passed in their favour is not complied with. Many a times, they have to even fight for execution thereof. In many cases, either the management, which is either the State or the Corporation/ Board, remains unrepresented or its defence is struck off due to non-filing of reply. Relevant records having not produced before the Court in evidence, adverse inference is drawn against it. Many times the officers of the department concerned appear in court as a witness and state in favour of the workman contrary to the official records. The State had been coming with the policies

to regularise the services of the workmen working for a particular period, however, many cases come to the court where services of the workmen are terminated after a decade or so and during that period, the policies for regularisation had also been there, but still their names are not considered for the reasons best known to the management.

The matter is not examined threadbare by the authorities concerned before taking a decision to challenge award of the Labour Court before this court. The prayer for stay of award of the Labour Court directing reinstatement is always subject to compliance of provisions of Section 17-B of the Act, which results in payment of last drawn wages even without working. Due to this, the State exchequer has to pay lacs of rupees to the workman without working only because of lapse on the part of some of the officers who had failed to discharge their duties diligently at the initial stage.

Though the State has framed litigation policy but for the reasons best known to the authorities, this aspect has not been touched therein, which is a root cause of generating lot of avoidable litigation in the cases of low paid employees. In case due care is taken at the time of termination of services of the workmen and the provisions of the Act are complied with, this will avoid unnecessary harassment of the workmen and also reduce not only the litigation but unnecessary burden on the State exchequer wherein the State is required to pay to the workmen wages for years together without working. The amount being in lacs and crores can be better utilised for other purposes.

In many cases the challenge to the award of the Labour Court is made by filing writ petitions after years, the object apparently may be to get stamp of the court while getting the writ petition dismissed on account of delay and laches.

This is an era where everybody is talking about transparency and accountability. This is also an aspect where the officers concerned are required to be made accountable for the lapse committed by them when they fail to comply with the mandatory provisions of law. The question is why the State exchequer, which is a trustee of the tax payers money, should be

made to suffer to the tune of lacs and crores of rupees for an unproductive work merely on account of lapse on the part of its officers.

The failure is not only on the part of the officers of the departments concerned where the workmen are working, rather, the Labour Department is equally responsible as even during conciliation proceedings, the issues are not settled. The data in the office of Labour Department will show as to how much references are made to the Labour Court in the cases pertaining to the employees working in various departments of the State or its Boards and Corporations. Majority of this litigation is avoidable. This is also resulting in wasting of lot of man hours of the officers, working in different departments, who spend considerable time and money in prosecuting or defending such avoidable litigation.

The matter needs to be examined by the authorities concerned. The action taken be placed before the Court.

Adjourned to 20.11.2012.

A copy of this order be sent to Advocates General, Punjab and Haryana, Senior Standing Counsel for Union Territory, Chandigarh and Addl. Solicitor General for Union of India.

(Rajesh Bindal)
Judge

10.9.2012
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