
(2013) 05 P&H CK 0182
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 1389 of 2010

Cement Corporation of India Ltd.

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 21-05-2013

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 16, 17, 22

Citation : (2013) 139 FLR 703 : (2013) 3 LLJ 324

Hon'ble Judges : Jasbir Singh, Acting C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : Abha Rathore, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—The dispute as to whether the action of the management in denying permanent status according to Standing Order applicable to the workmen was just, fair and legal was referred by the Government to the Labour Court. The Labour Court, vide its order dated 12.05.2003, held that the workmen under reference have attained the permanent status according to the Standing Order and the management was directed to grant them permanent status and also the attached benefits to the post of permanent nature from the date they complete three months service. In arriving at this conclusion, the following observations have been made by the Labour Court:-

7. I have considered the contentions of the learned representatives of the parties. I have also perused the judgment passed by the Hon"ble Punjab & Haryana High Court in CWP No. 5786 of 2000 and orders passed in CWP No. 10701 of 1994 and CWP No. 11999/1993. I have also gone through the Model Standing orders, Cement Wage Board and Arbitration Award. In CWP No. 5786 of 2000 workmen have claimed for computation of wages when they were rendered jobless. The Hon"ble Punjab & Haryana High Court has affirmed the orders of this Court for the grant of wages for the period when the workmen were rendered jobless. Model Standing orders also provided that if a person completes

three months on probation, he is entitled for permanent status and to also entitled for all the benefits at par with regular employees. In my considered opinion after person attains the status of permanent workman and he is entitled for all the benefits attached to the regular employee and the denial of such benefit is illegal. The Union has also placed on file five decisions under the payment of Gratuity Act, 1972, in which the gratuity has been allowed to the person who approached the authority concerned for the grant of gratuity. Moreover, the Hon'ble High Court of Punjab & Haryana also affirmed the decision of this Court for the grant of compensation in lieu of lay off and minimum wages and other benefits and they were considered at par with the regular employees in the matter of payment of gratuity and other minimum benefits. Therefore, the above seven workmen are entitled to the benefit of permanent status from July 1986 along with other benefits attached to the post of permanent workman employed with the CCI.

8. It is also pertinent to mention here that the management has been making the recovery of provident fund subscription of the workmen w.e.f. 1.1.1987 and the management of CCI is also paying their part of contribution in the provident fund of the workmen, and these workmen for all intends and purposes are thus the employees of the corporation and are entitled for the benefits at par with a permanent workman.

Aggrieved against the aforesaid order of the Labour Court, the appellant came in the writ petition in which it was contended that there had been no master and servant relationship; there was no scope for affording the workmen permanent status when they had not been employed as such; and that the company had also been declared sick under Sick Industrial Companies (Special Provisions) Act, 1985 [hereinafter referred to as the "Act"] and whatever the amounts the workmen are declared entitled to, they should only have recourse to recover the same through the process set forth u/s 22 of the Act.

2. The learned Single Judge found that the workmen were entitled to be treated as permanent workmen and were entitled to reinstatement. However, it was observed that since the establishment of the management has been closed, the workmen shall not be entitled to the relief of reinstatement but would be entitled for monetary benefits as they were holding regular posts in terms of the award passed by the Labour Court and they would be entitled to obtain sums in excess of over what they were being paid in their respective posts. They were also awarded interest @ 9% per annum for the amount as is found due to the workmen from the date of the award. In regard to the company having been declared sick, it was observed that admittedly, there was neither any proceeding which is pending enquiry u/s 16 of the Act nor there is any scheme under preparation or consideration set out u/s 17 of the Act nor it is brought before the Court that there is a sanctioned scheme which is under implementation or the circumstances of pendency of the appeal u/s 22 of the Act.

3. In the grounds of appeal set out by the appellant, it has been mentioned that

the only issue which remains to be decided is whether the annual increment, which is given to a regular employee, is to be given to the respondents-workmen as all other payments have already been made to them at par with the regular employees. It has also been argued that the respondents-workmen, who were employed on account of a settlement, cannot be afforded permanent status, as held by the Courts below.

4. We have heard learned counsel for the appellant and perused the record.

5. Once the respondents-workmen have been paid all the dues at par with the regular employees, it is not understood as to why they have not been paid the annual increment as well because the same has been paid to the similarly situated employees who were working on the permanent posts and have the permanent status. Insofar as the settlement is concerned, the Labour Court has relied upon various judgments of this Court passed in CWP No. 5786 of 2000, CWP No. 10701 of 1994 and CWP No. 11999 of 1993 to hold that the respondents-workmen were entitled to permanent status from July 1986 along with other benefits attached to the post of permanent workman employed with the appellant. Keeping in view the facts and circumstances of this case, the judgment of the learned Single Judge is found to be without any blemish which could call for any interference by this Court in this intra-court appeal. Hence, the present appeal is hereby dismissed being denuded of any merit.