
(2013) 05 P&H CK 0172

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 19054 of 1995

Superintending Engineer and Another

APPELLANT

Vs

Sh. Zile Singh and Others

RESPONDENT

Date of Decision : 10-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 32
Industrial Disputes Act, 1947 — Section 10, 10(1), 25H, 33C(2)

Citation : (2013) 138 FLR 909 : (2013) LLR 1104 : (2013) 171 PLR 294

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : S.S. Pattar, A.A.G., Haryana, for the Appellant;

Final Decision : Allowed

Judgement

Gurmeet Singh Sandhawalia, J.—The present petition has been filed under Articles 226 /227 of the Constitution of India for issuance of writ of Certiorari quashing the award dated 28.3.1994 (Annexure P-1) whereby applications No. 3 to 14 and 16 to 17 of 1993 had been allowed by the Industrial Tribunal-cum-Labour Court, Rohtak (hereinafter referred to as "the Tribunal") and a sum of Rs. 3,68,240/- had been ordered to be paid on account of equal pay for equal work. perusal of the award would go on to show that 14 workmen filed applications that they were entitled to various sums for various periods in as much as other regular employees were getting Rs. 1428/- + DA and they were entitled for the same which the regular employees were drawing and they were also entitled to the interest @ 12% per annum.

2. The management did not admit the facts of the claim statement and pleaded that the Tribunal had no jurisdiction to try the applications as the applicants were not workmen and it was not an industry. The applicants were being paid the wages as fixed by the Deputy Commissioner, Karnal from time to time. All the applicants except Shamsheer Singh were posted as Mali-cum-chowkidar on daily wages basis on muster roll. No appointment letter was issued to the applicants

nor they were working against the regular/sanctioned post. Therefore, they were not entitled to regular pay scale or other benefits of the regular employees.

3 The Tribunal came to the conclusion that the workmen were working since 1990 and they had not completed five years of service and as such they were not entitled to be confirmed as workers of the P.W.D., Public Health, Karnal as per instructions of the Government. However, the workmen were entitled to get the pay scale which was applicable to the other regular employees in view of the statement made by workman Zila Singh who had deposed that he was appointed on 25.5.1990 at Karnal and he used to get Rs. 1025/- whereas others Gardeners were getting Rs. 1700/1800 per month. Accordingly, while placing reliance upon Civil Writ Petition No. 11173 of 1992 - Ajmer Singh, M.C.C. etc. v. State of Haryana, wherein direction was issued to place the petitioners at the basic pay of Rs. 750/- in the pay scale of Rs. 750-900/- plus usual allowances, a finding was recorded that the workmen were entitled to get the pay scale which was applicable to the other regular employees whether they were appointed on D.C. rate or not. Reliance was also placed upon the judgment of Municipal Corporation of Delhi Vs. Ganesh Razak and Another, wherein it was held that application of daily rated/casual employees claiming arrears of wages at the rate paid to regular employee of the same category on principle of equal pay for equal work was maintainable. Accordingly, the workman were held entitled to get the pay scale and amount claimed in the application along with interest.

4 The writ petition had been filed pleading that the workers engaged on daily wages were not governed by the conduct rules of Civil Services Rules and they could leave their job at any time without any prior notice and the workers on daily wages were given limited quantity of work and they were engaged for short span of 8 hours and no emergency duty was entrusted to them. It was further averred that the application u/s 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") was not maintainable without prior adjudication of the claim of a workman.

5. In the written statement filed by the private respondents-workmen it was pleaded that there was delay of 1 year and 9 months in challenging the award and the award was already implemented and the respondents were getting salary in regular pay scale.

6 The operation of the award was stayed by the Division Bench of this Court while issuing notice of motion. A perusal of the award goes on to show that the dispute was never referred to the Tribunal for the decision by the State Government and there was no industrial dispute which was pending consideration. It is apparent that the applications were filed u/s 33-C(2) of the Act for grant of benefit of equal pay for equal work without prior adjudication of the matter.

7. A perusal of the judgment relied upon by the Labour Court in Ganesh Razak's case (supra) would go on to show that the Tribunal has totally misread the said

judgment. The SLP filed by the Municipal Corporation in the said case against the amount determined by the Labour Court u/s 33-C(2) of the Act on the principle of equal pay for equal work was allowed and the award of the Labour Court as well as order of the High Court dismissing the writ petition were set aside. The Hon"ble Apex Court also held that without prior adjudication or recognition of the claim of the workman on the principle of equal pay for equal work by the employer, the application u/s 33-C(2) of the Act is not maintainable. The relevant paras read as under:-

4. It is clear that there has been no earlier adjudication by any forum of the claim of these workmen of their entitlement to be paid wages at the same rate at which the regular workmen of the establishment are being paid and there is no award or settlement to that effect. In short, this claim of the workmen has neither been adjudicated nor recognised by the employer in any award or settlement. The real question therefore is: Whether in these circumstances, without a prior adjudication or recognition of the disputed claim of the workmen to be paid at the same rate as the regular employees, proceedings for computation of the arrears of wages claimed by them on that basis are maintainable u/s 33-C(2) of the Act?

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13. In these matters, the claim of the respondent-workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen"s claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of "equal pay for equal work" being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents" claim is not based on a prior adjudication made in the writ petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication ensuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made u/s 33-C(2) of the Act by these respondents.

8. This Court in Karnal Central Coop. Bank Ltd. Vs. P.O., Indl. Tribunal-cum-Labour Court and Others, has held that the Tribunals are not Courts of plenary jurisdiction and the limits of their jurisdiction are circumscribed by the provisions

of Sub Section (4) of Section 10 of the Act according to which the Labour Court has to confine its adjudication to the points of dispute specifically referred to it. The relevant observations reads as under:-

Lastly, it was urged on behalf of the workman that even though his service was less than 240 days, he was entitled to re-employment in terms of Section 25H of the Act. This may be so, but the dispute regarding his re-employment in terms of Section 25H had not been referred to the Labour Court and, therefore, it could not be adjudicated upon. It is well settled that the Labour Courts and Tribunals under the Act are not Courts of plenary jurisdiction and the limits of their jurisdictions are circumscribed by the provisions of Sub-section (4) of Section 10 of the Act according to which the Labour Court has to confine its adjudication to the points of dispute specifically referred to it u/s 10(1) of the Acts. What was referred in the instant case was the dispute relating to his termination and not the one which he sought to raise before the Labour Court regarding his employment. Re-employment in terms of Section 25H of the Act pre-supposes a valid termination in the first instance and therefore, constitutes a different cause of action and can be gone into by the Labour Court only if a reference is to be made in this regard but not otherwise. It cannot be described as a matter incidental to the dispute relating to termination.

9. A perusal of the award shows that the State Government had never referred the dispute for adjudication to the Labour Court, therefore in the absence of the reference the Labour Court had no jurisdiction. Accordingly, the present writ petition is allowed and the award dated 28.3.1994 Annexure P-1 is quashed.