

(1994) 11 P&H CK 0074
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 8260 of 1994

Vijay Prakash

APPELLANT

Vs

General Manager, Haryana Roadways Depot and Another

RESPONDENT

Date of Decision : 02-11-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (1995) 2 LLJ 1039 : (1995) 109 PLR 231

Hon'ble Judges : G.C. Garg, J; Amarjeet Chaudhary, J

Bench : Division Bench

Advocate : N.K. Suneja, for the Appellant;

Final Decision : Dismissed

Judgement

1. The petitioner who is employed as a Conductor in the Haryana Roadways was not paid increments and thus, he made an application u/s 33C(2) of the Industrial Disputes Act (for short "the Act") whereby he laid a claim of Rs. 22,285/- on account of wages of increments, which according to him, were not paid. Before the Labour Court the stand of the Department was that increments of the petitioner were stopped and the orders stopping increments were conveyed to him which were still in full force, the same having not been set aside by any court of competent jurisdiction. It was further pleaded by the Department that the application was bad on the ground of unreasonable delay and the same was not maintainable as the petitioner had no existing right and also that there was a dispute regarding entitlement of the petitioner to these increments.

2. The Labour Court by its award dated March 9, 1994 declined the prayer of the petitioner and dismissed his application and while doing so, it came to the conclusion that the Labour Court had no jurisdiction as illegality of the order to stoppage of increments could not be gone into in proceedings u/s 33C(2) of the Act and that the petitioner having no existing right, his application u/s 33C(2) of the Act was not maintainable and he was, therefore, not entitled to arrears.

3. Undoubtedly, proceedings u/s 33C(2) of the Act are in the nature of execution proceedings. Learned counsel for the petitioner relying on *Smt. Kantamana v. General Manager South Eastern Railway, Calcutta and Ors.* 1983 (3) S.L.R. 795 and *Janta Cooperative Sugar Mills Ltd. v. The Labour Court Jullundur and Anr.* 1987 (1) S.L.R. 273 vehemently contended that the orders of stoppage of increments were illegal, void and, therefore, the Labour Court erred in declining the prayer of the petitioner.

4. After hearing learned counsel for the petitioner we are of the view that the contention has no merit. The orders passed by the department stopping increments whether after hearing or even without hearing the petitioner continue to be the good orders till the same are set aside in appropriate proceedings. The apex Court in *State of Punjab and Others Vs. Gurdev Singh*, took a view that the order of dismissal though void is governed by Article 120 of the Limitation Act. Thus, it has to be concluded that a void order is also required to be set aside within the period of limitation. The petitioner has failed to show the dates of orders passed by the respondent-authorities whereby his increments were stopped. Even otherwise, the orders stopping increments of the petitioner could be agitated before a forum either on the ground that the same were void or contrary to the principles of natural justice or against the statutory rules. In the absence of these orders having been set aside by a competent Court, the petitioner could not straightaway move a petition u/s 33C(2) of the Act and the Labour Court could not exercise its powers under the above provisions and grant relief. Thus, in our view the Labour Court has taken a correct view in declining the prayer and rightly dismissed the application of the petitioner u/s 33C(2) of the Act. In these circumstances, no interference is called for in the matter and the writ petition is consequently dismissed.