
(2013) 09 P&H CK 0522

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 16718 of 2006 (O&M)

Whirlpool of India Ltd.

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 17-09-2013

Acts Referred:

Citation : (2014) 2 SCT 476

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rameshwar Singh Malik, J.—The present writ petition is directed against the order dated 4.9.2006 (Annexure P-5) passed by the learned Labour Court allowing the application of respondent-workman u/s 33-C(2) of the Industrial Disputes Act, 1947 ("I.D. Act" for short). The brief facts of the case are that respondent-workman was employed as Machinist with the petitioner-management. Certain allegations of misconduct were alleged against him. Domestic enquiry was conducted, wherein he was held guilty. Consequently, his services were terminated. The industrial dispute raised by him having been referred to the learned Labour court, the reference was decided in favour of the workman with continuity of service and full back wages, vide award dated 9.6.2000. Petitioner management challenged the award before this court by way of writ petition, which was dismissed and workman was reinstated in service on 23.3.2001. It is further pleaded case of the petitioner that an amount of Rs. 2,23,399/- was due as arrears of back wages in favour of the respondent-workman. After deducting the income tax, an amount of Rs. 1,60,253/- was paid to the respondent-workman by way of cheque.

2. However, not fully satisfied, respondent-workman moved an application u/s 33-C(2) of the I.D. Act, claiming an amount of Rs. 5,19,574/- vide Annexure P-1. Petitioner-management filed its written statement Annexure P-2, raising objections about the entitlement and method of calculation of the workman.

Workman filed his replication. Both the parties led their respective evidence. After hearing both the parties and going through the record of the case, the learned Labour Court partly accepted the claim of respondent-workman holding the respondent-workman entitled to receive an amount of Rs. 3,75,670/-, vide impugned order dated 4.9.2006 (Annexure P-5). Hence, this writ petition at the hands of the petitioner-management.

3. While issuing notice of motion vide order dated 13.11.2006, a Division Bench of this court passed the following order:-

Learned counsel for the petitioner, inter alia, contends that the Labour Court has erred in making an observation in para. 14 of the order that the Company had agreed to pay fixed LTA every year, which fact is contrary to the evidence brought on record and that the workman himself has admitted that the LTA was granted/payable only to those employees who had availed the leave for journey and submitted the proof in support thereof. In this regard a specific plea has been taken in ground No. 1(i) of the petition.

Notice of motion for 11.12.2006.

50% of the amount quantified by the Labour Court, by virtue of order dated 4.9.2006, shall remain stayed and that the balance 50% shall be paid to the workman subject to furnishing security to the satisfaction of Labour Court. It is made clear that at the time of accepting the security, notice shall be served upon the Company.

4. Thereafter, the above said order dated 13.11.2006 was modified, while admitting the writ petition for regular hearing, by passing the following order on 3.12.2007:-

Heard. Needs consideration. Admit. To be listed for hearing within one year.

We modify order dated November 13, 2006, to the extent that 50% of the amount in dispute be paid to the respondent workman without getting any security from him. It is made clear that in case the petitioner fails in this writ petition, it will have to make payment of the balance amount with interest at the rate of 7% per annum (simple).

5. No written statement has been filed on behalf of the respondent-workman. That is how, this court is seized of the matter.

6. Learned counsel for the petitioner-management submits that the respondent-workman has put up inflated claim in his application, to which he was not entitled. No justification has been given to arrive at the total amount, which was sought to be recovered. Many benefits were admissible only when the workers were on active duty. Since the respondent-workman has put up an imaginary figure, without giving any break-up thereof, the learned Labour Court has proceeded on an erroneous approach, while passing the impugned order and the same was not sustainable. Finally, he prays for setting aside the impugned order

by allowing the present writ petition.

7. Per contra, learned counsel for the respondent-workman submits that the petitioner-management did not lead any evidence before the learned Labour Court. In the absence of any cogent evidence led before the learned Labour Court, petitioner has put up a totally misconceived plea before this court. She next contended that although the respondent-workman might not be entitled for some of the allowances like Leave Travel Allowance, educational allowance, conveyance allowance, quality allowance and yearly benefits, yet the learned Labour Court proceeded on a factually correct and legally justified approach, while passing the impugned order, which deserves to be upheld. She prays for dismissal of the writ petition.

8. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this court is of the considered opinion that since there is a factual difference between the stand taken by both the parties on different figures of amounts, the present case is required to be remanded back to the learned Labour Court, so that the parties may lead their evidence and thereafter, the learned Labour Court may record its positive findings thereon. To say so, reasons are more than one, which are being recorded hereinafter.

9. This court has found force in the contention raised by learned counsel for the petitioner-management that many figures given by the respondent-workman in the tabulation form at pages 14 and 14-A of the writ petition were only imaginary. Learned counsel for the respondent-workman also could not substantiate her arguments, as to how the respondent-workman was entitled for yearly benefits, amounting to Rs. 1,19,625/-. Similarly, the claim of the respondent-workman could not be substantiated qua some other allowances also. In the absence of relevant evidence, the learned Labour Court could not record definite finding, as to how the respondent-workman was entitled for yearly benefits. The learned Labour Court recorded an incorrect finding in para. 16 of the impugned order holding the respondent-workman entitled for leave travelling allowance and other allowances, which might be available to any employee only when he is on active duty. Thus, the impugned order passed on such a finding cannot be sustained.

10. Learned counsel for the parties are ad-idem that pursuant to the above said orders passed by this court, 50% of the amount awarded vide impugned order passed by the learned Labour Court, had been paid to the respondent-workman on 17.12.2007. A bare reading of the impugned order would show that it has failed to justify the entitlement of the respondent workman for different allowances inspite of the fact that he was not on active duty. In this view of the matter, this court deems it appropriate to remit the case to the learned Labour Court for passing a fresh order, in accordance with law and after granting due opportunity to both the parties for leading their respective evidence.

11. No other argument was raised.

12. In view of what has been observed herein above, this court is of the considered view that the impugned order cannot be sustained and the same is hereby ordered to be set aside.

13. Consequently, the matter is remanded back to the learned Labour Court for deciding it afresh. The learned Labour" Court is further directed that reasonable opportunity shall be granted to both the parties to lead their respective evidence. However, every endeavour shall be made to decide the case at an early date, preferably within a period of six months from the date of receipt of a certified copy of this order. 50% of the awarded amount, which has already been paid to the respondent-workman on 17.12.2007 shall be kept in view and adjusted accordingly, at the time of passing the fresh order by the learned Labour Court. Resultantly, with the observations made and directions issued, as herein above, the instant writ petition stands allowed, however, with no order as to costs.