

Punjab-Haryana High Court

Ram Karan vs Labour Court And Another on 11 December, 2009

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.

L.P.A. No.720 of 2009(O&M)

Date of decision: 11.12.2009

Ram Karan.

-----Appellant

Vs.

Labour Court and another.

-----Respondents

CORAM: - HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

HON'BLE MR. JUSTICE GURDEV SINGH

Present:- None for the appellant.

Mr. Kulbir Dalal, Advocate  
for respondent No.2.

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ORDER:

1. This appeal has been preferred against order of learned Single Judge, dismissing the writ petition against order of the Labour Court declining to enforce award for backwages for the period during which the workman was proved to be gainfully employed.

2. The appellant was employed with the management, running a private hospital, where he worked from 1978 to 1996 when his services were terminated. He raised an industrial dispute against the order of termination, which was referred for adjudication to the Labour Court. The Labour Court vide award dated 26.3.2003, set aside the order of termination and directed reinstatement of the workman with continuity of service and full backwages. It was held that no inquiry was held, which rendered the termination of service to be illegal. Thereafter, the workman filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947 for computation of monetary benefits flowing from the award. The application was opposed with a plea that the workman was gainfully employed with Kapil Vohra Eye Hospital, Ambala City after his services were terminated and prior to his reinstatement and for that period, he was not entitled to backwages.

3. The Labour Court vide order dated 6.12.2007 partly allowed the application, except for the period he was gainfully employed.

4. The workman filed writ petition in this Court, giving rise to the impugned order and submitted that once the award was made in his favour, which became final, he was entitled to wages for the entire period irrespective of his being gainfully employed and thus, he could not be denied backwages from 19.6.1996 to 23.12.2004, during which he was gainfully employed. Learned Single

Judge rejected this claim, holding that the claim of the workman was based on a fraud, on which ground benefit of award could be partly declined inspite of its finality.

5. On the last date of hearing, none appeared for the appellant. Even today, none appears for the appellant. We have perused the record.

6. Learned Single Judge observed:-

"XX XX XX XX X A perusal of the writ petition clearly shows that the workman has neither denied that he was gainfully employed from 2002 onwards nor has he pleaded that he was unemployed for the period for which the Labour Court has held him gainfully employed and on this ground rejected his claim of back-wages. What has been asserted in the writ petition by the petitioner is that the Labour Court could not go beyond the award and, therefore, the petitioner-workman was entitled to full back wages from 19.6.1996 i.e. the date of termination till 23.12.2004 i.e. the day before his date of reinstatement. This clearly brings out the lust of the workman to gain undue benefit which he is not entitled to. The back wages are granted to a workman who due to his illegal termination by the employer remained unemployed or who is not gainfully employed. The Management has been able to prove that the workman was indeed gainfully employed from 2002 onwards, and, therefore, what is being claimed by the workman beyond 2001 till 23.12.2004 was undue benefit which under law he cannot be held entitled to. The Labour Court while exercising its powers under Section 33-C (2) of the Act has not over-stepped the limits as prescribed under the Statute nor has it ventured out the limitations as culled out by the judgments referred to by the counsel for the petitioner or the Management. It has merely, while exercising its powers under Section 33-C (2) of the Act, given effect to the award passed by the Labour Court on 26.3.2003 (Annexure P-1) on which the claim of the workman is based. Since the period for which the workman is entitled to back wages was not specified in the award, the Labour Court on the basis of the evidence led by the parties, has determined the period for which the workman had remained unemployed and has accordingly granted him the benefit of back wages for the said period. This, by no stretch of imagination, can be said to be beyond the jurisdiction of the Labour Court while exercising powers under Section 33-C (2) of the Act."

7. It is, thus, clear that the workman was gainfully employed for the period in dispute, for which backwages have been declined. Even though finality of an award may not be disturbed and findings recorded may be resjudicata, we are unable to find any error in the view taken by learned Single Judge that the claim of the workman for the period he was proved to be gainfully employed was vitiated by fraud, relying on judgment of the Hon'ble Supreme Court in S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others AIR 1994 SC Court

853.

8. We, thus, do not find any ground to interfere with the view taken by the learned Single Judge.

9. The appeal is dismissed.

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( ADARSH KUMAR GOEL )  
JUDGE

December 11, 2009  
ashwani

( GURDEV SINGH )  
JUDGE