



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No.8015/2017

Secretary Administration Rajasthan Rajya Vidyut Prasaran Nigam
Limited, Jyoti Nagar, Jaipur (Raj.).

----Petitioner

Versus

Rashtriya Bijali Karmachari Union (INTUC) Rajasthan, Majdoor
Maidan, Purana Power House, Near Ram Mandir, Jaipur,
Rajasthan (Workman Kishan Lal Sharma).

----Respondent

For Petitioner(s) : Mr.Virendra Lodha, Sr. Adv. with Mr.Jai
Lodha, Adv.
For Respondent(s) : Mr.Suresh Kashyap, Adv.

HON'BLE MR. JUSTICE ASHOK KUMAR GAUR

Order

Reportable

24/01/2023

The instant writ petition has been filed by the petitioner-employer challenging the award dated 02.012.2016, passed by the Industrial Tribunal, Jaipur.

Learned counsel appearing for the petitioner submitted that a reference was made to the Industrial Tribunal Jaipur, whereby the claim of the respondent-workman was to be adjudicated in respect of his entitlement of basic salary of Rs.595/- to be paid to him on 19.04.1985 and if the same salary was not being paid, whether the employee was entitled for any relief or not.

Learned counsel for the petitioner, while assailing the award, has made following submissions:-



1. There has been a jurisdictional error by the Industrial Tribunal in granting relief to the petitioner by holding him entitled for basic salary of Rs.580/- per month, as there was no such reference being made.

2. The Industrial Tribunal has gone beyond the scope of reference and the same is not permissible in the eyes of law.

3. The respondent-workman since had not prayed for the relief of grant of Rs.580/- as basic salary per month, as such in absence of any prayer, no such relief could have been granted.

4. The relief, as has been moulded by the Industrial Tribunal could not have been done, as there was lack of pleadings in respect of entitlement of the respondent-workman for getting basic salary of Rs.580/- per month.

Learned counsel for the petitioner also places reliance on a judgment passed by the Co-ordinate Bench of this Court in the case of **Suresh Chandra Vs. General Manager, Raj.State Bridge & Construction Corporation** reported in **2002(3) WLC (Raj.) 67**. Para 6, 11, 15 & 16 is quoted hereunder:-

“6. Jurisdiction to deal with a case is a creation of statute and it cannot be created by acquiescence of the party or by the order of the Court. (Vide the Constitution Bench judgment of the Hon'ble Supreme Court in the [United Commercial Bank Ltd. v. Their Workmen](#) (1), in [Kesar Singh and Ors. v. Sadhu](#) (2), the Apex Court held that a decree without jurisdiction is a nullity and when the matter goes to root of the jurisdiction, it can be raised even in execution proceedings. The finding of a Court or a Tribunal becomes irrelevant and unenforceable/in-executable once the forum is found to have no



jurisdiction (Vide State of Gujarat v. Rajesh Kumar Chimanlal Barot and Anr., AIR 1996 SC 2664.

11. [In the Bombay Gas Company Ltd. v. Gopal Bhiva and Ors.](#), AIR 1964 SC 752, the Hon'ble Supreme Court examined the scope of jurisdiction and powers of the Industrial Tribunal/Labour Court and held that the Labour Court is a Court of limited jurisdiction and it can deal with only the dispute referred to it and the matters incidental thereto, but cannot travel beyond the terms of the reference:

15. Thus, in view of the above, I reach the inescapable conclusion that the Labour Court lacks competence to correct/modify/amend/alter the terms of the reference or correct the name or the date of termination etc. and in case it does so, the award becomes nullity, being without jurisdiction, based on the bad reference.

16. Thus, the impugned award dated 25.4.2000 is declared to be a nullity, unenforceable and inexecutable and is hereby set-aside. The workman may approach the Appropriate Government for amending the reference. As the matter is very old, if the workman makes such an application, the Appropriate Government is requested to pass appropriate order on his application expeditiously and in case the reference is made, the Labour Court is requested to dispose of the claim petition expeditiously. There shall be no order as to costs. "

Per contra, learned counsel appearing for the respondent-workman submitted that the award passed by the Industrial Tribunal does not require any interference by this Court under Article 227 of the Constitution of India and findings recorded after taking into account the entire evidence, may not be substituted by



this Court, as the same would amount to re-appreciating of evidence.

Learned counsel submitted that the relief granted to the respondent-workman is an 'incidental relief' and the same is permissible under Section 10(4) of the Industrial Disputes Act, 1947 (hereinafter read as 'the Act of 1947') and as such, no error has been committed.

Learned counsel submitted that the workman while filing his statement of claim, had given specific names of the employees, who were similarly situated like the respondent-workman but were getting higher pay than the respondent-workman and as such, on the principle of equal pay for equal work viz-a-viz the similarly situated employees, the Labour Court/Industrial Tribunal has rightly passed the award.

Learned counsel submitted that entitlement of basic salary of Rs.595/- even if was not found to be justified, the Labour Court after coming to the conclusion of entitlement of Rs.580/- per month as a basic salary to the respondent-workman, has rightly moulded the relief.

I have heard the submissions made by learned counsel for the parties and perused the material available on record.

This Court finds that the claim which was made by the respondent-workman was in respect of the basic salary of Rs.595/- per month on his appointment on the post of LDC from the post of Helper.

This Court finds that the Industrial Tribunal after analyzing the evidence of the parties, came to conclusion that there were other persons, who were similarly appointed like respondent-



workman and they were getting the basic salary of Rs.580/- and as such, claim of the respondent-workman was found to be justified for grant of such pay scale.

This Court, while going through the award, further finds that the specific names, which were given by the respondent-workman in his statement of claim, their service particulars were also taken into account and accordingly, the respondent-workman has been given the same benefit and as such, it cannot be inferred from any stretch of imagination that the Industrial Dispute has granted the relief to the respondent-workman for which he was not entitled.

The submission of learned counsel for the petitioner that there has been a jurisdictional error like granting relief to the respondent-workman, no particular prayer or relief was sought by him in his statement of claim, this Court finds that Section 10(4) of the Act of 1947 provides the procedure which is being followed by the Industrial Tribunal/Labour Court, while deciding the Reference and as per sub-Section (4) of Section 10, the Labour Court has been given not only power to decide the points of dispute for adjudication but it can also decide the 'incidental matters'.

This Court finds no substance in the submission of learned counsel for the petitioner that grant of particular pay scale, by making comparison with other similarly situated employees, as the relief granted by the Industrial Tribunal, is not a 'matter incidental' to the main dispute, which was referred to the Labour Court.

This Court finds that the claim of the respondent-workman has been rejected for his entitlement of Rs.595/- as basic salary per month and grant of pay scale to those similarly situated



employees, who were also given appointment with the respondent-workman, the similar yardsticks were to be applied while granting the pay to all the employees, who were working as LDC in the year 1985.

The submission of learned counsel for the petitioner that the Court below has gone beyond the scope of reference is also noted to be rejected.

The Labour Court/Industrial Tribunal while considering the claim of the respondent-workman has to adjudicate the dispute, which is raised and if some nomenclature of post is different or a particular pay scale is prevailing at different point of time, the same cannot be a stumbling block for granting relief to a workman, if his entitlement is proved otherwise.

This Court finds that the Industrial Tribunal while considering the oral as well as documentary evidence, came to definite conclusion that the LDC, who were working earlier as Helper and if later on appointed on the post of LDC, they were entitled for pay scale of Rs.580/- and as such, no error has been committed by giving same relief to the respondent.

Learned counsel for the petitioner, at this juncture, submitted that the benefit to the other similarly situated persons as claimed by the respondent-workman was on account of judgment passed by the High Court, whereby the persons, who were appointed as LDC were granted benefit of basic pay of Rs.580/- per month and since the respondent-workman was not a party in the litigation decided by this Court and as such, she cannot be granted benefit.



This Court is afraid to accept submission of learned counsel for the petitioner. If this Court has decided the controversy in respect of other similarly situated employees, then it would not lie in the mouth of the employer that the person who has gone to the Labour Court will be deprived to get the benefit, because he had not approached the High Court.

This Court finds that if the issue with regard to entitlement of an employee for a particular pay scale has been settled by the High Court, obviously it was necessary for the Labour Court to consider the said aspect and accordingly, the Labour Court has recorded in its order that similarly situated persons, if have been held entitled for a particular pay scale, such benefit cannot be denied to the respondent-workman only on account of he being not a party in the litigation before the High Court.

This Court finds that the award passed by the Industrial Tribunal has taken into account the relevant factors for granting relief, pleadings of the parties and further evidence led before it and accordingly it came to the conclusion that the respondent-workman was entitled for relief, which has been granted to him.

Reliance is placed by learned counsel for the petitioner on a judgment passed by this Court in the case of **Suresh Chandra Vs. General Manager, Raj. State Bridge & Construction Corporation (supra)**, this Court, on a careful reading of the entire facts of the case, finds that the Labour Court had granted the award of compensation in lieu of reinstatement and the same was not one of the terms of reference and accordingly, this Court came to the conclusion that jurisdiction of the Labour Court has been exceeded.



This Court, in the present facts of the case, finds that if the respondent-workman has raised a dispute and ultimately reference has been made by the State Government for claiming particular pay or a pay scale, the Labour Court if has found that the relief claimed by the respondent-workman is to be given, as has been given to other similarly situated employees, it cannot be said that the Labour Court has exceeded its jurisdiction and as such, the said case is of little assistance to learned counsel for the petitioner.

Accordingly, the present writ petition stands dismissed.

No order as to costs.

(ASHOK KUMAR GAUR), J

Monika/13