

In view of the law laid down by the Supreme Court of India in the aforesaid case and the decision of this Court rendered in *R. P. Khosla* (supra), I have no hesitation in mind to hold that all the petitioners irrespective of their dates of retirement are entitled to the benefit of cash equivalent of leave salary including dearness allowance in respect of the period of earned leave at their credit on the date of retirement subject to a maximum of 240 days and the decisions contained in Annexures P-1 and P-2 saying that the benefit of leave encashment will be applicable to the employees retiring on or after 30th September, 1977 and 1st July, 1986, respectively, are quashed being unconstitutional.

(10) In view of the foregoing discussions, the writ petition is allowed and the respondents are directed to pay the petitioners cash equivalent to the leave salary (including dearness allowance admissible to them on the leave salary) at the rates in force on the date of their retirement in respect of the period of earned leave at their credit subject to a maximum of 240 days with 12 per cent p.a. from the date of filing of the writ petition till realisation. This decision shall be implemented within three months from the receipt of a copy of judgment. No costs.

P.C.G.

Before Amarjeet Chaudhary, J.

MOHINDER SINGH,—*Petitioner.*

versus

COMMISSIONER UNDER WORKMEN COMPENSATION ACT,
SONEPAT AND OTHER'S,—*Respondents.*

Civil Writ Petition No. 3902 of 1988.

27th September, 1990.

Constitution of India, 1950—Arts. 226 & 227—Workmen Compensation Act, 1923,—Rl. 10(1)—Injured workman suffering 40 per cent disability—Worker continued in service after accident—Notice for compensation served immediately after accident—Application for compensation filed after two years—Claim of workmen—Whether barred by time.

Mohinder Singh v. Commissioner under Workmen Compensation Act, Sonepat and others (Amarjeet Chaudhary, J.)

Held, that the petitioner continued to be in the employment of the respondents on the same salary even after the occurrence. He had given notice of the accident on 12th June, 1984, as required under rule 10(1) of the Workmen Compensation Act and had waited considerably with a hope that his employer would consider his claim sympathetically. The fact that the petitioner continued to be in the employment of the respondents had sufficient cause for not preferring the claim within the prescribed period as he continued to draw the same wages even after sustaining injury during the course of employment and remained under the belief that his employer would settle his claim.

(Para 6)

Petition under Article 226/227 of the Constitution of India praying that ;

- (i) *a writ in the nature of certiorari/mandamus or such other appropriate writ, order or direction be issued quashing the order dated 29th October, 1987, passed by the Commissioner, Respondent No. 1, Annexure with this writ petition as Annexure P-4, and further directing the learned Commissioner to decide the claim petition of the petitioner on merits;*
- (ii) *such other appropriate writ, order or direction, as may be deemed fit and proper in the facts and circumstances of the instant case may also be issued in favour of the petitioner and against the respondents ;*
- (iii) *filing of certified copies of Annexure P-1 to P-4 may kindly be dispensed with.*
- (iv) *issuance of advance notices to the respondents may also be dispensed with.*
- (v) *records of the case may be called for the kindly perusal of this Hon'ble Court.*
- (vi) *costs relating to this writ petition may be awarded to the petitioner.*

Arun Jain Advocate with Sudhir Aggarwal, Advocate, for the Petitioners.

Nemo, for the Respondents.

JUDGMENT

Amarjeet Chaudhary, J.

(1) The petitioner who is a Mechanic in the respondent department had filed the present petition under Articles 226 and 227 of the Constitution of India for quashing the order dated 29th October, 1987 passed by the Commissioner under the Workmen's Compensation Act, 1923 (for short 'the Act') and for a further direction to decide the claim of the petitioner on merits.

(2) The facts of the case are that the petitioner while working as a Mechanic with the respondent department at Sonapat Depot had received personal injuries by an accident which took place on 13th April, 1984 in the course of employment. On the day of the accident, when the petitioner was repairing the bus, the Jack slipped and its Chasis fell on the left hand of the petitioner as a result of which he received serious permanent injury rendering three fingers of his left hand permanently disabled. Thus the petitioner sustained 40 per cent disability. The notice of this accident was given by the petitioner to the General Manager, Haryana Roadways, Sonapat on 12th June, 1984. As the respondent department did not pay any compensation to the petitioner, he was left with no alternative but to file the application for compensation against the Haryana State Roadways, Sonapat Depot on 31st July, 1986 (Annexure P/2) wherein it was stated that he met with an accident on 13th April, 1984 and suffered 40 per cent permanent disability and was thus entitled to get compensation of Rs. 10,800. His claim was registered by the office, in the Register of claims and a notice was issued to the respondent for proceeding with the case. The respondent filed written statement and the following issue was framed.

Whether the claim of the petitioner is barred by time and if so, what effect ?

The Commissioner under the Workmen's Compensation Act refused to entertain the claim on the ground that the same was not made within the period of limitation i.e., two years and rejected the same without any proceedings.

(3) The writ petition was admitted on 13th May, 1988 but the respondent had not filed any written statement. The facts of the case thus remain uncontroverted. Moreso, at the time of final hearing of the petition, none appeared on behalf of the respondent-state.

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(4) It was urged that the petitioner had given notice of accident on 12th June, 1984 as per provisions contained in Rule 10(1) of the Workmen Compensation Act and kept on waiting that the Department would consider his claim sympathetically while working with them. Therefore, it was itself a good ground for extension of limitation.

(5) I have considered the submissions made at the bar and perused the paper-book.

(6) The petitioner continued to be in the employment of the respondents on the same salary even after the occurrence. He had given notice of the accident on 12th June, 1984, copy of which is annexed as Annexure P-1 to the writ petition as required under rule 10(1) of the Workmen's Compensation Act and had waited considerably with a hope that his employer would consider his claim sympathetically. The fact that the petitioner continued to be in the employment of the respondents had sufficient cause for not preferring the claim within the prescribed period as he continued to draw the same wages even after sustaining injury during the course of employment and remained under the belief that his employer would settle his claim. In *Said Ahmad v. North Eastern Railway, Lahore* (1), it was held that where a workman is re-employed after the accident by the same employer in the same workshop, this fact is itself sufficient cause for not making an application under the Workmen's Compensation Act within the period of limitation. Similarly in *Kesoram Cotton Mills Ltd. v. Bal Gobind* (2) that the workman, whose working capacity was reduced during employment, was allowed to continue to be in the employment on lighter job. After some time he was asked to return to his original job on which he had become incapacitated. The Commissioner took the view that the workman had sufficient cause not to provoke a conflict with his employer and not to prefer claim within the limitation so long as his interests were not prejudicially affected and so long as he was receiving a kind of compensation in the shape of lighter work on the same wages.

(7) In view of the foregoing reasons and well settled propositions of law, this writ petition is allowed and the impugned order dated 29th October, 1987 (Annexure P-4) is set aside and the case is

(1) A.I.R. 1940, Lahore 227.

(2) A.I.R. 1953, Calcutta, 667.

remanded back to Respondent No. 1, for deciding the claim of the petitioner on merits expeditiously. The parties are left to bear their own costs.

(8) The petitioner is directed to appear before the Commissioner, Workmen's Compensation Act, Sonapat on 30th October, 1990, for directions.

P.C.G.

Before Harbans Singh Rai, and A. P. Chowdhri, JJ.

RAJ MAL & OTHERS,—Petitioners.

versus

JOGINDER RAM AND OTHERS,—Respondents.

Criminal Misc. No. 2630-M of 1988.

1st November, 1990.

Criminal Procedure Code, 1973—Ss. 133, 138, 139, 310 & 482—Conflicting reports on question of fact on record.—Spot inspection by Magistrate—Order passed under Ss. 133 & 138—Such order—Whether vitiated.

Held, that an order passed by a Magistrate under Ss. 133/138 of the Code is not vitiated if he personally inspects the spot for a proper appreciation of the evidence on record. (Para 5)

Petition under section 482 Cr. P.C. praying that the petition be accepted and Annexure P-2 be quashed and the respondents be restrained from obstructing the flow of water thereby restoring the order passed by Id. S.D.M. Jalandhar.

Petition under section 133 Cr. P.C.

D. Khanna, Advocate, for the Petitioners.

H. S. Giani, Advocate, for the Respondents.

JUDGMENT

A. P. Chowdhri, J.

(1) The sole significant question arising for our consideration in this petition is whether an order passed by a Magistrate under