**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**Civil Writ Petition No. 26212 of 2013**
**Date of Decision: 29.11.2013**

Municipal Council, Ropar

.....Petitioner.

Versus

Presiding Officer, Industrial Tribunal, Patiala and another

.....Respondents.

2. **Civil Writ Petition No. 26222 of 2013**

Municipal Council, Ropar

.....Petitioner.

Versus

Presiding Officer, Industrial Tribunal, Patiala and another

.....Respondents.

3 **Civil Writ Petition No. 26242 of 2013**

Municipal Council, Ropar

.....Petitioner.

Versus

Presiding Officer, Industrial Tribunal, Patiala and another

.....Respondents

4. **Civil Writ Petition No. 26243 of 2013**

Municipal Council, Ropar

.....Petitioner.

Versus

Presiding Officer, Industrial Tribunal, Patiala and another

.....Respondents.

5. **Civil Writ Petition No. 26247 of 2013**

Municipal Council, Ropar

.....Petitioner.

Versus

Presiding Officer, Industrial Tribunal, Patiala and another

.....Respondents.

**CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK**

Present: Mr. Kumar Vishav Aggarwal Advocate
for the petitioner.

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**1.Whether Reporters of local papers may be allowed to see the judgement?**
**2. To be referred to the Reporters or not?**
**3. Whether the judgment should be reported in the Digest?**

**RAMESHWAR SINGH MALIK J.(ORAL):**

This order will dispose of five identical writ petitions filed by the Municipal Council, Ropar against the impugned orders of even date, i.e. 29.5.2012 (Annexure P-3) passed by the learned Labour Court, Patiala, allowing the application of the respondents-workmen under Section 33-C(2) of the Industrial Disputes Act, 1947 ('ID Act' for short). However, for the facility of reference, facts are being culled out from CWP No. 26212 of 2013.

Brief narration of essential facts would be required to unravel short controversy involved between the parties. The respondent-workman moved an application under Section 33-C(2) of the ID Act before the learned Labour Court. Since more than one such claims were decided by the learned Labour Court vide similar order, the petitioner-Municipal Council challenged one of those

orders by way of CWP No. 18849 of 2009 (Municipal Council, Ropar Vs. Karnail Singh (since deceased) through his LR Sukhdev Singh and another) and other identical writ petitions. The above said order passed by the learned Labour Court was affirmed with respect to the entitlement of the respondents-workmen to receive wages for every Saturday on which they performed the duty. However, the matter was remanded to the learned Labour Court, Patiala, to determine the total number of Saturdays, on which the workmen actually performed duty at octroi posts of the Municipal Council. The remand order was passed vide order dated 14.10.2011, disposing of large number of writ petitions.

In compliance of the remand order dated 14.10.2011 (Annexure P-2) passed by this Court, the learned Labour Court gave sufficient opportunities to both the parties to lead their respective evidence, in order to pass an appropriate order. Since the petitioner-Municipal Council failed to furnish the relevant official record despite having been summoned, adverse interference was drawn by the learned Labour Court and the application was allowed, vide order dated 29.5.2012 (Annexure P-3), directing the petitioner-Municipal Council to grant the amount of wages for Saturdays to the respondents-workmen. Hence these writ petitions.

Learned counsel for the petitioner submits that the respondents-workmen were not entitled for wages for the Saturdays and the learned Labour Court proceeded on an erroneous approach while passing the impugned order. He further submits that the

respondents-workmen failed to establish their claims that they actually worked on any particular number of Saturdays. He next contended that until and unless the respondents-workmen proved their claim by leading cogent evidence, they should not have been held entitled to receive the wages for Saturdays. He prays for setting aside the impugned order by allowing the present writ petitions.

Having heard the learned counsel for the petitioner, after careful perusal of record of the case and giving thoughtful consideration to the arguments advanced, this Court is of the considered opinion that in the given fact situation of these cases, no interference is called for at the hands of this Court while exercising its writ jurisdiction under Article 226/227 of the Constitution of India. To say so, reasons are more than one, which are being recorded hereinafter.

So far as entitlement of the respondents-workmen for receiving the wages for every Saturday on which they performed their duty was concerned, that matter has already been upheld by this Court, while passing the abovesaid remand order dated 14.10.2011 (Annexure P-2). A bare reading of the remand order would show that claim of the respondents-workmen to receive the wages for Saturdays on which they had performed duty, as a matter of fact, was accepted by the petitioner-Municipal Council itself.

The relevant part of the remand order dated 14.10.2011 passed by this Court, reads as under:-

*Counsel for the petitioner, states on*

*instructions, that in the peculiar facts and circumstances of the present case, the Municipal Councils accept that the workmen performed duties at octroi post on Saturdays. It is, however, submitted that as the Labour Court has not recorded any finding with respect to the total number of Saturdays, on which the workmen performed duties as octroi Clerks at octroi posts the matter may be remitted to the Labour Court to determine the actual numbers of Saturdays on which the workmen performed duties as octroi Clerks at octroi posts.*

*Counsel for the workmen accept the statement made by counsel for the petitioner and state that they have no objection, if the matter is remitted to the Labour Court for the limited purpose of determining the actual number of Saturdays on which the workmen performed duties as octroi Clerks at octroi post.*

*In view of the statements made by counsel for the parties, the order passed by the Labour Court Patiala, is affirmed with respect to the entitlement of the workman to receive wages for every Saturday on which they performed duties of octroi Clerks at octroi posts. The matter is however, remitted to the Labour Court, Patiala to determine*

*the total number of Saturdays on which the workmen performed duties as octroi Clerks at octroi posts.*

*Each party shall be granted three opportunities each to lead evidence to establish their respective pleas. In case any amount is found due to any workman, it shall be paid within three months with interest @ 6% p.a.*

*Parties are directed to appear before the Labour Court, Patiala, on 8.12.2011."*

A bare reading of the abovesaid observations made by this Court would show that the argument raised by the learned counsel for the petitioner that respondents-workmen were not entitled to receive the wages for every Saturday on which they have performed duty, is no more available to him. The reason is obvious that this claim of the respondents-workmen was accepted by the petitioner-Municipal Council itself before this Court in the earlier round of litigation. Having said that, this Court feels no hesitation to conclude that the learned Labour Court proceeded on a factually correct and legally justified approach, while passing impugned order and the same deserves to be upheld.

In compliance of the abovesaid order dated 14.10.2011 (Annexure P-2) passed by this Court, the only issue that was to be decided by the learned Labour Court was as to on how many Saturdays, the respondents-workmen had actually performed their

duty, so as to calculate their wages. Repeated opportunities were granted by the learned Labour Court to the petitioner-Municipal Council for producing the relevant official record, so as to enable it to substantiate its plea that the respondents-workmen did not work on all Saturdays. Despite having summoned the record, the petitioner-Municipal Council failed to produce the same for perusal of the learned Labour Court. On the other hand, own witness of petitioner-Municipal Council namely Vikas Gupta, in his cross examination, admitted that all the applicants had worked at octroi posts. He further submitted that octroi posts remained open on Saturdays. Once the own witness of the petitioner-Municipal Council admitted this factual aspect of the matter, his statement clinched the issue in favour of the respondents-workmen.

The learned Labour Court rightly drawn an adverse inference against the petitioner-management for not producing the relevant official record, despite having been summoned. The learned Labour Court recorded cogent reasons before arriving at a judicious conclusion while passing the impugned order. The findings recorded by the learned Labour Court in para 16 of the impugned order, read as under:-

> *" Presently, the only controversy to be adjudicated between the parties by this Court is that for how many Saturdays the applicant has actually performed duty at Octroi Post. Upon remand of the application, applicant through his AR has moved an*

*application for summoning the attendance register of the Octroi Department for the period from 1989 to 30.6.2000. Inspite of this application, the management has not produced the record. On 3.4.2012, Vikas Gupta, Accountant in the office of respondent has made statement that he has not brought the summoned record, as the same is not available in their office. The case of the applicant is that as the record has not been produced by the management, so adverse inference is to be drawn against the management, whereas the case of the management is that the applicant or some other Co-employee of the applicant has misplaced the relevant record to take benefit of the same. But the fact remains that in the ordinary course of official duty, the management/Municipal Committee is responsible to maintain the attendance record to the applicant. This record has to remain in the custody of the management. The management has put up the case that the applicant or his co-employee has misplaced the record. But the fact remains that originally, the present applicant was filed in the year 2000, which was decided in the year 2009, in which adverse inference was drawn against the respondent that if the attendance record was*

*produced by the respondent in the court, it would have gone against the respondent. After remand, the applicant has moved the application for production of the abovesaid record, but the management has failed to do so. At the very belated stage on 27.1.2012 vide Ex. M1 and Ex. M2 dated 10.2.2012, the management has started some proceedings to race out the record and ultimately has come up with the result that in spite of the best efforts, record is not available with the management. Ex. M3 dt. 13.2.2012 is letter written by the Executive Officer, Nagar Council, Roopnagar to President, Nagar Council, Roopnagar for the registration of FIR. But MW1 has admitted in his cross examination that no legal proceeding against the applicant or Prabh Dayal (one of the applicants) has been initiated form the filing of the application till the decision of that application, i.e. 10.2.2009. When the management has not been able to trace out the record since 2000 up to date and furthermore, has not taken any action against any of its officials, then the management is bound to suffer for its carelessness in maintaining, preserving and tracing out the record or to take some action anybody responsible for the same. As such, I am of*

*the considered opinion that as per above discussed facts, adverse inference has to be drawn against the management for non-production of the record. Regarding this I find further support from* ***2000(3) SCT 155 and 2009(3) SCT 67*** *relied upon by AR of the applicant, as cited above. Furthermore, MW1 Vikas Gupta in his cross examination has admitted that all the applicants have worked at Octroi Posts. He has further admitted that Octroi Posts remained open on Saturdays. Furthermore, even if the attendance record at the Octroi Posts have been misplaced, then the management and not at the Octroi Posts. The present applicant was not party in the Special Leave Petition (Civil) No. 22390 of 1997 fled in the Hon'ble Supreme Court, copy of which has been placed on the connected file of Application No. 932/2000 titled as Sarwan Kumar Vs. Municipal Council, Ropar and others. Even in the writ petition the applicant has mentioned his address that he is posted at Octroi Post and even this fact has not been rebutted by the management. The amount calculated by the applicant in his claim applicant from the period from 1.1.1989 has not been disputed by the management. Resultantly, the applicant is found entitled to recover the calculated*

*amount from the respondents for the period from 28.6.1997 to 27.6.2000, which in the present case comes out to be Rs. 1,87,362/-. However, if the ordered amount is not paid to the applicant within four months from the date of this order, then the applicant will be entitled to interest @ 6% per annum upon the ordered amount Rs. 1,87,362/- from the date of this order till realization."*

A combined reading of the abovesaid remand order passed by this Court and the impugned order passed by the learned Labour Court would show that the learned Labour Court has passed the impugned order strictly in accordance with the directions issued by this Court and after granting due opportunities to both the parties to lead their respective evidence. The rate of interest has also been awarded as per directions issued by this Court. In this view of the matter, it is unhesitatingly held that the learned Labour Court committed no error of law, while passing the impugned order and the same deserves to be upheld for this reason also.

During the course of hearing, learned counsel for the petitioner failed to point out any jurisdictional error or patent illegality apparent on the record of the case, which might have been committed by the learned Labour Court, while passing the impugned order. Further, no prejudice has been shown to have been caused to the petitioner by passing of the impugned order. Thus, the impugned order deserves to be upheld for this reason, as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that all these writ petitions are misconceived, bereft of merit and without any substance. Thus, these must fail. No case for interference has been made out.

Resultantly, all these writ petitions stand dismissed, however, with no order as to costs.

**(RAMESHWAR SINGH MALIK)**
**JUDGE**

29.11.2013
AK Sharma