

Government of India  
Ministry of Labour & Employment,  
Central Government Industrial Tribunal-Cum-Labour Court-II, New Delhi.

Present:

Smt. Pranita Mohanty,  
Presiding Officer, C.G.I.T.-Cum-Labour  
Court-II, New Delhi.

**LCA. NO. 09/19**

**Date of Passing Order- 03<sup>rd</sup> March, 2022.**

Between:

Ms. Kamla Bhandari,  
D/o Shri J.S Bhandari,  
C/o Shri Ramesh Chand Jani,  
R/o Upper Bazar, Srinagar,  
Pauri Garhwal, Uttarakhand-246001.

Workman

Also At:- Clerk, N.S.S Unit,  
Birla Compound Srinagar, H.N. B Garhwal University,  
Srinagar, District- Pauri Garhwal, Uttrakhand-246001.

Versus

The Vice Chancellor/Registrar,  
H.N.B Garhwal University Central,  
Srinagar, District- Pauri Garhwal, Uttrakhand-246001.

Management

**ORDER**

This is an application filed by the applicant u/s 33-C(2) of the ID Act 1947 praying for an order computing the full back wages at the rate of minimum wage prescribed for the period 30.10.2001 to 14.01.2009 by Government of Uttrakhand and from 15.01.2009 to 26.03.2018 at the rate of minimum wage of the Central Government deducting the back wages paid at the fix rate of Rs. 3000/- per month. The claimant has further prayed that the management may be directed to pay interest @18% per annum on the same from the date of the award and till the final payment is made.

The facts leading to the present petition in short is that the petitioner as the claimant had raised an Industrial Dispute registered as ID No. 94 of 2011 before the Hon'ble CGIT –II New Delhi. The Tribunal by award dated 26.10.2016 answered the reference in favour of the claimant directing that the management shall reinstate the workman with full back wages since the date of termination i.e. 30.10.2001 and the award is to be implemented within 2 months after the expiry of the period of remedy available against the award. The said award was published in the Gazette on 15.09.2016. Thereafter the claimant made various representations to the management for her reinstatement and payment of back wages in compliance of the award passed. But the management lingered the matter forcing the claimant to file an application before the Additional Labour Commissioner (Central)

Dehradun for implementation of the award. That proceeding prolonged and the management ultimately by order dated 22.05.2018 reinstated the claimant in service. At the time of reinstatement the salary of the claimant was fixed at Rs. 15180/- w.e.f 27.03.2018. After great persuasion the management also passed an order for payment of back wages at the fixed rate of Rs. 3000/- per month and made payment in that rate which was received by the claimant petitioner under protest. The management released the said back wages at the fixed rate of Rs. 3000/- for the period 30.10.2001 to 26.03.2018 amounting to Rs. 590710/- and an amount of Rs. 5,31,639/- was credited after deduction of income tax. Though the pay of the claimant at the time of his reinstatement on 27.03.2018 was fixed at Rs. 15180/- in accordance to the minimum wage rate prevailing then, the management while making the payment of back wage never took into consideration the minimum wage prevalent during the period for which the tribunal passed the award. Thus, in this petition the claimant has prayed that the University which was a state university till 14.01.2009 be directed to pay the back wages at the rate of the prevailing rate of minimum wage of the state of Uttarakhand during that time and from 15.01.2009 till the date of reinstatement pay the arrear wage at the rate of the minimum wage fixed by the central government calculating the differential amount taking into consideration the arrear paid at the rate of 3000/- per month. The ALC Dehradun in exercise of the power u/s 33( C) (1) has clearly observed that the claimant is entitled to the back wages at the prevailing rate of minimum wage deducting Rs. 3000/- paid per month by the management. But the commissioner not being competent to compute the amount the present petition has been filed. To support the contention the claimant has filed several notifications of the government Dehradun and the government of India revising the rate of minimum wage from time to time.

Notice was issued to the management to file its reply and the calculation sheet. Accordingly the management filed the reply stating that the award was passed by the tribunal but a settlement was arrived between the claimant and the respondent on 07.05.2018 before the ALC during the proceeding for implementation of the Award. It has been stated that the award was passed for reinstatement with full back wages and during the pendency of the proceeding filed u/s 33C(1) a conciliation was reached between the parties to the effect that the management shall pay back wages to the claimant at the rate of Rs. 3000/- per month from the date of termination and till the date of reinstatement. The present petition has been filed with an ulterior motive and in breach of the settlement arrived. It has also been stated that for the settlement arrived in the proceeding before the ALC the management did not challenge the award dated 26.08.2016. By filing the conciliation sheet showing the payment made to the claimant in view of the said settlement arrived the management has stated that the amount having been admitted by the claimant pursuant to the settlement the present petition is not maintainable and liable to be dismissed. Alongwith

the reply the calculation sheet showing the payment of the arrear pay at the rate of Rs. 3000/- per month has been filed.

During course of argument the claimant has seriously disputed the amount paid to her. Perusal of the award dated 26.08.2016 it appears that the tribunal had passed the award directing her reinstatement into service and payment of full back wages from the date of termination i.e. 30.10.2001 and till the date of reinstatement. There was no direction in the award for payment of back wages considering the revised rate of minimum wage from time to time. The claimant had filed an application before the ALC for implementation of the award. The proceeding of the ALC has been filed and marked as annexure-7. From this proceeding it clearly appears that during the conciliation both the parties agreed that the arrear salary shall be paid to the claimant at the rate of Rs. 3000/- per month for the intervening period between the date of termination and reinstatement. The proceeding before the ALC contains the signature of the claimant which nowhere reveals that the claimant had raised any objection to the said settlement. On behalf of the management a document has been filed which proves that the back wages at the rate of settled amount has already been paid to the claimant. The management has further pleaded that for the settlement arrived the management did not challenge the award in the higher forum. The claimant since admitted the settlement is not justified in advancing a differential claim by filing the present petition. Moreover, law is well settled that the, tribunal while deciding an application u/s 33-C(2) can't create a new right of a party beyond the award. Hence, the prayer of the petitioner for payment of interest cannot be entertained. The petition filed u/s 33-(C )2 is thus held devoid of merit and rejected. Consign the record as per rules.

The order is accordingly passed.

Presiding Officer  
Central Government Industrial Tribunal  
cum Labour Court No. II, Delhi.

Date: 03<sup>rd</sup> March, 2022.