

(2011) 07 BOM CK 0128
In the Bombay High Court
Case No : Writ Petition No. 635 of 2011

Agriculture Produce Market Committee	APPELLANT
Vs	
Parshuram Kore	RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 25F, 25H, 33C(2), 36A
Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules,
1967 — Rule 100(5)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 48

Citation : (2011) 5 ALLMR 714 : (2012) 2 LLJ 240

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : Subhash Paliwal and Soumitra Paliwal, for the Appellant; I.S.
Charlewar, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Savant, J.—Rule, with the consent of the parties, made returnable forthwith and heard.

2. The above writ petition filed under Articles 226 and 227 of Constitution of India takes exception to the Judgment and Order dated 15/11/2010 passed by the Labour Court in Reference IDA No. 14 of 2008. By the said order, the application u/s 33C(2) of the Industrial Disputes Act, 1947 filed by the respondent herein came to be allowed.

3. The facts necessary to be cited for adjudication of the above petition are stated thus

The respondent herein came to be appointed on 8/12/1992 on a fixed salary of Rs. 750/ per month by the petitioner which is an Agriculture Produce Market Committee functioning at Gondia. The services came to be terminated of the

respondent on 20/03/1995, which resulted in the respondent filing Complaint ULP No. 66 of 1995 invoking Item No. 1 of Schedule IV of Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971. It was the case of the respondent in the said complaint that he has worked continuously from 8/12/1992 till his termination on 20/3/1995. It was further the case of the respondent that he has completed 240 days continuous service in a calendar year. It was further the case of the respondent that the petitioner herein was intentionally giving breaks so that he could not get the benefit of permanency and regularization. It was lastly the case of the respondent that his services were terminated illegally without notice and/or wages in lieu of such notice and therefore was in contravention of Section 25F and 25H of the Industrial Disputes Act, 1947.

4. The said complaint was resisted by the petitioner herein by filing its Written Statement. It was the case of the petitioner that the respondent was appointed on a temporary basis on 8/12/1992 on a fixed salary of Rs. 750/. It was further the case of the petitioner that the respondent was appointed considering the need in a particular season and since the respondent's services were no more required after 20/3/1995, the services of the respondent came to be terminated. The petitioner placing reliance on Rule 100(5) of the Maharashtra Agriculture Produce Marketing (Development and Regulations) Rules, 1967 contended in its written statement that the petitioner could not appoint the person for more than six months without the permission of the Director of Marketing who was vested with the necessary powers under the A.P.M.C. Act. The respondent, therefore, having not been appointed with the sanction of the Director of Marketing could not claim the benefits sought in the said complaint.

5. The complaint was adjudicated by the Labour Court Bhandara and by its Judgment and Order dated 31/10/2006 the Labour Court allowed the said complaint. Whilst allowing the said complaint, the Labour Court inter alia dealt with the case of the petitioner based on Rule 100(5) of the said Rules. The Labour Court in terms has held in paragraph No. 22 that there is no substance in the submission of the petitioner and further observed that the same would not be a ground to refuse to follow the provisions in Section 25F of the Industrial Disputes Act, 1947. The Labour Court, therefore, allowed the complaint, the operative part of the Judgment and Order of the Labour Court reads as follows

i) Complaint U.L.P.A. Nos. 2/95, 3/05 and 4/95 are hereby partly allowed.

ii) It is declared that, the respondents engaged in an Unfair Labour Practice while terminating the services of the complainants w.e.f. 03/05/1995. Consequently, their termination are quashed and set aside.

(iii) The respondents are directed to cease and desist for committing Unfair Labour Practice.

(iv) The respondents are further directed to reinstate the complainants in their former post with continuity of service but without back wages.

(v) The respondents shall comply with the order within two months from the date of order.

(vi) No order as to costs.

The record discloses that the said Judgment and Order dated 31/10/2006 passed by the Labour Court in Complaint ULP No. 2 of 1995 came to be challenged by the petitioner by filing Revision Application being Revision ULP No. 104 of 2006 in the Industrial Court, Bhandara. The Industrial Court, Bhandara by its Judgment and Order dated 3/9/2007 dismissed the said revision. The petitioner thereafter filed a Writ Petition in this Court being Writ Petition No. 1222 of 2007 challenging the Judgment and Order passed by the Labour Court as well as the Industrial Court. The said Writ Petition came to be dismissed by this Court by Judgment and Order dated 6/6/2008. Therefore, the Judgment and Order dated 31/10/2006 passed by the Labour Court in Complaint ULP No. 2 of 1995 became final and binding. It appears that though the judgment of the Labour Court was dated 31/10/2006, the respondent was reinstated by the petitioner only on 24/11/2008 i.e. after he was constrained to file an Application u/s 48 of the M.R.T.U. and P.U.L.P. Act for nonenforcement of the Judgment and Order of the Labour Court dated 31/10/2006. It is required to be noted that though the respondent was reinstated, he was reinstated on a fixed salary of Rs. 1200/ per month.

6. Since the respondent was not given the benefits of the Scale applicable to the Junior Clerk though the direction of the Labour Court was to reinstate him with continuity of service but without back wages, the respondent filed an application u/s 33C(2) of the Industrial Disputes Act for payment of his dues. In the said application, the background to filing of Complaint ULP No. 2 of 1995 was stated, as also reliance was placed on the judgment and Order dated 31/10/2006. It was further the case of the respondent in the said application that though he was so reinstated pursuant to the Judgment and Order dated 31/10/2006 of the Labour Court, however, he is being paid on the basis of the rate at which he was paid in the year 1995 and the Scale of the Junior Clerk was not made applicable to him. It was further averred by the respondent in the said application that he was brought in the pay Scale of Rs. 260505 w.e.f. 1/11/1993 vide order No. 19921993 dated 1/10/1993 issued by the petitioner. It was further averred that the persons who were junior to him were not only paid as per the Scale applicable to the Junior Clerk but were also paid as per the Scale applicable in terms of the Fifth Pay Commission i.e. Rs. 3050 - 4570 plus other allowances. The respondent contended that though he has been reinstated, he is being paid at the paltry rate of Rs. 40/ per day. The respondent, therefore, claimed to be paid at the Scale mentioned in paragraph 7 of the said application i.e. from 3/5/1995 -

Rs.950201150251500 (Old Pay Scales 260505 p.m.), from 01/01/1996 - Rs. 3050 - 753950804590 p.m.

7. The petitioner filed its reply to the said application and denied the claim of the respondent. The petitioner contended that the respondent is being paid at Rs. 2500/ per month and therefore no dues are remained to be paid to the respondent and sought the dismissal of the application.

8. The parties led evidence. The respondent examined himself whereas the petitioner examined its witnesses in support of its case. The Labour Court adjudicated upon the said application filed u/s 33C(2) of the Industrial Disputes Act and by the impugned Judgment and Order dated 15/11/2010 allowed the same and issued the following directions.

(i) Application is allowed.

(ii) The nonapplicant to determine the pay scale of the Junior Clerk post of applicant since 29/12/2006 and apply the same and to pay thereafter the pay scales as applicable from time to time till today and in future. This fixation of pay scale should be done within 30 days of this order.

(iii) The pay scale as determined above be paid after deducting the fixed pay given to applicant within 60 days after the above period of 30 days.

(iv) The difference of pay every year will bear 6% interest and cost of Rs. 1000/ be paid to the applicant.

(v) Copy of this order be sent to Assistant Labour Commissioner, Gondia for necessary action.

The Learned Judge of the Labour Court inter alia held that the respondent should have to be paid in terms of the regular Scale applicable to a Junior Clerk. The Labour Court took into consideration Exh.13 i.e. order dated 1/10/1993 issued by the petitioner wherein the pay Scale of the respondent was fixed in the scale of the Junior Clerk and Exh.14 wherein the higher scales have been given to the persons, who had joined after him. The Labour Court observed that the said two documents, Exhs.13 and 14 have not been denied by the petitioner, as indicated above. It is the said Judgment and Order dated 15/11/2010, which is impugned in the present petition.

9. Heard the learned Counsel for the parties.

SUBMISSIONS ON BEHALF OF THE PETITIONER.

(i) That the A.P.M.C. in terms of Rule 100(5) cannot appoint any employee for more than six months without seeking the approval of the Director of Marketing. It is the Director of Marketing who has the power to sanction the posts in terms of the Act. In the instant case, the appointment of the respondent was not made with the approval of the

wp635.11.odt 9 Director of Marketing sanctioned and therefore the respondent could not claim the benefits available to a permanent employee.

(ii) That, admittedly, the respondent was being paid at Rs. 750/ per month and

therefore, on his reinstatement he could not claim the benefits of the pay scale applicable to a Junior Clerk, more so in view of the fact that his appointment was not in terms of the Rules.

(iii) That the jurisdiction u/s 33C(2) of the Industrial Disputes Act can only be invoked if there is a preexisting right to a particular benefit. The applicability of pay Scale cannot be adjudicated upon in a proceedings u/s 33C(2) of the Industrial Disputes Act, 1947.

10. Reliance was placed by the learned Counsel for the petitioner on the Judgments of the Apex Court reported in 1995 I LLJ SC 395 in the matter of Municipal Corporation of Delhi v. Ganesh Razak and Anr. Paragraph 8 of the said Judgment is relevant and is reproduced hereunder.

8. Reference may be made first to the Constitution Bench decision in The Central Bank of India Ltd. v. P.S. Rajagopalan etc., (1963 II LLJ 89 SC), on which Shri Rao placed heavy reliance. That was a case in which the question of maintainability of proceedings u/s 33C(2) of the Act was considered in a claim made by the workmen on the basis of the Sastry Award. The employer disputed the claim of the workmen on several grounds including the applicability of Section 33C(2) of the Act. It was urged that since the applications involved a question of interpretation of the Sastry Award, they were outside the purview of Section 33C(2) because interpretation of awards or settlements has been expressly provided for by Section 36A. This objection was rejected. This Court pointed out the difference in the scope of Section 36A and Section 33C(2) indicating that the distinction lies in the fact that Section 36A is not concerned with the implementation or execution of the award whereas that is the sole purpose of Section 33C(2); and whereas Section 33C(2) deals with cases of implementation of individual rights of workmen falling under its provisions, Section 36A deals merely with a question of interpretation of the award where a dispute arises in that behalf between the workmen and the employer and the appropriate Government is satisfied that the dispute deserves to be resolved by reference u/s 36A. In this context, this Court also indicated that the power of the Labour Court in a proceeding u/s 33C(2) being akin to that of the Executing Court, the Labour Court is competent to interpret the award or settlement on which a workman bases his claim u/s 33C(2), like the power of the Executing Court to interpret the decree for the purpose of execution. Relevant extract from that decision is as under:(at 96):

Besides, there can be no doubt that when the Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing Court to interpret the decree for the purpose of execution. It is, of course, true that the executing Court cannot go beyond the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court; but like the executing Court, the Labour Court would also be competent to interpret the award or settlement

on which a workman bases his claim u/s 33C(2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination u/s 33C(2), it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests.

This decision itself indicates that the power of the Labour Court u/s 33C(2) extends to interpretation of the award or settlement on which the workman's right rests like the Executing Court's power to interpret the decree for the purpose of execution, where the basis of the claim is referable to the award or settlement, but it does not extend to determination of the dispute of entitlement or the basis of the claim if there be no prior adjudication or recognition of the same by the employer. This decision negatives instead of supporting the submission of learned Counsel for the respondents.

Reliance was also placed on the judgment of the Apex Court reported in U.P. State Road Transport Corporation Vs. Shri Birendra Bhandari, of the said Judgment is material and is reproduced hereunder

7. The benefit which can be enforced u/s 33C(2) is a preexisting benefit of one flowing from a preexisting right.

As also the Judgment of the Apex Court reported in 1998 (III) LLJ (Supp) 187 in the matter of Chief Superintendent, Government Livestock Farm, Hissar v. Ramesh Kumar which is along the same lines.

11. The learned Counsel for the petitioner lastly relied upon a Judgment of a learned Single Judge of the Rajasthan High Court reported in 1999 Lab.I.C.873 in the matter of Additional Chief Engineer, Irrigation and Ors. v. Bachan Singh wherein the learned Single Judge of the Rajasthan High Court has held - application for fixation of revised pay scale cannot be entertained unless issue for refixation is settled by adjudication or is recognized by the employer.

12. SUBMISSIONS ON BEHALF OF THE RESPONDENT.

(A) In the Complaint ULP No. 2 of 1995 decided on 31/10/2006, there is a specific direction to reinstate the respondent with continuity of service. The said judgment having been challenged up to this Court and said challenge having failed, the said judgment has become final and binding upon the petitioner. In terms of the said judgment, the respondent would be entitled to the benefits of the pay scale of a junior clerk.

(B) That u/s 33C(2) of the Industrial Disputes Act whilst computing the benefits the incidental questions can be decided by the Labour Court trying the said application. In the teeth of Exh.13 and Exh. 14, there was no dispute as regards the entitlement of the respondent to the pay scale of a Junior Clerk and hence there was no adjudication required. Assuming that some adjudication was required, the same was only incidental to the dispute regarding the computation.

(C) That since Exh.13 which is the appointment letter dated 1/10/1993 by which

letter also the pay of the respondent was fixed in the scale of Junior Clerk and Exh.14 which demonstrates that the persons junior to the respondent are being paid in the regular scale. The said two documents having not been challenged and, in fact, could not have been challenged, the respondent is entitled to the pay scale applicable to a Junior Clerk and it will presently as per the Fifth Pay Commission.

(D) That the submission based on Rule 100(5) of the A.P.M.C. Rules has been dealt with by the Labour Court in the earlier round of litigation in Complaint ULP No. 2 of 1995 and has been specifically rejected, which rejection has been confirmed by this Court, and therefore it is now no more open for the petitioner to take shelter behind the said Rule 100(5) of the A.P.M.C. Rules.

13. CONSIDERATION:

Having heard the learned Counsel for the parties, I have given my anxious consideration to the rival contentions.

At the outset, it will have to be borne in mind that Complaint ULP No. 2 of 1995 filed by the respondent herein has resulted in his termination effected in the year 1995 being set aside and the Labour Court directing the petitioner to reinstate the respondent with continuity of service, however, without back wages. The said Judgment and Order of the Labour Court having been confirmed by this Court, the same has become final and binding upon the petitioner. The petitioner in the said complaint had specifically taken the plea based on Rule 100(5) of the A.P.M.C. Rules to contend that the petitioner does not have power to appoint anybody beyond six months. The said plea has been specifically rejected by the Labour Court in the said Judgment and Order dated 31/10/2006. In my view, therefore, it is now not open for the petitioner to contend that the respondent is not entitled to the benefits available to a regular Junior Clerk i.e. the pay scale, on the ground that the appointment of the respondent was illegal. The said submission of the learned Counsel for the petitioner based on Rule 100(5) of the A.P.M.C.

Rules cannot be entertained.

14. It is pertinent to note that though the respondent was reinstated, on such reinstatement he was once again being paid a lump sum amount of Rs. 1200/ and not as per the pay scale of the Junior Clerk. In that respect, it is pertinent to note that the petitioner itself had issued the appointment letter dated 1/10/1993 Ex.13 appointing the respondent as Junior Clerk and fixing him in the pay Scale of Rs. 450505 which at the relevant time was the pay scale applicable to a Junior Clerk. The said document was produced by the respondent in support of his claim u/s 33C(2) of the Industrial Disputes Act and it is significant to note that the said document was not denied by the petitioner in its evidence. No cross-examination worth the name in respect of the said document was done by the petitioner. The next document is the document Exh.14 which the respondent had produced showing the pay scales which have been given to the persons who are appointed

after the respondent, who are junior to the respondent which document unequivocally points out that the said persons have been given the benefit of the Fifth Pay Commission whereas the respondent was not. The said document was also not denied by the petitioner. In the teeth of the said two documents, there could not be any dispute as regards the entitlement of the respondent to the pay Scale of a Junior Clerk as the said documents unmistakably proved the entitlement of the respondent to the pay Scale of a Junior Clerk. The respondent, therefore, was entitled to the said pay Scale on his reinstatement, however the petitioner, for the reasons best known to it, chose to reinstate him and pay him again on lump sum basis. In the light thereof, the respondent was entitled to invoke the jurisdiction u/s 33C(2) of the Industrial Disputes Act.

15. In so far as invocation of the said jurisdiction is concerned, in the instant case in the teeth of Exhs.13 and 14 the respondent has proved his preexisting right to the pay scale of a Junior Clerk and therefore the Labour Court was right in entertaining the said application filed u/s 33C(2) of the Industrial Disputes Act. It is well settled that the Labour Court exercising jurisdiction u/s 33C(2) of the said Act can decide the incidental issues. In the instant case, that was also not required as the respondent had proved his preexisting right by Exh.13, which is a document of the petitioner itself and therefore in my view the submission of the learned Counsel for the petitioner that the issue of applicability of a pay scale could not be gone into u/s 33C(2) of the Industrial Disputes Act cannot be accepted.

16. In so far as the Judgments of the Apex Court cited on behalf of the petitioner, in my view, in the teeth of the facts as aforesaid whereby by Exh.13 the petitioner has proved his entitlement to the pay scale of a Junior Clerk, the said judgments would have no application as the present case did not involve any dispute for adjudication, as the petitioner itself had placed the respondent in the pay scale of Junior Clerk by the said appointment order dated 1/10/1993 i.e. Exh.13.

17. Having perused the impugned order passed by the Labour Court, in my view, the direction to pay the respondent in terms of pay scale applicable to a Junior Clerk cannot be faulted with, as also the direction regarding payment of interest at 6% per annum in the facts and circumstances of the present case. In that view of the matter, no case for interdiction in writ jurisdiction is made out. Writ Petition is accordingly dismissed. Rule discharged.