
(2016) 01 JH CK 0203
In the Jharkhand High Court
Case No : W.P. (L) No. 5851 of 2013

Aman Kumar Bharatiya

APPELLANT

Vs

TISCO Ltd. and Others

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(C)(2), Section 7

Citation : (2017) 2 AIRJharR 134 : (2016) 150 FLR 188 : (2016) 2 JCR 381 :
(2017) 1 JLJR 107 : (2016) 1 LLJ 651

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : Manish Kumar and Shresth Gautam, Advocates, for the Appellant;
Shresth Gautam and Manish Kumar, Advocates, for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J.—1. Aggrieved by order dated 29.09.2011 in M.J. Case No. 74 of 1999 whereby, the claim for payment of allowances except, the leave encashment has been declined, the son of the deceased workman has preferred W.P.(L) No. 5851 of 2013 and, M/s. TISCO Ltd. has challenged the order granting leave encashment to the deceased workman.

W.P.(L) No. 5851 of 2013

The brief facts of the case are that, the deceased workman namely, Chakradhar Sah was employed initially with Indian Tube Limited and he was dismissed from service on 25.01.1979. An industrial dispute was raised which after failure of the conciliation proceeding, was referred for adjudication vide Reference Case No. 31 of 1979. The reference was answered vide award dated 30.05.1988 whereunder, the management of M/s. TISCO Ltd. was directed to reinstate the deceased workman with 75% back wages and other benefits. The petitioner is one of the legal heirs and successors of the deceased workman namely, Chakradhar Sah, who died during the pendency of M.J. Case No. 74 of 1999. An application under

Section 33(C)(2) of the Industrial Disputes Act was filed for payment of various benefits accruing to the deceased workman during the period his service remained terminated. The said application was partly allowed vide order dated 29.09.2011, against which the parties have filed writ petitions.

2. Heard the learned counsel for the parties.

3. The learned counsel for the petitioner submits that under the tripartite agreement and the award dated 30.05.1988, the deceased workman was entitled for various allowances which were not paid to the deceased workman and therefore, the application under Section 33(C)(2) of the Industrial Disputes Act was rightly entertained by the labour court. Challenging rejection of the claim for various allowances to the deceased workman, the learned counsel for the petitioner contends that the labour court ignored the award dated 30.05.1988 whereunder, the deceased workman was granted "other benefits" also, and thus committed serious error in law in not awarding "allowances" payable to the employees of M/s. TISCO Ltd. to the deceased workman also.

4. Opposing the writ petition, Mr. Shresth Gautam, the learned counsel for the respondents referring to Section 7 and Section 33(C)(2) of the Industrial Disputes Act submits that the jurisdiction of the labour court to adjudicate an issue is confined under the Second Schedule to the Act. It is contended that the various allowances claimed by the deceased workman more particularly, leave encashment are the matters pertaining to the Third Schedule, which only the Industrial Tribunal is competent to adjudicate. Referring to decision in H.P. State Electricity Board and Another v. Ranjeet Singh and Others , (2008) 4 SCC 241 : LNIND 2008 SC 606 : (2008) 4 MLJ 109 : 2008-I-LLJ-629 the learned counsel for the respondents submits that a disputed claim cannot be adjudicated in a proceeding under Section 33(C)(2) of the Industrial Disputes Act, 1947.

5. I have carefully considered the submissions of the learned counsel for the parties and perused the documents on record.

6. Section 7 of the Industrial Disputes Act, 1947 provides that the Appropriate Government may constitute one or more labour courts for adjudication of the industrial dispute relating to a matter specified in the Second Schedule. In the Second Schedule of the Act, the following matters have been specified:

"1. The propriety or legality of an order passed by an employer under the standing orders;

2. The application and interpretation of standing orders;

3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;

4. Withdrawal of any customary concession or privilege;

5. Illegality or otherwise of a strike or lockout; and

6. All matters other than those specified in the Third Schedule".

7. The subject at Sl. No. 6 in the Second Schedule namely, "all matters other than those specified in the Third Schedule" restricts the jurisdiction of the labour court to adjudicate the disputes relating to matters specified under the Third Schedule. The "compensatory and other allowances", "bonus, profit sharing, provident fund and gratuity", and "leave with wages and holidays" are the subjects specified under the Third Schedule. The learned counsel for the management has rightly contended that in application under Section 33(C)(2), the labour court cannot adjudicate a dispute in respect of grant of leave encashment. The deceased workman has claimed Rs. 1,29,385.30 for leave encashment however, the basis for such claim has not been disclosed by the deceased workman. The award dated 30.05.1988 does not disclose that the claim for leave encashment or other benefits were specifically contested before the labour court. The management has paid Rs. 97,021/- to the deceased workman and the said payment has not been disputed by the deceased workman by furnishing a calculation. The labour court has noticed that the Company has already paid bonus to the deceased workman however, merely referring to a decision in *Gammon India Ltd. v. Niranjana Dass*, AIR 1984 SC 500 : 1983 Lab. I.C. 1865 : LNIND 1983 SC 361 : 1984-I-LLJ-233 the labour court awarded Rs. 97,039/- as leave encashment to the deceased workman, for the period during which his service remained terminated.

8. The jurisdiction of labour court under Section 33(C)(2) is well defined. It is well settled that the labour court can exercise jurisdiction under Section 33(C)(2) where the claim of the employee has been admitted by the employer under a settlement or a benefit has accrued to an employee under an award. In *State Bank of India v. Ram Chandra Dubey and Others*, AIR 2000 SC 3734 : (2001) 1 SCC 73 : LNIND 2000 SC 1528 : 2000-II-LLJ-1660 the Hon'ble Supreme Court has held that the jurisdiction of labour court under Section 33(C)(2) extends to computation of a preexisting benefit or one flowing from a preexisting right. In *U.P. State Road Transport Corporation v. Birendra Bhandari*, AIR 2006 SC 3220 : (2006) 10 SCC 211 : LNIND 2006 SC 779 : 2006-III-LLJ-969 the Hon'ble Supreme Court has reiterated that the benefit sought to be enforced under Section 33(C)(2) of the Industrial Disputes Act, 1947 is necessarily a preexisting benefit or one flowing from a preexisting right. The provision under Section 33(C)(2) of the Industrial Disputes Act, 1947 is thus, in the nature of an execution proceeding. The proceeding before the labour court in M.J. Case No. 74 of 1999 discloses that the deceased workman claimed protection bonus, special allowances, LTA amount, leave encashment, fitment allowance, medical allowance, canteen allowance, dress allowance etc. The order dated 29.09.2011 does not disclose that the deceased workman produced a copy of a circular/guidelines of the management for claiming benefit of the aforesaid allowances. The management disputed the claim raised by the deceased workman. It has been specifically averred by the management that in terms of award dated 30.05.1988, the benefits admissible to the deceased workman were computed

and a sum of Rs. 2,72,817.17 was found payable to him. It was claimed that the above computation included 75% of the wages, allowances and benefits from 22.01.1979 to 31.05.1988 and for the period between 01.06.1988 to 13.04.1993 the deceased workman was paid 100% benefit. The claim for benefit of other allowances to the deceased workman was specifically denied. Application dated 23.09.1999 under Section 33(C)(2) discloses that the deceased workman claimed benefit under a tripartite agreement under which an employee is entitled for all benefits during the period of illegal termination. However, the tripartite settlement was not produced before the labour court. The claim under a tripartite settlement has also been disputed by the management. The management asserted that it is maintaining a canteen and therefore, the employee is not entitled for canteen allowance. It is further stated that free medical treatment is given to the employee and therefore, medical allowance was not payable to the applicant. Similarly, other benefits as claimed by the deceased workman in the application under Section 33(C)(2) have also been disputed by the management. Noticing the objection raised by the management, the labour court declined to grant benefit of various allowances as claimed vide Annexure A to the application under Section 33(C)(2) however, the labour court erroneously proceeded to grant benefit of leave encashment to the deceased workman for the period under termination. Considering the aforesaid facts, order dated 29.09.2011 warrants interference and is accordingly, set aside. W.P.(L) No. 5851 of 2013 is dismissed and W.P.(L) No. 558 of 2012 is allowed.