

(2017) 03 RAJ CK 0166
In the Rajasthan High Court
Case No : 4 of 2016

Ambuja Cement Limited & Ors

APPELLANT

Vs

Babu Lal Mali & Ors

RESPONDENT

Date of Decision : 06-03-2017

Acts Referred:

[Industrial Disputes Act, 1947](#), [Section 10](#)/
[Section 33C\(2\)](#) - Reference of disputes to Boards, Courts
or Tribunals - Recovery of money due from an employer

Citation : (2017) 03 RAJ CK 0166

Hon'ble Judges : Govind Mathur, Vinit Kumar Mathur

Bench : DIVISION BENCH

Advocate : Mahesh Bora, Nitin Ojha, Sajjan Singh Rathore

Judgement

1. To review judgment dated 14.5.2015 passed by a Division Bench of this Court in a batch of special appeals led by D.B. Civil Special Appeal (W) No.1427/2014, these review petitions are before us.

2. Briefly stated facts of the case are that the appropriate government while exercising powers under Section 10 of the Industrial Disputes Act, 1947 referred industrial dispute to the Industrial Tribunal, Jodhpur with regard to application of recommendations made by the Cement Wage Board under its award relating to payment of wages, allowances and other ancillary benefits and amenities. The Tribunal by different awards arrived at the conclusion that the workman concerned are entitled to have pay-scales as per the recommendations made by the Cement Wage Board with other allowances and ancillary monetary benefits. The employer challenged the award by way of filing a group of writ petitions before Single Bench of this Court with assertion that the findings arrived by the Tribunal are not in consonance with law inasmuch as that the recommendation made by the Wage Board does not apply to the contractual workman and further that if applicable, then from what date those were required to be applied for the workman effected.

3. The writ petitions came to be disposed of by a common order dated 17.7.2014 by arriving at the conclusion that the Industrial Tribunal failed to decide mixed questions of facts and law specifically pertaining to determination of monetary relief that was to be extended to the workman concerned. The Single Bench also noticed that the counsel for the workman being unable to satisfy the question as to how the said award could be executed in favour of the respondent-workman agreed for remand of the cases to the Tribunal. Accordingly, all the disputes were remanded to the Industrial Tribunal for decision afresh in accordance with law.

4. Aggrieved by the order passed by learned Single Bench, the workman preferred appeals before a Division Bench of this Court and those came to be accepted under the order dated 14.5.2015.

5. The Division Bench while accepting the appeals held that the Industrial Tribunal was required to answer the reference that was made to it by the appropriate government and the question of quantifying the monetary benefits could have been adjudicated by invoking powers under Section 33C(2) of the Industrial Disputes Act, 1947 subsequently.

6. To challenge the judgment given by Division Bench, the employer preferred special leave petitions before Hon"ble the Supreme Court and those came to be disposed of by a common order dated 21.9.2015. The order passed by the Apex Court on 21.9.2015 reads as follows :- "Delay condoned in SLP (c) Nos...../2015 CC Nos.63-17177/2015. Mr. Chanden Uday Singh, learned senior counsel appearing for the petitioner has argued that there are certain apparent errors in the order of the High Court. He has also drawn our attention to the judgment of the learned single Judge and pointed out that in para No.9 of the said judgment the consent of the counsel for the respondents-workmen was recorded to the effect that the matter be remanded back to the Tribunal. His submission is that these aspects are not considered by the High Court. We feel that the review petition before the Division Bench of the High Court at the first instance. In the case the review is decided against the petitioner it would be open to the petitioner to challenge that order and at that time the petitioner would be entitled to take all the grounds which are the subject matter of these petitions.

The Special Leave petitions are disposed of in the aforesaid terms."

7. After disposal of the special leave petitions the instant review petitions are preferred.

8. It is submitted by Shri Mahesh Bora, learned Senior (8 of 8) Advocate appearing on behalf of the review petitioner that the Division Bench failed to appreciate that the counsel for the petitioner herself agreed to get the industrial dispute remanded for its adjudication afresh.

9. We do not find any merit in the argument advanced.

10. From perusal of the order passed by learned Single Bench it is apparent that

the learned counsel appearing on behalf of the workman contested the matter on merits and only on being failed to satisfy the Court agreed in alternative for remand of the dispute to the Adjudicating Body. The workman after acceptance of the writ petitions immediately approached to Division Bench and from perusal of the memo of appeal, it appears that all the merits relating to the issues were canvassed. In view of it, we are of the considered opinion that as a matter of fact the workman contested the matter on merits and the consent for remand was only in alternative. The Division Bench heard the submissions advanced by learned counsel for the rival parties and passed a detailed order on merits. In view of whatever stated above, we do not find any just reason to review the judgment dated 14.5.2015 passed in different review petitions. The review petitions are dismissed.