

(2008) 09 PAT CK 0028
In the Patna High Court

Arun Chemicals Industries

APPELLANT

Vs

The Certificate Officer etc.

RESPONDENT

Date of Decision : 02-09-2008

Acts Referred:

Citation : (2008) 09 PAT CK 0028

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.—These two writ applications are by the same Company, and are interconnected and as such are taken up for final hearing and disposal together.

2. In C.W.J.C. No. 11866/1999, the Company along with one of its Directors challenges the decision of the Presiding Officer Labour Court, Bhagalpur, given with reference to Section 33-C(2) of the Industrial Disputes Act, in favour of the alleged workman, the private-respondent. The second writ application being C.W.J.C. No. 9910/2001, challenges the certificate proceedings and the orders passed therein being Certificate Case No. 18/1999-2000, pending before the Certificate Officer, Bhagalpur, having been instituted at the instance of the Labour Court, Bhagalpur, for the recovery of the money due to the private-respondent under the decision given, which is impugned in the first case.

3. Parties have appeared and the pleadings are completed. This Court had called for the complete original records of the proceedings held in terms of Section 33-C(2), which have also been received and referred to by the learned Counsel appearing for the respective parties.

4. The Private respondent joined the employment of the petitioner in the year 1967 as an electrician. His services were terminated by the Management of the petitioner on August 24, 1983. This gave rise to an Industrial dispute, which was referred to Labour Court, as Reference Case No. 2/1985, for determining the question, whether the termination by the Management is proper and justified? If not, he is entitled to reinstatement or any other relief? It appears that in the said

Reference Case, while the matter was being adjudicated, an application was filed by the workman, private-respondent, signed only by him, stating that he had been reinstated, as consequence of the dismissal order being withdrawn by the Management. Consequently, a "no dispute award" was passed, in the said Reference Case on April 22, 1988. The workman alleges that consequent to his reinstatement his joining was accepted. On October 1, 1989, due to various reasons, which are not relevant to be discussed, there was a purported lay off ordered by the Management and with effect from March 5, 1990, the Factory, which was situated at Sultanganj in the district of Bhagalpur closed down for all practical purposes. The private-respondent states that he was retained as a part of essential staff.

5. On March 8, 1996, the private-respondent filed an application purporting to be in terms of Section 33-C(2) of the Industrial Disputes Act, seeking quantification of his due wages for the period February 25, 1983 to April 10, 1988 and then from May, 1989 up to date. This was registered as Miscellaneous Case No. 5/1996 before the Labour Court, Bhagalpur, against inter alia the petitioner Company, the petitioner Director, the General Manager of the petitioner Company purporting to be at Sultanganj district Bhagalpur.

6. From the order sheet, the order dated October 15, 1998, in this Miscellaneous Case No. 5/1996, it appears that orders were passed for the first time for the private-respondent to deposit money for issuance of notice to the Opposite Parties and November 18, 1998 was fixed for issuing notice. Opposite Party No. 2 is petitioner No. 2, the Director of the Company, petitioner No. 1, who was resident at Patna at all material times and therefore notice was to be served on him by registered post. In none of the orders it is found that whether notice was at all issued to Opposite Party No. 2 or not. The original records also do not show Issuance of any notice, much less, by registered post to Opposite Party No. 2. Yet, in order dated November 18, 1998, it is recorded that notice be deemed to be served on Opposite Party Nos. 1, 2 and 3, as they remained unrepresented, the case would proceed against them, ex parte. The rest of the parties having been deleted as per dated November 18, 1998, it will be the contention of the petitioner that it is surprising on whom notices were served at Sultanganj, as the Factory had shut down for good over 8 years and there was no one there, the premises being virtually abandoned, Ultimately, the impugned decision was rendered on February 27, 1999, in the Miscellaneous Case No. 5/1996, purporting to be in terms of Section 33-C(2) of the Industrial Disputes Act, awarding a sum of Rs. 2,85,490.43/- to the private respondent along with 12% interest be paid within two months as claimed by the private-respondent. This decision is challenged in the first case. Consequent to the said decision on a requisition being made by the Labour Court itself under the provisions of the Bihar Public Demand Recovery Act, 1914, the District Certificate Officer registered Certificate Case No. 18/1999-2000 and issued certificate for recovery of the amount, as per the decision of the Labour Court with interest and thereafter, notices were issued and coercive steps taken against the petitioners,

which have been challenged in the second writ application.

7. Mr. Madhuresh Prasad, advocate appeared for petitioners in both the cases and the private-respondent was represented by Sri Rajiv Verma, learned senior counsel and they were heard extensively, in the matter.

On behalf of the petitioner, in support of the two writ applications basically five contentions were raised.

(i) Petitioners questioned the jurisdiction of the Labour Court and the maintainability of private-respondent's application in terms of Section 33-C(2) of the Industrial Disputes Act;

(ii) The decision rendered by the Labour Court in the proceedings u/s 33C(2) was not after service of notice to the parties and thus invalid and unenforceable;

(iii) The decision was based on no or inadmissible evidence as such perverse and liable to be set aside;

(iv) The decision not having been published, as per Sections 17, 17-A of the Act, could not be enforced; and lastly

(v) The Labour Court itself could not file requisition and initiate certificate proceedings for Implementation of its decision, as rendered u/s 33-C(2).

8. All these contentions were countered by the learned senior counsel on behalf of the private-respondent.

9. So far as the first is concerned, it may first be useful to refer the substantive part of Section 33-C(2), which is quoted hereunder:

Section 33-C. Recovery of money due from an Employer

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months....

10. With reference to the aforesaid provision on behalf of the petitioner, it is submitted that ordinarily where a workman has to claim certain amounts, which is dependent on establishing his entitlement his remedy would be in terms of Section 10 of the Act, as Section 10 provides for a complete adjudicatory machinery, wherein, the workman can establish his entitlement, first followed by quantification, but, the quick remedy u/s 33-C(2) can only be availed, where, there is no dispute with regard to entitlements nor that have to be adjudicated and found out but based on established entitlement money due has to be only calculated. In other words, it is submitted that where the entitlements are to be established by adjudicatory process, where claims of entitlement are first to be

settled by adjudicatory process, the remedy is u/s 10, but, where claims in money term have to be computed only, it is a virtually, only an executionary proceedings in terms of Section 33-C(2) of the Industrial Disputes Act. For this purpose, Sri Prasad, learned counsel, for the petitioner placed reliance on the Judgment of the Apex Court in the or Municipal Corporation of Delhi Vs. Ganesh Razak and Another, and in particular paragraphs 11 and 12, thereof, the case of U.P. State Road Transport Corporation Vs. Shri Birendra Bhandari,

11. To the contrary. Sri Verma, learned senior counsel for the private-respondent submitted that so far as claim of the private-respondent is concerned, no adjudication of his entitlement was required, as the case remained uncontested and based on the claims of undisputed entitlements. The dues were validly and correctly calculated by the Labour Court.

12. Thus, the question is, what is the nature and scope of proceedings u/s 33-C(2) of the Industrial Disputes Act. In the case of Municipal Corporation of Delhi v. Ganesh Rajak and Anr. (supra) in paragraph 11 of the reports, while referring to the earlier decision of the Apex Court in the case of Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, their Lordships noticed and held that proceedings u/s 33-C(2) are in the nature of execution proceedings. It would appear that an investigation of alleged right of reemployment is outside the scope and the Labour Court exercising power u/s 33-C(2) of the Act cannot arrogate to itself, the functions of adjudication of the dispute relating to the claim of the reemployment. In view of their Lordships, the distinction was similar to that of a suit and an execution proceeding. It was, further, pointed out that if for grant of the relief as claimed, there was required an investigation into facts, then that could only be done in the suit (indicative of a proceeding in terms of Section 10). But, once the suit was adjudicated upon, the working out of liability was the function of the execution proceedings (to be done u/s 33-C(2) of the Act). In so many words, the Apex Court has held that when a claim is made before Labour Court in terms of Section 33-C(2) of the Act that Court must clearly notice the limitation under which it is to function. It cannot arrogate to itself the function -say of any Industrial Tribunal which alone is entitled to make adjudication or proceed to compute the benefits by dubbing an adjudicatory process, as incidental to the computation. Computation, their Lordships held is itself consequential upon and subsidiary to determination in the process of reference to Industrial Tribunal. Their, Lordships in paragraph 12 pointed out the true ratio of various decision on this aspect and held that where the basis of claim or entitlement of a workman to a certain benefit is in dispute and requires adjudication or recognition, thereof, by employer, then, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of the proceedings u/s 33-C(2) of the Act. In other words, where entitlement have to be first ascertained and established, it cannot be done in a proceeding u/s 33-C(2), for it is to be done u/s 10 and once entitlements are crystallized, then, on that basis, the power u/s 33-C(2) is to be exercised, for the purpose of implementation or the enforcement, thereof.

13. In that case, the workers, who had laid claim in terms Section 33-C(2) were daily rated/casual workers and were claiming on principle of equal pay for equal work, pay parity with regular workers, which had not been earlier settled by any adjudication. Their, Lordships held that such a claim could not be adjudicated, even though, apparently, it was not in dispute that they were daily rated/casual workers. Their, Lordships clearly held that the respondent's claim was not based on a prior adjudication made, even though, in a writ petition they were held to be entitled to pay parity.

14. In my view, similar is the view of the Apex Court in the case of U.P. State Road Transport Corporation v. Birendra Bhandari. (supra). Here, there was an application by employee of the State Road Transport Corporation for payment of arrears of salary, leave encashment and arrears of dearness allowance arising out of implementation of the recommendations of the 5th Pay Commission, which was sought to be done under an application u/s 33-C(2) of the Act. The Labour Court decided the matter in favour of the workman and the writ petition of the Road Transport Corporation was dismissed. The Apex Court allowed the appeal and set aside the decision of the Labour Court and the High Court holding that the benefit which can be enforced and claimed u/s 33-C(2) of the Act is a pre-existing benefit or one flowing from a pre-existing right.

15. In my view, the ratio of the two decisions aforesaid is that if question arises whether a workman is entitled or not or what is the entitlement, then, these questions have first to be investigated/adjudicated and entitlement established. This would be in the nature of an adjudicatory process of a suit, which would be competent in a reference u/s 10 of the Act. u/s 33-C(2), if there is no dispute about the entitlement or the entitlement has been established in any earlier proceeding, then, only quantification, thereof, for the purposes of executing the same, is required to be done u/s 33-C(2), otherwise, the jurisdiction under Sections 10(1) and 33-C(2) would be completely overlapping, which cannot be the legislative intent. The scope of Section 33-C(2) is quantification in money term of a pre-existing right in a non-adjudicatory execution proceedings.

16. Before proceeding, further, I may note the contention of Sri Verma, learned senior counsel for the private-respondent that in the present case, there was no requirement of any adjudication, inasmuch as, the proceeding proceeded ex parte, without any opposition and thus the Labour Court did not err in entertaining and giving a decision in the matter. With due respect, the submission cannot be accepted for a simple reason. Jurisdiction of a Court or a Tribunal is to be determined on the application made to it, at the first instance and not on what subsequently transpires in the proceedings before it. It cannot be said that the application was maintainable and the Court had jurisdiction to entertain the proceedings but once Opposite Parties appeared and contested the matter challenging the entitlement, the Court would lose jurisdiction, for if once the Court had the jurisdiction to entertain the application, it cannot by subsequent act of parties lose jurisdiction in the matter and conversely if the

Court lacks the jurisdiction in the matter, at the very inception, then, act of party cannot confer the court with jurisdiction in the matter. Thus, the submission of the learned senior counsel in this regard cannot be accepted if the Labour Court lacks the jurisdiction at the very inception.

17. In view of the law, as noticed above, let us now examine the fact, the application of the private-respondent purporting to be an application u/s 33-C(2) of the Act is on record. One thing that sticks out in the lengthy detail application is that it is curiously silent about the closure of the Factory over 6 years back. It, further, relies on the "no dispute award", which by nature of it was not an award adjudicating anything and was merely recording reinstatement and had been rendered futile and thus ended as a "no dispute award." No findings, therein, were findings relevant to any issue, much less, could be used as establishing a preexisting entitlement or a right. All documents referred in the said application were self-statements with regard to annual increments, entitlement to bonus and other entitlements unsubstantiated with any official document or admissions. In my view, it was necessary for the private respondent, the workman, first, to establish those claims of entitlement and that necessarily was an adjudicatory process. Merely, because, there was no one to oppose, cannot make it that when the initial claim was laid to the entitlement, they were either predetermined or admitted. This, in my view, took away the jurisdiction of the Labour Court to entertain the application in the claim petition. There is reference of earlier attempts of conciliation proceedings, which failed. By an order of the Officer concerned (Deputy Labour Commissioner) to approach the Labour Court and taking clue from that as if that observation invested jurisdiction in the Labour Court in terms of Section 33-C(2), these proceedings were initiated in view of the judgment aforesaid, above mentioned. The scope of Section 33-C(2), as determined by this Court, in my view, the application of the private-respondent was not maintainable and the Labour Court ought to have relegated the workman to other forum available. On this finding alone, both the writ petitions must succeed, as the decision of Labour Court was beyond the scope of its jurisdiction u/s 33-C(2) of the Industrial Disputes Act.

18. As all other issues have been also argued in extenso, I would prefer to deal with other issues, as well.

19. Now coming to the second issue: with regard to the order being vitiated on the ground of no due notice to the Opposite Parties. In my view, before an order can be passed in terms of Section 33-C(2) of the Act, the management has to be heard and as such required to be noticed in the proceedings. The order-sheet of the entire proceedings has been appended and the original records have been produced. A reference, thereto, depicts a very sorry state of affairs. As noticed earlier, the proceedings were initiated by an application by the private-respondent, in terms of Section 33-C(2) of the Act, on or about March 8, 1996. Up to September 16, 1998, no steps for service of notice were taken on the Opposite Parties. The matter was adjourned day after day for orders to issue

notice. It is for the first time, on October 15, 1998 that the private-respondent was asked to deposit Rs. 50/ for service of notice but even then the next day November 18, 1998 was fixed for issuance of notice. Records now reveal that on October 17, 1998 notices were issued on three of Opposite Parties only. They were (1) the Company and (2) Sri Bhagwan Mishra, who was at that time Opposite Party No. 4, and the alleged General Manager and one Satyadeo Sharma with the address of Katihar. But, the latter has been scored out from the notice. With regard to the Company and the said Sri Bhagawan Mishra on the same day, the notice is returned with the endorsement of the server that the notice was served on the Guard at the Factory at Sultanganj, who refused to receive it after reading the notice. With regard to Petitioner No 2, who was Opposite Party No. 2, obviously, this notice was not addressed, as he was at Patna and it was for that apparently costs were required to be deposited for sending registered notice. I perused the entire Lower Court records, but there is no evidence of either deposit of the said sum or of issuance of any registered notice or for that matter any notice to the said person. Then, we come to the next date i.e. November 18, 1998, on this day, the private-respondent filed an application for deleting Opposite Party Nos. 3, 5, 6 and 7 from the proceedings, as he had nothing to do with them. That left the Company, petitioner No. 2, the Director and Sri Bhagawan Mishra, the General Manager, as the three Opposite parties. The ordersheet would show that the Labour Court accepted the petition and deleted the parties. Then, it noted that against the two remaining, notices were issued and deemed to be served, on refusal with regard to petitioner No. 2, it is merely noted that notices were issued by registered post and none of the parties have turned up, as such, the matter would proceed ex parte against all of them. The Labour Court has completely glossed over the service report, which clearly showed that the notice was sought to be served on the security guard, who refused to accept and as such the notice could not be deemed to be validly served. So far as the other Opposite Party (petitioner No. 2) at Patna is concerned, no notice at all was actually issued, thus, in law the Opposite Parties were not validly noticed. In this regard, reference may be made to Rule 20 of the Industrial Disputes (Bihar) Rules, 1961, which provides for manner of service of notice. It clearly provides that the notice may be served either personally or by registered post, failing which service may be effected in the manner provided for in the Code of Civil Procedure, except, where service is effected through agent of the interested party, who shall then swear an affidavit as provided therein, in proof of such service. Undisputedly, in the present case, neither there was personal service nor by registered post nor by the person interested nor there was any affidavit in support of service notice. Thus, it has to be held that the decision was made without notice to the parties concerned and thus stood vitiated, as a matter of law.

20. Now, we come to the third issue, which is that even otherwise the award stands vitiated, being based on no evidence or inadmissible evidence. Again, perusing the Lower Court's records and the ordersheet of the Labour Court, it

would be seen that to establish his entitlement the private respondent exhibited as many as 13 Exhibits, with the exception of Exhibit-6 series, Exhibit-11, Exhibit-12 and Exhibit-13, all are self-serving letter of the private-respondent raising various claims against the management. Exhibit-6 series are letters of Deputy Labour Commissioner noticing the management in conciliation proceedings, which as noted earlier ended, giving liberty to the private-respondent to move appropriate forum, in the matter, ending with an Exhibit-7, in this regard. Exhibit-II purports to be an office order dated April 13, 1988, transferring petitioner to Sultanganj Factory. Exhibit-12 is no dispute award in the Reference Case No. 2/1985, as noticed earlier and Exhibit-13 is list of essential staff dated October 1, 1989 signed by General Manager. There is no evidence of any office order or terms of employment or conditions of service, whatsoever. A chart is one of evidences giving the claim of the petitioner month wise, year wise, showing yearly increment in salary, yearly entitlements to bonus and other perquisites prepared by the private-respondent himself, which has been accepted in toto by the Labour Court. Thus, even on facts, it is apparent that the entitlement of the private-respondent was not established by any cogent, valid and relevant evidence and for that reason also the order stands vitiated.

21. On behalf of petitioners, it is submitted that the decision has not been published in terms of Section 17 and as such does not become enforceable in terms of Section 17-A of the Industrial Disputes Act. Sri Verma, learned senior counsel for the private-respondent, in my view, rightly submits that to a decision in a proceeding u/s 33-C(2) of the Act, the provisions of Sections 17 and 17-A of the Industrial Disputes Act do not apply. To my mind, he is correct and the reason is simple. Section 17 talks of a report of the Board or a Court, arbitration award and an award of Labour Court, Tribunal or National Tribunal. It does not refer to a decision of a Labour Court given in terms of Section 33-C(2). Section 17-A talks of an award including arbitration award and as shown above, the decision u/s 33-C(2) is different and distinct from an award.

22. In my view, there is a more important provision which supports the argument that Section 17 or 17-A for that matter does not apply. Section 33-C(4) makes a specific provision with regard to decisions of Labour-Court and provides that it shall be forwarded to an appropriate government and any amount found due by the Labour Court may be recovered in the manner provided in Sub-section (1) of Section 33-C, Section 33-C(I), inter alia, provides that without prejudice to other modes of recovery the workman may make an application to the appropriate government for recovery of money due to has and if the appropriate government is satisfied that the money is due it shall issue a certificate for that amount to the Collector, who shall proceed to recover the same in the same manner as an arrear of land revenue. These provisions as contained in Section 33-C(4) and Section 33-C(I), which is part of the scheme u/s 33-C(2) provide a complete mechanism for enforcement of the decision u/s 33-C(2) and once it is so specifically provided, then, it impliedly excluded other

provision by implication on the principle of "expressio unius est exclusio alterius." Which means express mention of one implies exclusion of other or express mention precludes implications. Thus, the contention of the petitioner in this regard cannot be accepted. But, then, this leads us to the 5th contention that even if the decision was correct and unassailable the certificate proceedings were incompetently instituted by the Labour Court itself.

23. In this regard, as noticed hereinabove, Section 33-C(4) clearly provides for the decision of the Labour Court to be sent to the appropriate government, who in terms of Section 33-C(1) was only competent to enforce for its recovery through certificate proceedings. It is not disputed and the records speak for themselves that the Labour Court never bothered to send its decision to the appropriate government, rather, it purported to issue notice to the management for payment thereof, within two months and on failure straightaway sent a requisition to the Certificate Court for recovery of dues and the Certificate Court immediately started coercive proceedings to enforce the certificate. To my mind, such a procedure is unknown to law and in clear violation to the statutory provisions, as noticed above. Thus, I have no hesitation in holding that the certificate proceedings as instituted, registered and carried out were all wholly without jurisdiction and cannot be countenanced by this Court. Thus, the proceedings are declared to be invalid from very inception and are quashed, as such.

24. Ordinarily, in view of the findings aforesaid, the writ applications have to be allowed with all consequential reliefs in favour of the petitioner, but, as would appear from the ordersheet of the writ proceedings, this Court had directed petitioners to deposit Rs. 3 lakhs in this Court out of which subsequently the private-respondent was permitted to withdraw a sum of Rs. 1 lakh and the balance of Rs. 2 lakhs is still lying in this Court. In my view, equities would be well served by closing the matter by permitting the petitioners through their counsel to take a refund from this Court of the balance of Rs. 2 lakhs without making any claim, as against the private-respondent for refund of Rs. 1 lakh as withdrawn by him.

With the above directions and observations, the two writ applications are allowed and the decision of the Labour Court and the certificate proceedings are quashed.

Let the original records of the Labour Court be transmitted back to the Labour Court, Bhagalpaur.