

(2021) 01 RAJ CK 0162
In the Rajasthan High Court
Case No : Civil Writ Petition No. 384 Of 2021

Assistant Engineer, Junior Sub Division II And Ors	APPELLANT
Vs	
Narpat Singh And Ors	RESPONDENT

Date of Decision : 20-01-2021

Acts Referred:

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

Citation : (2021) 01 RAJ CK 0162

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : Kuldeep Mathur, Lakshya Raj Singh

Final Decision : Dismissed

Judgement

1. By way of the present writ petition, petitioners have challenged the order dated 26.08.2020 passed by Industrial Tribunal cum Labour Court, Jodhpur (hereinafter referred to as 'the Labour Court' or 'the Tribunal'), whereby an application filed by respondent No.1 under Section 33-C (2) of the Industrial Disputes Act, 1947, (hereinafter, referred to as 'the Act of 1947') has been allowed.
2. At the instance of the respondent No.1, a reference came to be made by the appropriate Government to the Labour Court in relation to his retrenchment and the Tribunal was required to answer as to whether retrenchment of respondent No.1 by the present petitioners and respondent No.2 was legally valid?
3. Vide award dated 15.04.2014, learned Labour Court answered the reference so made to it and held that respondent's retrenchment vide order dated 02.09.2008 was contrary to law and without following due procedure.

4. While passing the award, the Tribunal held the respondent- labourer entitled for reinstatement along with 50% back wages.
5. When the due amount as awarded by the Tribunal was not paid, the respondent-labourer was again constrained to approach the Tribunal by way of moving an application under Section 33-C (2) of the Act of 1947.
6. Respondent No.1 claimed the amount which was not paid to him in terms of the award.
7. Vide order dated 26.08.2020, (impugned in the present proceeding), the learned Labour Court passed an award requiring the present petitioners to pay a sum of Rs.3,36,205/- to the respondent-labourer being 50% of his salary (Rs.6,72,410/-) within a period of two months.
8. Calling the order dated 26.08.2020 in question, Mr. Mathur, learned counsel for the petitioners submitted that the Labour Court was not justified in directing the present petitioners to pay a sum of Rs.3,36,205/-, as such amount was not determined/mentioned in the award dated 15.04.2014.
9. He invited Court's attention towards the provisions contained in Section 33-C (2) of the Act of 1947 and argued that in exercise of powers under Section 33-C (2) of the Act, Labour Court can pass direction/award only in relation to the amount which had earlier been determined or is undisputed. He also argued that the liability of the amount should have been fastened on respondent No.2.
10. Heard.
11. It is not in dispute that pursuant to award dated 15.04.2014, the present petitioners were required to reinstate the respondent No.1 and pay 50% back wages.
12. It is also not in dispute that after the judgment and award dated 15.04.2014, neither the present petitioners nor the Manager-respondent No.2 has paid the amount flowing from the judgment and award dated 15.04.2014.
13. A perusal of the judgment and award dated 15.04.2014 reveals that not only respondent No.2 but the petitioners were also held responsible for illegally dispensing with the services of the respondent No.1.
14. This being the position, petitioners cannot sway off their hands by saying that it is the responsibility of respondent No.2 to pay the amount awarded by the Labour Court.

15. Admittedly, the petitioners had challenged the judgment and award dated 15.04.2014 wherein, interim order has not been granted so far.

16. In considered opinion of this Court, since the present petitioners (Officers of Jodhpur Vidyut Vitran Nigam Ltd.) were held responsible for

dispensing with services of the respondent No.1, they were under statutory duty to take him back on duty in furtherance of the award and to pay the

amount under consideration.

17. So far as Mr. Mathur's arguments based on the provisions of Section 33-C (2) of the Act is concerned, prima facie, it appears to be attractive;

however, a deeper probe therein shows that it is liable to be rejected. The reasons are not far to seek.

18. A comprehensive reading of Section 33-C (2) reveals that it does not speak of amount already awarded or determined, it rather provides that in

case, money or any due are to be computed, then, the Labour Court would decide/compute the amount and pass orders accordingly.

19. If this interpretation is not given, then, the whole purpose of the provision contained in Section 33-C (2) of the Act would be frustrated. A Labour

Court cannot be expected to determine the amount before hand, while allowing the claim and passing the award. The said amount is required to be

quantified at a later date. In case the employer does not implement the award or omits to pay the amount as per the award passed by the Labour

Court, it can calculate the same.

20. As an upshot of discussion aforesaid, this Court does not find any substance in the writ petition for which the same is hereby dismissed.

21. Stay petition is also dismissed.

22. Needless to observe that in case amount is paid by or recovered from the present petitioners, the same will remain subject to ultimate decision of

the writ petition which has been filed by the petitioners against the basic award dated 15.04.2014. Respondent No.1 or 2, as the case may be, shall

have to retribute in case the award is set aside or modified.