
(2005) 07 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 463 of 2004

Balbir Singh

APPELLANT

Vs

Nika Ram and Others

RESPONDENT

Date of Decision : 08-07-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Himachal Pradesh Industrial Disputes Rules, 1974 — Rule 66
Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2006) 2 LLJ 310

Hon'ble Judges : K.C. Sood, J; Arun Kumar Goel, J

Bench : Division Bench

Advocate : M.S. Guleria, for the Appellant; R.D. Kaundal and Chandranarayana Singh, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Goel, J.—Petitioner has challenged award dated May 13, 2004, passed by Presiding Judge, H.P. Industrial Tribunal-cum-Labour Court, Shimla, in Case No. 39 of 1999. By means of impugned award, petitioner has been directed to pay the balance amount of wages amounting to Rs. 25,080/- with interest at the rate of 9% per annum, with costs assessed at Rs. 1,000/-.

2. Respondent No. 1 initiated Proceedings u/s 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") against the petitioner. Case set up before the Labour Court was that he was engaged as a mason by the petitioner for placing chips, tiles and marble between October 21, 1997 to October 31, 1998 for 230 days. His daily wage was fixed at Rs. 160/- per day. Total wages for this period worked out was Rs. 36,800/-. A sum of Rs. 11,720/- was only paid, thus leaving the balance of Rs. 25,080/-. Since it was not paid, he filed the claim petition.

3. This claim of respondent No. 1 was contested and resisted by petitioner. It was specifically denied by him that respondent No. 1 worked for 230 days at the rate

of Rs. 160/- per day and total amount payable for this period was Rs. 36,800/-. According to petitioner, respondent No. 1 was sometimes casually engaged in the year 1998 and his daily wage was Rs. 120/-. Entire amount stands paid to him from time to time. Claim of respondent No. 1 was denied as set out in his claim under (sic) Section 33-C(2) of the Act. Labour Court after putting the parties to trial, has passed the impugned award, supra.

4. Shri Guleria, learned Counsel for the petitioner urged that assumption of the jurisdiction by the Labour Court was wholly misconceived and unwarranted keeping in view the fact that claim of respondent No. 1, as set out in proceeding u/s 33-C(2) of the Act was a disputed question of fact. He further submitted that Labour Court will only assume jurisdiction under this Section unless it (sic) is a settlement or award; or the workman was held entitled to receive from his employer any money under settlement or award, as the case may be; in case workman was entitled to receive from employer any money under any settlement or award, what will be its rate or quantum and lastly whether the amount claimed was due or not. Further according to him, impugned award Annexure P-3 was not sustainable, because engagement of respondent No. 1 by the petitioner as pleaded in his petition u/s 33-C(2) of the Act was disputed as also liability of the petitioner for the payment of the sum claimed, Labour Court had no jurisdiction to have entertained the claim made by respondent No. 1. Thus according to him, Annexure P-3 was liable to be set aside and consequently writ petition allowed.

5. On the other hand, Shri Kaundal, learned Counsel for respondent No. 1 while supporting the award of the Labour Court, urged that on the proved and admitted facts impugned award suffers from no infirmity so as to call for interference by this Court in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India. Per him, petitioner failed to place on record receipt of final payment whereby claim of his client was settled finally. Thus according to him, there was no merit in this petition, which was liable to be dismissed and he prayed for accordingly.

6. For ready reference Section 33-C(2) of the Act read with Rule 66 of the Industrial Disputes Rules, 1974, framed by the State of Himachal Pradesh, which are relevant, while deciding this case is extracted hereinbelow:

Section 33-C(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 the money any if any question arises as to the amount of money due or as to the amount at which such benefits should be computed, then the question may, subject to any rules that may be made in 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):

(Provided that where the Presiding Officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing

extend such period by such further period as he may think fit).

Rule 66(1). - Where any money is due from an employer to a workman or a group of workmen under a settlement or an award or under the provisions of Chapter V-A, the workmen or the group of workman, as the case may apply in Form "M" for the recovery of the money due:

Provided that in the case of a person authorized in writing by the workman, or in the case of the death of the workman, the assignees or the heir of the deceased workman, the application shall be made in Form "N".

(2) Where any workmen or a group of workman is entitled to receive from the employer any money, or any benefit which is capable of being computed in terms of money, the workmen or the group of workman, as the case may be, may apply to the specified Labour Court in Form "C" for the determination of the amount due or as the case may be, the amount at which such benefit should be computed.

7. Facts as they emerge from the record of this case are, that respondent No. 1 was claiming to have been employed at the rate of Rs. 160/- per day by the petitioner and his having worked for 230 days. After deducting the amount paid by the petitioner, respondent No. 1 claimed a sum of Rs. 25,080/- due and outstanding payable.

8. Admittedly, this is not the sum payable either under a settlement or an award in accordance with law. This was not a sum determined in accordance with law, which would enable the Labour Court to have passed the impugned award. Assumption of jurisdiction by the Labour Court in these circumstances cannot be upheld and plea to the contrary urged by Shri Kaundal is liable to be rejected. In fact, Labour Court travelled beyond the scope of its authority u/s 33-C(2) of the Act, and as such the impugned award cannot stand the test of judicial scrutiny.

9. Under what circumstances Labour Court will assume jurisdiction, is otherwise no more res integra in view of the authority pronouncements of the Supreme Court.

10. In Namer Ali Choudhury and Others Vs. The Central Inland Water Transport Corporation Ltd. and Another, while interpreting the provisions of Section 33-C(2) of the Act, it was held in para 4 of the judgment as under at pp. 168 & 169 of LLJ:

4. In our judgment the High Court has committed an error in so narrowly interpreting Section 33-C(2) of the Act. The said provision runs as follows:

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.

There are two parts of the sub-section by Act 36 of 1964. The first part is concerned with the money claim simpliciter and the second part speaks about computation in terms of money of any benefit to which the workman is entitled. Although for appreciation of the point at issue there is no substantial difference between the two, we shall confine our discussion to the money claim only pure and simple. On a plain reading of the wordings of the Statute it would be found that where any workman is entitled to receive from employer any money and if any question arises as to the amount of money due, then the question may be decided by the Labour Court. The expression "if any question arises as to the amount of money due" embraces within its ambit any one or more of the following kinds of disputes:

- (1) Whether there is any settlement or award as alleged?
- (2) Whether any workman is entitled to receive from the employer any money at all under settlement or an award etc. ?
- (3) If so, what will be the rate or quantum of such amount?
- (4) Whether the amount claimed is due or not?

Broadly speaking, these will be the disputes, which will be referable to the question as to the amount of money due. If the right to get the money on the basis of the settlement or the award is not established, no amount of money will be due. If it is established, then it has to be found out, albeit, it may be by mere calculation, as to what is the amount due. For finding it out, it is not necessary that there should be a dispute as to the amount of money due also. The fourth kind of dispute which we have indicated above obviously and literally will be covered by the phrase "amount of money due". A dispute as to all such questions or any of them would attract the provisions of Section 33-C(2) of the Act and make the remedy available to the workman concerned.

11. In *Municipal Corporation of Delhi Vs. Ganesh Razak and Another*, , what was held and is relevant in the context of the present case, is extracted hereinbelow at pp. 398 & 400:

12. Where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding u/s 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on the basis in exercise of its power u/s 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power u/s 33-C(2) like that of Executing Court's power to

interpret a decree for the purpose of its execution.

8...The power of the Labour Court u/s 33-C(2) extends to interpretation of the Award or settlement on which the workmen's right rests....

12. In *Tara and Others Vs. Director, Social Welfare and Others*, while dealing with the question of maintainability of application u/s 33-C(2) the Act, it was held that where claimant's status and nature of employment is itself disputed, there must be prior adjudication on merits about such status and nature, only then application u/s 33-C(2) can be moved.

13. In *State Bank of India Vs. Ram Chandra Dubey and Others*, it was held as under at p. 1662 of LLJ:

8. Wherever a workman is entitled to receive from his employer any money or any benefit which is capable of computation in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court u/s 33-C(2) of the Act. The benefit sought to be enforced u/s 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand, is vital. The former falls within the jurisdiction of Labour Court exercising powers u/s 33-C(2) of the Act while the latter does not...

14. To similar effect is the judgment of this Court in *B.B.M.B. and Others Vs. Paras Ram and Another*,

15. At the risk of repetition it may be appropriate to reiterate that, there has neither been a settlement nor there is any award in favour of respondent No. 1, which he could have enforced u/s 33-C(2) of the Act. Nothing to the contrary has been brought to our notice on behalf of respondent No. 1 to justify as to how impugned award can be sustained in the absence of its adjudication in accordance with law. Further it is admittedly not the case of respondent No. 1 that there was any settlement between the parties, which enabled him to maintain his claim u/s 33-C(2) of the Act before the Labour Court.

16. No other point is urged.

17. In view of the aforesaid discussion this writ petition deserves to be allowed. Ordered accordingly. Consequently, the impugned award dated May 13, 2004, in Case No. 39 of 1999 titled as *Nikka Ram v. Balbir Singh and Anr.*, passed by Presiding Judge, H.P. Industrial Tribunal-cum-Labour Court, Shimla (Annexure P-3), is hereby quashed and set aside and as a result of it petition u/s 33-C(2) of the Act filed by respondent No. 1 before the said Court shall stand dismissed, leaving the parties to bear their own costs.

CMP No. 1493 of 2004.

18. In view of the disposal of the writ petition, this application is also disposed of and interim order dated December 20, 2004 shall stand vacated.