(2002) 01 DEL CK 0068

In the Delhi High Court

Case No : CW No. 1186 of 2000

Basant Lal APPELLANT

Vs

The Management of A.F. Ferguson and Co. and Another RESPONDENT

Date of Decision : 30-01-2002

Acts Referred:

Citation : (2002) 2 AD 93 : (2002) 96 DLT 770 : (2002) 93 FLR 1220

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Rajiv K. Garg, for the Appellant; Arun Katpalia and Anant Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—The Petitioner by this writ petition assails the order dated November 4, 1999, passed in L.C.A. No. 547/1995 (Old No. 829/84), by which the Labour Court dismissed the application of the petitioner u/s 33-C(2) of the Industrial Disputes Act (hereinafter referred to as the Act''). The Labour Court held the application as not maintainable, finding that the claim preferred was outside the ambit and scope of Section 33-C(2)of the Act.

2. The petitioner in the application u/s 33-C(2) of the Act had sought computation of his wages for the period May 1984 to September, 1984, claiming a sum of Rs.11,647.50, together with interest at 18 per cent per annum. During the course of the proceedings before the Labour Court, petitioner also furnished details claiming the difference of the salary payable to him and amount paid to him amounting to Rs.1,11,766/- for the period 1.10.1984 to 31.3.1995.

3. The relevant facts culminating in the filing of the present writ petition may be briefly noted. Petitioner had joined respondent M/s. A.F. Ferguson & Co., a well known firm of Chartered Accountant, having 8 offices in different parts of the country, with an employee strength of 800. The petitioner joined the respondent on January 16, 1962, as an Audit Clerk. Petitioner was also registered with the

Institute of Chartered Accounts as an Audit clerk. The applicable scale for audit staff grade II, as per the settlement dated November 8, 1982, arrived at by the respondent with its Union was Rs. 115-1090.

4. The petitioner as an audit clerk on passing of the intermediate examination of the Institute of Chartered Accountants received an increment of Rs.20/-. He was confirmed as an Audit clerk on April 30, 1979. In the event, petitioner passed the final examination of Chartered Accountant in January, 1984. At that time, the petitioner was drawing a salary of Rs.2,239/- per month i.e. inclusive of basic pay and Dearness allowance etc. in terms of the settlement.

5. At this stage one of the salient terms of the settlement, contained in Clause No. (2)(a)(iv), which is relevant for the present petition may be noted:

"(iv) Any one of the Audit staff who after completing the audit service with the Employer Company completes the required examination of the Institute of Chartered Accountants of India and become eligible for membership shall be promoted in the Grade applicable to a Chartered Accountant with effect from the first of the month following the declaration of the results."

The respondents promoted the petitioner is terms of the settlement.

6. The crux of the controversy between the parties, as discernible from the pleadings and documents on record, is really a short one. The petitioner on having qualified as Chartered Accountant, naturally expected to be placed in an appropriate pay scale, which would have been commensurate with the qualification acquired. He expected a quantum jump from the salary he was getting. The respondents took the position that in terms of the settlement and Clause 2(A)(iv), as noticed above, they were obliged to promote him. The petitioner was placed at the beginning of the salary for Chartered Accountants, resulting in his getting almost the same emoluments, which he was drawing earlier. The petitioner on getting almost the same emoluments after being promoted, naturally protested by his letter dated August 8, 1984, stating that the scale sought to be granted to him was the one applicable for a fresh Chartered Accountant and could not be made applicable to an old continuing employee. The petitioner contended that the promotion implied betterment in pay structure and resultant benefits and not withdrawal of the existing benefits. The petitioner, Therefore, stated that his placement in the pay scale without his consent was arbitrary, irrational and mala fide. He stated that the promotion was not binding on him until it was accepted by him. He, Therefore, requested to be paid salary according to the pay scale in which he was being paid up to April 30, 1984, failing which he threatened legal action.

7. The petitioner continued to be paid a consolidated salary, which according to him, he accepted under protest. The petitioner has placed Annexure P-9 computation of the amount that according to him was payable to him taking into accounts his old scale i.e. salary, dearness allowance, house rent allowance etc. and the consolidated salary, which he was being paid as audit clerk and claimed

the differential for the period October 1, 1984 to March 31, 1995 amounting to Rs. 1,11,766/-.

8. Learned counsel Mr. Rajiv Garg in support of the petition submitted that the petitioner had been treated in a cruel and unjust manner. He submitted that the other Audit clerks were getting in the range of Rs. 15,000/- to Rs.16,000/- per month or so, even sepoy or peon was paid total emoluments of Rs.11,567/- while the petitioner was confined by the respondents on a salary less than what was being paid to a 4th class employee, though being a chartered accountant.

9. While one may have genuine sympathy with the petitioner, who even after his promotion as Chartered Accountant received salary or emoluments, which were not commensurate to his qualification and as per the petitioner''s allegation even less than the ministerial staff, the same does not provide or afford a ground to assail the judgment of the Labour Court. It is to be recognized that the petitioner of his own volition continued to work with the respondents.

10. In the instant case, there in no pre- existing right or adjudication or benefit of which the petitioner may seek enforcement u/s 33-C(2) of the Act. The respondents claim that they had duly notified the Indian Institute of Chartered Accountants of the petitioner passing the examination and his consequent registration as a Chartered Accountant. Upon this being done, the petitioner ceased to be a workman. The respondents have stated that after the petitioner had qualified as Chartered Accountant in the VIIIth attempt, the Management under Regulation 165(3) had notified Institute of the Chartered Accountants, New Delhi, to insert the name of the applicant in item No. 10 of Form 27 filled on February 8, 1984 vide letter No. MLW: 915 dated March 23, 1984. Besides, in view of Clause 2(A)(iv) of the settlement, which was binding on the parties, the petitioner had been promoted. The petitioner, Therefore, from the date of his becoming a Chartered Accountant ceased to be an Audit clerk and was not entitled to the wages or the grade of an Audit Clerk. It may also be noted that earlier the petitioner had duly accepted an increment of Rs. 20/- when he was registered as an Audit clerk and had cleared the intermediate examination.

11. The issues, such as, whether petitioner received a raw deal as a Chartered Accountant or whether he ceased to be a workman or not, are not the question, which could be decided in an application u/s 33-C(2) of the Act. There has been no determination or adjudication of a pre- existing right of the petitioner or of the benefits of which computation could be sought. Reference in this respect is invited to the case of Municipal Corporation of Delhi Vs. Ganesh Razak and Another, where it is held as under:

"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 that 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 recognised 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 the Executing Court''s power to interpret the decree for the purpose of its execution. The power of the Labour Court u/s 33-C(2) extends to interpretation of the award or settlement on which the workman''s right rests."

12. The Labour Court in its judgment has duly noted and recognised that the questions and disputes as are sought to be raised by the petitioner in his application and the present writ petition would not fall within the scope and ambit of determination of entitlement of benefits or those incidental thereto, u/s 33-C(2) of the Act. The writ petition has no merit and is dismissed.