

(1986) 12 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 863 of 1986

Beas Construction Board

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 30-12-1986

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 33C, 33C(1), 33C(2)

Citation : (1986) ILR HP 803 : (1987) ShimLC 171

Hon'ble Judges : P.D. Desai, C.J;R.S. Thakur, J

Bench : Division Bench

Advocate : P.A. Sharma, Central Government Standing, for the Appellant; Notice not Ordered to issue, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Desai, C.J.—This writ petition is directed against the order dated December 9, 1985, Annexure P-11, made by the Presiding Officer, Labour Court (Central), Simla, in a proceeding u/s 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act").

2. The claim of the Respondent-workman in the said proceeding was that he was a work charged employee of the Beas Satluj Link Project (hereinafter referred to as "the management") at Sundernagar, that the work-charged employees were entitled to the grant of rent free accommodation or 10% house rent allowance in lieu thereof (unless tentage accommodation was provided, in which case, the house rent allowance would be admissible at the rate of 7 %), that he was not provided with rent free accommodation nor any house rent allowance was paid to him for the period from January 1978 to March 1984 at the rate of 10% although it was due to him and was actually paid to him earlier and that he be awarded the sum Rs. 1,179.15 P. being the arrears of house rent allowance for the aforesaid period at the rate of 10% admissible to him. The Labour Court upheld the claim of the Respondent-work man on the basis of the orders Annexure P-5 and P-6 dated September 27, 1965 and June 2/3, 1986, respectively, and passed

an order directing the management to pay within a period of two months the arrears of house rent allowance as claimed by him. Hence the present writ petition.

3. In *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, , the scope and ambit of Section 33C(2) was examined and explained. It was pointed out in that case:

Though in determining the scope of Section 33C Industrial Disputes Act, care must be taken not to exclude cases which legitimately fall within its purview, it must also be borne in mind that cases which fall within Section 10(1) of the Act, for instance cannot be brought within the scope of Section 33C...there can be no doubt that when the Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing Court to interpret the decree for the purposes of execution. It is, of course, true that the executing Court cannot go behind the decree, nor can it add to or subtraor from the provision of the decree. These limitations apply also to the Labour Court; but like the executing Court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim u/s 33C(2). Therefore, we fell no difficulty in holding that for the purpose of making the necessary determination u/s 33C(2), it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests.... Claims made u/s 33C(1), by itself can be only claims referable to the statement, award, or the relevant provisions of Chapter V-A. These words of limitations are not to be found in Section 33C(2) and to that extent, the scope of Section 33C(2) is undoubtedly wider than that of Section 33C(1). It is true that even in respect of the larger class of cases which fall u/s 33C(2), after the determination is made by the Labour Court, the execution goes back again to Section 33C(2). That is why Section 33C(2) expressly provides that the amount so determined may be recovered as provided for in Sub-section (1). ...There is no doubt that the three categories of claims mentioned in Section 33C(1) fall u/s 33C(2) and, in that sense, Section 33C(2) can itself be deemed to be a kind of execution proceeding; but it is possible that claims not based on settlements, awards or made under the provisions of Chapter V-A, may also be competent u/s 33C(2) and that may illustrate its wider scope.... Thus, our conclusion is that the scope of Section 33C(2) is wider than Section 33C(1) and cannot be wholly assimilated with it, though for obvious reasons we do not propose to decide or indicate what additional cases would fall u/s 33C(2) which may not fall u/s 33C(1).

4. In a later decision, *Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another*, the scope of Section 33C(2) was expounded in the following words:

It is now well-settled, as a result of several decisions of this Court, that a proceeding u/s 33C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from

his employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. But the right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman, and his employer. Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others, It is not competent to the Labour Court exercising jurisdiction u/s 33C(2) to arrogate to itself the functions of an Industrial Tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject-matter of an industrial dispute in a reference u/s 10 of the Act State Bank of Bikaner and Jaipur Vs. R.L. Khandelwal,

5. In yet another decision, Namer Ali Choudhury and Others Vs. The Central Inland Water Transport Corporation Ltd. and Another, the legal position in connection with the scope and ambit of Section 33C(2) was explained thus:

On a plain reading of the wordings of Section 33C(2) 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 questions 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 any 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 disputed 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 33C(2) of the Act and make the remedy available to the workman concerned.

These decisions clearly point out that in a proceeding u/s 33C(2), so far as the workman is concerned, he must proceed on the footing of an existing right; the existing right may be under the terms of the settlement or an award or the right may have been provided for either by custom or by law or by agreement or by conditions of service but there must be an existing right and, so long as there is

that existing right which is claimed by the workman, he can apply to the Labour Court u/s 33C(2) and the Labour Court will have jurisdiction to deal with the application on merits. It must be pointed out that Section 10 of the Act which deals with reference to Court of Inquiry, Labour Court or an Industrial Tribunal is wide enough to cover all industrial disputes including those which would fall u/s 33C(2). Thus whereas Section 10 deals with references of cases of industrial disputes of all kinds, Section 33C(2) provides a speedier remedy for the recovery of the dues of a workman against his employer in certain specified type of cases and the basis is that there must be an existing right. Section 33C(2) is obviously not meant for creation of any new rights or fresh rights. All that it deals with is an existing right which, as we have observed above, may arise because of an adjudication in an earlier proceeding or which has been provided for either by custom or by law or by agreement or by conditions of service etc.

6. In the present case, the Respondent-workman founded his claim on two orders issued by the competent authority and on the basis of those orders he claimed the arrears of house rent allowance at the rate of 10% for the specified period.

7. The first order on which the claim was founded is dated September 27, 1985, Annexure P-5. The order was issued by the Secretary to the Punjab Government, Beas Project Administration, Talwara, by the order and in the name of the Government of Punjab. The order, as its caption shows, related to the payment of house rent allowance and hill compensatory allowance to the work-charged employees of the Beas Project. The material portion of the said order reads as follows:

In supersession of this office letter Nos. 16910 11/BPA/3209/61, dated 30-7-1964, sanction is hereby conveyed to allow rent free accommodation or house rent allowance in lieu thereof at 10% to the workcharged staff of Beas Project till such time this concession is admissible to the regular staff employed on Beas Project...

In cases of workcharged staff provided with tentage accommodation at the cost of Government at Beas Dam Talwara for working area and Beas Sutlej Link Colonies, where rent free concession is admissible, rate of the House Rent allowance shall be reduced from 10% to 7 % the reduction of 2i% being deemed to be the rent of tentage accommodation....

8. The second order dated June 2/3, 1966, Annexure P-6, also is issued by the order and in the name of the Governor of Punjab by the General Manager and Secretary to the Government of Punjab, Beas Project Administration, Talwara. as mentioned in the caption, it related to the grant of allowances to the work-charged employees of the Beas Project and that it was issued in supersession of the previous order dated September 27, 1965, Annexure P-5, and yet another previous order dated July 30, 1964. The material portion of the said order is reproduced hereinbelow:

In supersession of above quoted letters sanction is hereby conveyed to the grant of rent free accommodation or 10% house rent allowance in lieu thereof to the workcharged staff of Beas Project till such time this concession is admissible to the regular staff employed on the Beas Project.

In case of workcharged staff provided with tentage accommodation at the cost of Government at Beas Dam Talwara or working area and Beas Sutlej Link Colonies and working areas where rent free concession is admissible, rate of House Rent allowance shall be reduced from 10% to 7 1/2%, the reduction of 2 1/2% being deemed to be the rent of the tentage accommodation.

9. Four notes are appended below the operative portion of the said order. Those notes read as follows

NOTE: 1. No distinction would be made between the local and other residents for the purpose of this allowance.

NOTE : 2. Special allowance would be treated as compensatory allowance for calculation purposes and no deduction from the special allowance would be made for rent free accommodation, if any, provided

NOTE : 3 Special allowance and house rent allowance at the above rates will be admissible w.e. f. 5-1-1965.

NOTE: 4. For grant of house rent allowance, the issue of non-allotment of houses Certificate by the Secretary, House Allotment Committee should be enough as per practice followed at Bhakra.

10. The claim of the Respondent-workman was resisted by the management substantially on the ground that only those workcharged employees, who resided beyond the radius of eight kilometres from the work-sites, were entitled to house rent allowance at the rate of 10% and that such of those employees who resided within the eight kilometres radius in their own houses were entitled to the house rent allowance at the rate of 7½% only. In support of the above submission, reliance was placed on behalf of the management on the order, Annexure P-2, dated May 15, 1963, issued by the order and in the name of the Governor by the General Manager and Secretary to the Government of Punjab, Beas Project Administration, Talwara. The said order, as its caption shows, related to the payment of house rent to the staff employed on the Beas Project in lieu of rent free accommodation and conveyed the sanction to the payment of house rent to the staff employed on the Beas Project in lieu rent free accommodation, with effect from May 1, 1963, subject, inter alia, on the following conditions:

(1) The officials belonging to villages lying within five miles radius of Talwara Township, Sundernagar, Pandoh and Talwara and living in their own houses should not be allotted any accommodation at these places or the adjoining colonies, but should be paid house rent allowance at the rate of 7 1/2% on their pay and should live in their own houses/villages.

The submission founded on the above quoted order was that the conditions and limitations therein imposed applied automatically and governed also the house rent allowance payable to the workcharged employees under the orders Annexures 1-5 and P-6 and that, therefore, those of the workcharged employees who were living in their own houses within a radius of five miles, that is, eight kilometres, from the work-site, were not entitled to house rent allowance exceeding 7 1/2% on their pay.

11. The Labour Court rejected the submission made on behalf of the management substantially on the ground that the condition relating to a work-charged employee residing within or beyond the radius of eight kilometres was irrelevant so far as his entitlement to the house rent allowance under the orders at Annexures P-5 and P-6 is concerned since, in those orders, no such condition or limitation was imposed. The Labour Court also observed:

This condition may have been imposed with respect to the regular staff. But this fact is not enough to deprive the work-charged staff from the House Rent Allowance. The regular staff is entitled to other benefits which are being denied to the work-charged staff. The condition of service of the work-charged staff is neither similar nor the same as those of regular staff. The work-charged staff is entitled to the House Rent Allowance without any condition of residence. Such condition may have been imposed with respect to the regular staff.

In view of the aforesaid findings, the claim made by the Respondent-workman was allowed:

12. The challenge advanced before us, to order of the Labour Court, is two-fold : first, having regard to the nature and character of dispute, no relief to the Respondent-workman could have been granted u/s 33C(2) of the Act and, secondly, the claim could not have been allowed even on merits.

13. There is no manner of doubt that, in the present case, the claim of the Respondent-workman to the house rent allowance was founded on an existing right. The right accrued or arose out of or flowed from the office orders Annexures P-5 and P-6. Even the Respondents do not dispute the entitlement of the Respondent-workman to the house rent allowance. The controversy between the parties centres round the question whether the house rent allowance was admissible at the rate of 10% or 7 1/2%. The determination of this controversy depends upon the true interpretation of those two orders on which the Respondent-workman relied and also upon the order, Annexure P-2, on which the management relied. It was within the competence of the Labour Court to interpret those orders and to adjudicate and determine the controversy. Under the circumstances, in our opinion, the award made by the Labour Court can not be regarded as lacking in jurisdiction.

14. The question which next requires consideration is whether the Labour Court committed an error of law apparent on the face of the record in granting relief to the Respondent workman on the basis of the orders, Annexures P-5 and P-6. The

material portions of those orders have been extracted hereinabove. They may be analysed to appreciate their true effect.

15. The order, Annexure P-5, relates, inter alia, to the payment of house rent allowance to the workcharged employees of the Beas Project. It conveys sanction for providing rent free accommodation, or house rent allowance in lieu thereof, at the rate of 10%, unless tentage accommodation at Government cost was provided at the places therein mentioned, in which case such allowance would stand reduced to 7 1/2%, the reduction to the extent of 2i% being treated as in lieu of rent for the tentage accommodation. These benefits were undoubtedly to be extended to the workcharged employees "till such time" as the concession was admissible to the regular staff employed on the Beas Project. No conditions like those which were imposed in the case of the grant of similar benefits to the regular employees under the order, Annexure P-2, are, however, found engrafted in the order, Annexure P-5. In other words, those of the work charged employees who lived within the five mile radius in their own houses, were not held entitled to house rent allowance at the rate of 7 1/2% only.

16. The order, Annexure P-6, which deals, inter alia, with the same subject-matter and supersedes the earlier order, Annexure P-5, is in substance to the same effect, the only difference being that there are certain foot-notes attached to the said order. Foot-note No. 1 clarifies that no distinction was required to be made between the local and other residents for the purposes of grant of "this allowance". We do not think it would be correct to read this note as applicable only to the special allowance, which was held admissible to work charged employees in addition to the house rent allowance thereunder. Even if the said foot-note is not taken into consideration, the outcome is none-the-less the same, that is, since a condition similar to the one imposed in the case of regular employees was not engrafted on the sanction of the house rent allowance to the work-charged employees, there is nothing to disentitle all of them from claiming the said allowance at the rates specified irrespective of their place of residence. Be it noted in this connection that the order, Annexure P-2, regulating the grant of house rent allowance to the foot-note regular staff, where these restrictive conditions are imposed, is earlier in point of time than the orders, Annexures P-5 and P-6. The omission of those conditions in the orders, Annexures P-5 and P-6, must, therefore, be regarded as not accidental but intentional. As has been observed by the Labour Court, since all the conditions of the work harged employees and regular employees are not similar and in many respects the regular employees are better off, the management may not have regarded it just and proper to impose the restrictive conditions such as those which are found placed in the order, Annexure P-2 in the orders, Annexures P-5 and P-6. We do not think, therefore, that the interpretation pieced upon the orders, Annexures P-5 and P-6, by the Labour Court can be regarded as suffering from the vice of an apparent error of law having resulted in the mis-carriage of justice and calling for interference of this Court in the exercise of its writ jurisdiction.

17. The learned Counsel for the Petitioner emphasised the recital in the order, Annexures P-5 and P-6, to the effect that the house rent allowance was admissible "till such time this concession is admissible to the regular staff employed in the Beas Project". The submission was that in view of this stipulation and in light of the doctrine of incorporation, all the conditions imposed in the order, Annexure P-2, must be deemed to have been incorporated in the orders at Annexures P-5 and P-6. We do not think that the true legal import of the extracted recital is what the learned Counsel for the Petitioner pleads. The true interpretation of the extracted portion is that the right to receive house rent allowance conferred on the work-charged employees is to enure till and so long as such allowance is paid to the regular staff. In other words, by virtue of the concerned stipulation, only the duration of the benefit is regulated and nothing more. It would not be correct to read into the orders, Annexures P-5 and P-6, all the conditions subject to which the house rent allowance was admissible to the regular employees on the strength of the said stipulation.

18. For the foregoing reasons, there being no substance in this writ petition, it is summarily rejected.

19. The Court expects that the Petitioner, which is a department of the Central Government, will implement the award made by the Labour Court, which was under challenge herein, without undue delay and that the Respondent-workman and indeed all the workmen similarly situate and entitled to the arrears of house rent allowance will be paid the amount due with utmost expedition.