(1999) 01 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 545 of 1983

Bharat Porcelain APPELLANT

Vs

The Labour Court and Others RESPONDENT

Date of Decision : 25-01-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (1999) 121 PLR 701

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : R.S. Mittal and Sudhir Mittal, for the Appellant; U.S. Sahni and Tribhawan Singla for Respondent Nos. 2 to 38, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—What is challenged in this petition filed under Article 226 of the Constitution is the order dated 30.9.1982 passed by the Labour Court, Rohtak, whereby the applications filed by respondents 2 to 38 u/s 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter called the ''Act'') were allowed and the monetary benefits due to them computed.

2. Facts which lie in a narrow compass may first be noticed.

3. Respondents 2 to 38 were in the employment of M/s Bharat Porcelain Limited, Sonepat (for short the ''management'') and their services were terminated in the year 1989. This gave rise to an industrial dispute and the parties agreed to refer the same to the arbitration of Shri S.N. Vats u/s 10-A of the Act. By his award dated 1.3.1971 published in the Haryana Government Gazette on 19.3.1971 the Arbitrator held the termination of the services of the workmen illegal and directed their reinstatement with continuity of service and full back wages. It is alleged that after the award the workmen-respondents went to the gate of the factory to report for duty but they were neither allowed to join duty nor paid their back wages in terms of the award. The management, according to the

respondents, refused to implement the award and it was then that the workmen filed the applications u/s 33-C(2) of the Act out of which the present petition has arisen claiming their back wages and other monetary benefits which, according to them, were due from the management including provident fund, bonus etc. The applications were filed in August, 1971 but the management successfully evaded filing of the written statement on one pretext or the other for a sufficiently long period. Meanwhile the management filed civil writ petition 2661 of 1971 in this Court challenging the validity of the award which was dismissed. Thereafter, it filed Civil Appeal 1434 of 1971 in the Supreme Court against the decision of this Court which was also dismissed on 28.9.1972. It was then that the written statement to the applications was filed in December, 1972. All possible objections were raised to the maintainability of the applications and even though the award had been upheld upto the Apex Court the management chose to challenge the same as a nullity in the present applications as well thereby denying its liability to pay any amount to the workmen on the basis of that award. From the pleadings of the parties the Labour Court framed the following issues:-

1. Whether the award the basis of the application is a nullity and, therefore, not enforceable?

2. Whether the applicants are the workmen of the respondent and whether this question can be gone into in the present proceedings?

3. Whether the present applications are barred by resjudicata or are otherwise not maintainable for reasons given in the written statement filed by the management?

4. Whether the applicants are entitled to the computation of the benefits claimed? If so to what amount?

4. Issues No. 1, 2 and 3 were treated as preliminary and after recording evidence the Labour Court by its order dated 30.9.1974 decided issue No. 1 and 2 in favour of the workmen and issue No. 3 in favour of the management and dismissed all the applications holding that they were barred by the principle of resjudicata. The workmen successfully challenged that order in civil writ petition 1309 of 1975 in this Court which was allowed on 20.1.1981 and the Labour Court directed to decide the claim applications on merits in accordance with law. It was thereafter that the Labour Court decided issue No. 4 after recording evidence of the parties and allowed the applications as per order dated 30.9.1982.

5. I have heard counsel for the parties.

6. The first contention raised by Shri R.S. Mittal, Senior Advocate on behalf of the management is that only twenty two workmen out of the respondents had approached the management for resuming duty and, therefore, they alone were entitled to maintain the applications u/s 33-C(2) of the Act. The argument is that the other employees who did not report for duty are not entitled to claim any

monetary benefit from the management on the basis of the award of the Arbitrator. Reference in this regard is made to the letter addressed by twenty six workmen to the factory Manager seeking implementation of the award given by the Arbitrator. Four workmen out of these twenty six were not the applicants before the Labour Court. It is, therefore, contended that only twenty two employees had reported for duty. I am unable to agree with the learned Counsel for the management. On a consideration of the entire oral and documentary evidence led by the parties, the Labour Court has recorded a finding that the management refused to implement the award. This is a finding of fact and based as it is on the evidence of the parties it cannot be interfered within the present proceedings. It is well settled that this Court while exercising its extra ordinary jurisdiction under Article 226 of the Constitution does not sit as a court of appeal and does not normally interfere with the findings of fact unless it can be shown that they are perverse or are not based on any evidence. Moreover, the application on which reliance is sought to be placed by the workmen itself shows that after long discussions held between General Secretary of the Union and Management on 10.5.1971 the latter refused to implement the award given by the Arbitrator. This letter substantiates the finding recorded by the Labour Court. Once the management refused to implement the award then it matters the least whether twenty two workmen had approached for resuming duty or more. It appears that the management was not inclined to implement the award and to allow the workmen to resume duty and that is why some of the employees represented against non-implementation of the award. It does not mean that others who were not signatories to that letter were not interested in getting the award implemented. Again, it is not disputed that all the thirty seven workmen-respondents moved separate applications before the Labour Court which have been disposed of by the impugned order. There is thus no room for doubt that all the thirty-seven workmen were clamoring for the implementation of the award but when the management refused to do so they approached the Labour court for getting the monetary benefits computed in terms of that award. I have, therefore, no hesitation in rejecting the first contention of Shri Mittal.

7. It was then contended that the Labour Court grossly erred in law and acted without jurisdiction in allowing benefit of bonus and provident fund to the respondents-workmen in the applications filed u/s 33-C(2) of the Act. The argument of the learned Counsel is that bonus and provident fund have been specifically excluded from ''wages'' as defined in Section 2(rr) of the Act and, therefore, these could not be allowed to the workmen. The fallacy in the argument is writ large and the argument is being noticed only to be rejected. A perusal of sub Section 2 of Section 33-C of the Act makes it clear that when a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money he can approach the Labour Court for getting that amount computed. This provision is not confined to ''wages'' only. The monetary benefits to which a workman may be entitled may be his wages and, therefore, if wages are due those can also be recovered u/s 33-

C(2) of the Act. The provision is wide enough to include not only wages but all monetary benefits which are due to a workman from his employer and these would obviously include bonus as well as provident fund because these amounts if due are monetary benefits and thus covered by Section 33-C(2) of the Act. In this view of the matter, the second contention of Shri Mittal is also rejected.

8. It was next contended that the Labour Court was not justified in awarding interest to the workmen from the date of termination of their services. This contention is also without merit because interest has been awarded by the Labour Court from 15.12.1972 onwards as is clear from the impugned order. The award was given on 1.3.1971 and the same became enforceable with effect from 19.4.1971. Since the management did not implement the said award and withheld the monetary benefits due to the workmen the Labour Court was more than justified in awarding interest with effect from 15.12.1972. No fault can, thus, be found with this direction issued by the Labour Court.

9. It was then half heartedly urged that the wages have not been properly calculated. No meaningful argument was advanced by the learned Counsel as to how the wages have not been properly calculated. In the very nature of things this Court in the exercise of its jurisdiction under Article 226 cannot re-compute the wages. The rate at which the wages have been computed has been specified in the charge prepared by the Labour Court and the same does not call for any interference by this Court.

10. In the result, the writ petition fails and the same stands dismissed with costs. The management is directed to deposit the amount due from it including interest at the rate of 6% per annum as awarded by the Labour Court with the Labour Commissioner, Haryana within three months from today for disbursement to the workmen or to the heirs of those who are dead. The amount already deposited, if any, under the orders of this Court shall be adjusted and the Labour Commissioner is directed to disburse the amount to the workmen or to their heirs after proper verification. The respondents-workmen will have their costs which are assessed at Rs. 5,000/-.

