
(2013) 01 DEL CK 0423
In the Delhi High Court
Case No : LPA 611 of 2003

Bhim Singh Bajeli

APPELLANT

Vs

P.O. Central Govt. Industrial Tribunal

RESPONDENT

Date of Decision : 24-01-2013

Acts Referred:

Citation : (2013) 3 ILR Delhi 1724 : (2013) 2 LLN 371

Hon'ble Judges : Sudershan Kumar Misra, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : D.S. Bora and Sh. R.S. Rawat, for the Appellant; Jagat Arora and Sh. Rajat Arora, Advocates, for Resp. No. 2, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—This appeal is directed against a judgment and order of the learned Single Judge dated 13.08.2001 whereby the award made in favor of the appellant to the extent it directed payment of 15% interest, was quashed. The brief facts of the case are that the petitioner had raised an industrial dispute which was referred to the Tribunal under the Industrial Disputes Act (ID No. 169/83) on the question as to whether the employer, i.e. Khadi Gramodyog Bhawan had correctly placed him in the scale, which it had. The appellant claimed that he was entitled to be placed and appropriate order of fitment made in the scale of Rs. 330-560/- prevailing at that time. The Labour Court vide orders dated 29.10.1986, and 24.02.1987, found that the appellant had been discriminated against in the matter of promotion and pay scale in as much as persons junior to him had been given promotion and higher scales of pay. The Labour Court, vide its amended award dated 24.02.1987, awarded pay scales of Rs. 100-150/-, Rs. 125-255/- and Rs. 330-560/- w.e.f. 15.12.1962, 01.10.1963 and 01.01.1973 respectively. Instead of promoting the appellant w.e.f. 15.12.1962, the management promoted him to the revised scale of Rs. 330-560/- only w.e.f. 01.01.1973. The petitioner's claim for pay for the intervening period in question was considered and an amount of Rs. 4000/- was

paid by the respondent, i.e. the management, sometime in 1987 immediately after publication of the award in 1987. The appellant was dissatisfied with this and sought computation and payment of the outstanding amount due to him, by approaching the same authority, i.e. Central Government Industrial Tribunal, in 1987. The Tribunal, vide order dated 13.08.1996, ultimately computed the amount payable as Rs. 40,139/- (in addition to the amount disbursed to the appellant). Apart from the said computation, the Tribunal also issued a direction for payment of interest, in the following terms:

...According to this from August 1963 upto December 86, the workman was entitled to a total sum of Rs. 44139/14 p. Out of which he had been paid Rs. 4000/- rupees. This joint inspection report has been prepared by both the parties after going through the record, it is not disputed. This also includes entitlement of the applicant according to the award given by my predecessor dated 24.02.1987. He is thus entitled to Rs. 40139.14 p rounded off to Rs. 40139/-. He shall be paid interest @ 15% from the date of the amount became due to him. The entire payment shall be made within one month from today. The costs of this application are also assessed at Rs. 2000/- which shall also be paid to the applicant alongwith this amount by the management. This order disposes of LCA No. 1039/87.

2. The management approached the Court, claiming to be aggrieved by the award u/s 33C(2) of the Industrial Disputes Act, 1947, to the extent it directed payment of interest. The appellant too approached the Court, claiming that the respondents had not paid the amounts in time and had acted arbitrarily in withholding the amounts due. Besides payment, he was also entitled to consequential benefits. By the impugned order, learned Single Judge allowed the managements' Writ Petition and dismissed the appellant's petition. Learned Single Judge was of the opinion that having regard to the limited jurisdiction conferred upon the Labour Court (the Central Government Industrial Tribunal), in terms of Section 33C(2), the amount that can be quantified pursuant to the award, had to be calculated and given; and if the component of interest was not directed to be paid in the substantive award or rules applicable to the employee, he would be disentitled to claim u/s 33C(2), which was in the nature of execution proceedings. In arriving at this conclusion, learned Single Judge appears to have relied upon *UOI v. Central Government Labour Court, Delhi* and *Anr.* 1985 (66) FJR 16.

3. Learned counsel for the appellant contended that the impugned judgment has erroneously concluded that, under the circumstances of the case, the Industrial Tribunal was denuded of any jurisdiction to grant interest. It was submitted that the appellant had sought reference in 1983 and was able to secure award in his favor in 1987, which was eventually modified on 24.02.1987. As of that time, the management was aware of its liability. Nevertheless, it chose to pay only Rs. 4000/-, which was only a fraction of the amount due while disputing the balance payable. The workman approached the Tribunal and immediately sought another

proceeding u/s 33C(2). That this proceeding remained pending and could not be adjudicated was not his fault. As a matter of fact, his stand that a much larger amount was due, stood vindicated in 1996 when the Labour Court held that the management had to pay a further sum in excess of Rs. 40,000/-, i.e. ten times more than the original amount paid to him. Being deprived of this amount for 10 years was a sufficient cause for the Labour Court to invoke the principle of equity and restitution, directing payment of interest.

4. The respondents argue that the plain reading of Section 33C(2) limited the concerned authorities" (either the Labour Court or the Industrial Tribunal, as the case may be) jurisdiction in granting any amount in excess of what was due and payable. In other words, if the governing award of the Labour Court or Tribunal did not decree interest or such amounts were not payable in terms of the rules or conditions of rules governing the employee, he could not claim such payment on some equitable considerations. Learned counsel particularly relied upon the decisions of this Court in the Central Government Industrial Tribunal (*supra*). He also placed reliance on the judgment of the Gujarat High Court reported as *Durlabhbhai Naranbhai Parmar Vs. Divisional Controller*, where too the Court, noticing the structure of Section 33C, held that in the absence of any statutory provision, the Labour Court does not possess jurisdiction to award any interest to the workman.

5. This Court has considered the submissions. It is evident from the above discussion that the employee had to approach the Labour Court twice for determination of his rights. In the first instance, it was his good fortune that the reference ended within a time frame of three years and the substantive award decided what was due to him. Yet, the management did not honor the award. He was constrained to approach the concerned authority, i.e. the Industrial Tribunal u/s 33C(2). That the decision in that case was rendered almost a decade later, cannot be attributed to the appellant's fault. Although at one stage, learned counsel for the respondents urged that the claim was astronomical and unjustified, the fact remains that in final determination of 13.08.1996, the amount quantified as payable by the management (as on 24.02.1987) was Rs. 40,139/-, i.e. more than 10 times the amount originally paid. Whilst there can be no two opinions about the fact that the plain language of Section 33C(2) does not clothe the Labour Court or the concerned Industrial Tribunal with the jurisdiction to direct any payment in excess of what was directed by the award, this Court is not unmindful of the fact that in the present instance, the dispute as to quantification itself consumed 10 years. Whilst the entire delay cannot be attributed to the respondents, large measure of it can, because had the respondent management given the whole amount and not the abysmal amount of Rs. 4000/-, the dispute could have been avoided to a large measure. That being so, the question which this Court has to address is whether the grant of interest was justified.

6. As previously mentioned, even though the structure of Section 33C(2) does

not confer jurisdiction to the Labour Court to grant interest, in the facts and circumstances of the case, the fact remains that the employee had approached this Court under Article 226 of the Constitution of India, complaining that his rights had been defeated by non-implementation of substantive award and subsequent award. At least in these proceedings, it was open for this Court to have directed payment of interest even if it were of the opinion that the Tribunal did not possess the primary jurisdiction to do so. Although the management has relied upon the decision of this Court in Central Government Industrial Tribunal (supra), at the same time, the Court is mindful of certain other decisions of the Bombay High Court in *Mrs. Prabhavati Ramgarib B. Vs. Divisional Railway Manager, Western Railway Manager*, and of the Punjab and Haryana High Court in *State of Haryana Vs. Hisam Singh and another*, , where the Court relied on a larger equitable principle, as well as the public interest underlying Section 3 of the Interest Act and drawing analogy from Section 34 of the CPC (CPC), and upheld the jurisdiction of the authority u/s 33C(2), to award interest, having regard to the circumstances.

7. This Court is of the opinion that without entering into the merits or in any manner going into the correctness of the reasoning of the learned Single Judge in Central Government Industrial Tribunal (supra), which was followed in the impugned judgment; at least in the facts of this case, the High Court, in a proceeding u/s 226 of the Constitution of India, could certainly have invoked the substantive and restitutionary jurisdiction, to direct payment of interest. The learned Single Judge, in the impugned order, in paras 12-13 was conscious that the other Writ Petition No. 78/1998 was also being heard for disposal by the common impugned order. However, in view of the conclusions arrived at by him in respect of the jurisdiction of the Labour Court, the relief was denied in entirety. In view of the above discussion, the Court is of the opinion that the impugned judgment cannot be sustained. The direction to pay interest @ 15% is, however, modified to the extent that the rate of interest shall be 9% with effect from the date of application u/s 33C(2), till the date of the award, i.e. 13.08.1996. We make it clear that this direction has been made by the Court in exercise of its powers under Article 226. The appeal is allowed to the above extent. No order as to costs.