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(2009) 09 JH CK 0024

In the Jharkhand High Court

Bihar, Jharkhand Worker's Welfare Union APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 16-09-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C

Citation : (2009) 09 JH CK 0024

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—Heard Sri Kalyan Roy, learned Counsel for the petitioner and Sri G.M. Mishra, learned Counsel for the respondents.

2. Challenge in this writ application is to the order dated 10.07.2007 (Annexure-8) passed by the Joint Labour commissioner, Government of Jharkhand whereby, on deciding upon an application filed by the petitioner u/s 33C(1) of the Industrial Disputes Act (hereinafter referred to as the Act), had directed the petitioners to approach the Labour Court u/s 33C(2) of the Act for deciding the dispute. The petitioners have prayed for issuance of an appropriate writ for quashing the impugned order and for issuance of a direction to the respondents to decide the application u/s 33C(2) of the Act.

3. A counter affidavit has been filed on behalf of the respondent Management of TISCO (Respondent No. 6) and also on behalf of the respondent Deputy Commissioner (Respondent No. 5).

4. The facts of the petitioners'' case in brief are as follows:

The petitioner is a Union representing its members who have retired under the E.S.S. Scheme (Early Separation Scheme) from Tata Steel Ltd., between the period 01.01.1997 to 31.12.2001. An agreement, known as the Tripartite Agreement, was entered into on 29.09.2003 between the Management of TISCO

Ltd. and the TISCO workers union. The terms of agreement was made applicable to the employees who had retired under the ESS Scheme and it was decided that the employees will be paid the balance amount after adjusting the advance already paid to them for the period from 01.01.1997 to 31.12.2000.

On the basis of the agreement, the members of the petitioner- union have claimed payment of arrears to the extent of Rs. 1,85,075/-and Rs. 1,01,870/-for two of its members namely A.K. Pandey and V.C. Bhandari. Similar claims have also been put forward in respect of the other members of the petitioner-union.

When inspite of repeated representations, the respondent- Management of TISCO Ltd. failed to make the payments, the petitioner-union filed a representation before the Deputy Labour Commissioner, Jamshedpur for implementation of the Tripartite Agreement.

Though both the parties had appeared in the proceeding before the Deputy Labour Commissioner, Jamshedpur but the matter could not be resolved. The petitioner-union thereafter filed an application before the Respondent No. 2 to initiate a proceeding under the provisions of Section 33C(1) of the Act.

When the representation was not disposed of promptly, the petitioner-union filed writ application before this Court vide W.P.(S) No. 4390 of 2006. While disposing the writ application by order dated 01.09.2006, this Court had directed the Respondent No. 2 to dispose of the application as expeditiously as possible.

Pursuant to the directions of this Court, the Respondent No. 2, by the impugned order dated 10.07.2007, disposed of the application filed by the petitioner-union by directing them to move the Labour Court for calculation of the amount payable to them.

5. Assailing the impugned order, learned Counsel for the petitioner would submit that the impugned order has been passed mechanically without application of mind and without appreciating the fact that there was no question of calculating the amount which was payable under the terms of the Tripartite Agreement and there is no dispute regarding the amount which was payable to the members of the petitioner-union. Learned Counsel explains further, that the claim, as put forward by the petitioner, was on the basis of the Tripartite settlement which is binding upon the parties and since the amounts claimed by the petitioner-union on behalf of its members are on the basis of the tripartite settlement, it was squarely within the competence of the Respondent No. 2 to pass appropriate orders for recovery of the money due from the employer. By shifting its responsibility, the Respondent No. 2 has apparently abdicated its responsibility instead of exercising its powers vested under the provisions of Section 33C(1) of the Act.

6. Per contra, the stand taken by the respondent employer is that the application as filed by the petitioner-union before the Respondent No. 2 under the provisions of Section 33C(1) of the Act is totally misconceived. It is sought to be explained

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that as it would appear from the representation filed by the petitioner-union before the Labour Commissioner, their claim is for payment of arrears of Gratuity, Provident Fund, Leave Encashment and Bonus from 01.01.1997 to 31.12.2000.

Referring to the provisions of the Tripartite settlement, counsel for the respondent Management would want to inform that the provisions of the settlement which declare calculation for the purpose of Gratuity, Provident Fund, Leave Encashment, Bonus etc. specifically lays down that the payment as indicated in the table given in Para 2.1 of the settlement, will not be treated as basic pay or dearness allowance and will therefore, not count for any other purpose like Annual Bonus, Provident Fund, Tisco Employees Pension Scheme, Allowance, Gratuity, Encashment of Leave, Allowances, Pension ex-gratia monthly payment on account of Early Separation Scheme, Medical Separation Scheme, Employee Family Benefit Scheme etc.

Learned Counsel argues that in view of the above specific declaration in the tripartite settlement, the demand of the petitioner union for payment of arrears of Gratuity, Provident Fund, Leave Encashment, Bonus etc. is itself a subject of dispute as to whether they were entitled under the terms of settlement to such claim at all. Learned Counsel argues that until the dispute is not settled as to whether the members of the petitioner-union are entitled at all to the monetary claim advanced by them, the provisions of Section 33C(1) of the Act cannot be attracted.

7. A similar stand, disputing the very maintainability of the present writ application and justifying the impugned order, has been taken by the respondent Deputy Labour Commissioner (Respondent No. 5).

It is sought to be further explained that the tripartite memorandum of settlement arrived at on 17.12.2001, was relating to wage revision which was made effective from 01.01.1997 but the period from 01.01.1997 to 31.12.2000 has been treated notionally and by a subsequent settlement arrived at on 29.09.2003 between the Management of the Tata Steel Limited and Tata Workers Union, it was agreed that the employees who remained on the permanent rolls of the company on 01.01.1997 till 31.12.2001 were eligible for maximum ad-hoc amount corresponding to their basic pay and fixed D.A. as on 31.12.1996 as per the table mentioned in the settlement vide Clause 2.1. However, employees who were on the permanent rolls of the company on 01.01.1997 and had superannuated and separated under the E.S.S. Scheme and who were discharged from service for any reason in between 01.01.1997 till 31.12.2000, the amount of payment corresponding to the applicable range of Basic pay and fixed D.A. as per the table, were pro-rated linked with their actual attendance on duty, during the period 01.01.1997 till their separation from the rolls of the company and were paid the balance amount after adjusting the ad-hoc allowance already paid to them. Such ad-hoc amount paid, was not to be considered as basic pay or dearness allowance and therefore, it was not to count for any other purpose like Annual Bonus, Provident Fund, Tisco Employees'' Pension Scheme,

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Grauity, encashment of leave, Allowances, Pension/ex-gratia/monthly payment on account of Early Separation Scheme/Medical Separation Scheme/Employee Family Benefit Scheme etc.

8. From the rival submission, the facts which emerge are as follows :The demand of the petitioner-union as made before the Labour Commissioner was for recovery of specific amounts calculated and claimed by them from the employer. Such claim was based on the terms of the Tripartite settlement dated 29.09.2003 and pertain to the claim for arrears of payment towards Gratuity, Provident Fund, Encashment of Leave and Bonus etc.

The terms as indicated in Clause 2.4 of the settlement declare however that the payment as per the table given para 2.1 of the settlement will not be treated as Basic Pay or Dearness Allowance and will therefore not count for any other purpose like Annual Bonus, Provident Fund, Tisco Employees'' Pension Scheme, Grauity, encashment of leave, Allowances, Pension/ex-gratia/monthly payment on account of Early Separation Scheme/Medical Separation Scheme/Employee Family Benefit Scheme etc. 9. In the light of the above Clause in the terms of settlement, the claim for payment of money towards Gratuity, Provident Fund, Leave Encashment, Bonus etc. which has apparently not been acknowledged in the terms of settlement, creates a dispute which needs to be adjudicated upon by the competent authority. It cannot be said that the tripartite settlement acknowledges the claim of the petitioners for payment of the arrears under the aforementioned Heads. The petitioners cannot therefore claim that their right to claim and receive the amount demanded by them, has already been settled and resolved under the tripartite settlement.

10. The provisions of Section 33C(1) of the Act reads as under:

Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B the workman himself or any other person authorized by him in writing in his behalf or in case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate government for the recovery of the money due to him and if the appropriate government is satisfied that any money is so due, it shall issue a certificate for the amount to the collector who shall proceed to recover the same in the same manner as an area of land revenue.

Provided that every such application shall be made within one year from the date of which the money became due to the workman from the employer.

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate government is satisfied that the applicant has sufficient cause for making the application within the said period.

On a plain reading of the provision of Sub-1 of Section 33C would it be applicable:

(a) Where any money is due under a settlement or under an Award or under the

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provisions of Chapter V-A.

(b) The money due u/s 33C(1) may be a specified amount or may have to be arrived at by arithmetical calculation or verification simpliciter.

11. The provisions of Section 33C(1) offer a more comprehensive scope and apply not only to cases of settlement or award or to cases under Chapter V-A of the Act, but to other cases as well. When the money due is not specified or the benefit capable of being computed in terms of money has not been determined, the provisions of Section 33C(1) would be attracted in as much as the Labour Court, by a process of computation, to be found out and applied by it, would have to determine the amount of money due. Section 33C(1) enables a Labour Court to enquire into and decide upon the right to receive the money to be computed provided that the determination of that right is incidental or ancillary to computation.

12. As it appears from the facts of the present case, the terms of the tripartite settlement do not specifically declare the entitlement of the petitioners for the money sought to be recovered by them from the employer. Infact the claim itself is disputed and it needs to be adjudicated. This situation obviously rules out the scope for application of the exercise of the jurisdiction of the Labour Commissioner under the provisions of Section 33C(1) of the Act.

13. By the impugned order, the Labour Commissioner has rightly directed the petitioners to obtain an appropriate order from the competent authority for adjudication of the dispute relating to their claim of money as raised, under the provisions of Section 33C(2) of the Act or under other provisions of the Act. There is therefore no illegality or impropriety in the impugned order.

14. In the light of the above facts and circumstances, I do not find any merit in this application, accordingly the same is dismissed.

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