

(2012) 05 AHC CK 0001

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 57433 of 2009

Central Bank of India

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 09-05-2012

Acts Referred:

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

Citation : (2012) 7 ADJ 80 : (2013) 1 AWC 405 : (2012) LLR 1071

Hon'ble Judges : Bharati Sapru, J

Bench : Single Bench

Advocate : Himanshu Tiwari, for the Appellant; A.K. Singh, D.K. Maurya and S.C., for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Bharati Sapru, J.—Heard Learned Counsel for both parties. The controversy in the present writ petition is very limited. This petition has been filed by the petitioner against an order dated 17.7.2009 on an application made by the respondent-workman u/s 33C(2) of the I.D. Act, 1947 by which the authority has allowed the application of the respondent-workman directing the petitioner Bank to pay to the applicant his dues taking into account notional increments during the period of 31.8.1984 to 10.7.1997 on which date he was reinstated into service alongwith the interest also.

2. Learned Counsel for the petitioner has drawn the attention of this Court to the operative part of the award dated 18.3.1997. Reference is to be made to paragraphs No. 6 & 7 of the award, which is quoted here-in-below :

Taking into consideration all these factors, I am inclined to agree with the authorized representative of the concerned workman that punishment by way of discharge ought not to have been inflicted. Instead it will be deemed to have sufficiently punished if he is not allowed the wages from the date of discharge. In this way he is reinstated in service but without back wages.

Accordingly my award is that punishment by way of discharge is not justified and he should be reinstated in service without back wages. However, the period from the date of discharge till the date of reinstatement will be counted for the purposes of retrial benefits.

3. It is the contention of the Learned Counsel for the petitioner that in view of the fact that the respondent was reinstated in service but without back wages he is not allowed to any other consequential benefit or continuity. The only other direction given under the award was that the period from the date of discharge till the date of reinstatement will be counted for the purpose of retrial benefits.

4. Learned Counsel has argued that this specific direction would not include within its ambit the right of the respondent-workman also to claim the benefit of notional increments for this purpose. Learned Counsel for the petitioner has relied upon the decisions of Hon''ble Apex Court in the case of A.P.S.R.T.C. and Another Vs. S. Narsagoud, and in the case of Andhra Pradesh State Road Transport Corporation (A.P.S.R.T.C.) and Others Vs. Abdul Kareem, , wherein the Supreme Court has held as under;

Reverting to the facts of the case at hand, as already noticed, the Labour Court specifically directed that the reinstatement would be without back wages. There is no specific direction that the employee would be entitled to all the consequential benefits. Therefore, in the absence of specific direction in that regard, merely because an employee has been directed to be reinstated without back wages, he cannot claim a benefit of increments notionally earned during the period when he was not on duty during the period when he was out of service. It would be incongruous to suggest that an employee, having been held guilty and remained absent from duty for a long time, continues to earn increments though there is no payment of wages for the period of absence.

5. Learned Counsel for the workman on the other hand has relied on a decision of Hon''ble Apex Court in the case of A.P.S.R.T.C. Khammam Region, Khammam v. P. Nageswara Rao, 2002 2 LLN 73. The stand taken by him is that by virtue of the period of operation of the award he would be entitled to be given notional increment also as the period was directed to be counted towards retrial benefits.

6. In reply Learned Counsel for the petitioner has relied on a decision in the case of Andhra Pradesh State Road Transport Corporation (A.P.S.R.T.C.) and Others Vs. Abdul Kareem, , wherein the Hon''ble Apex Court has considered the case of P. Nageshwar Rao (supra) and while considering the said decision has come to the clear conclusion that in the absence of a specific direction with regard to any claim of the respondent-workman towards notional increments it would not be open to the Labour Court u/s 33C (2) of the I.D. Act to grant the benefit of notional increment to the workman concerned. Even otherwise, Learned Counsel has contended that the scope of Section 33C(2) of the Act is well known and established and is confined to the grant of moneys to a workman, who has an established and existing right meaning thereby the payments are only be made

against claims, which already stand adjudicated.

7. Having heard Learned Counsel for both sides, I am of the opinion that the Labour Court has wrongly allowed the application of the respondent-workman u/s 33C(2) of the I.D. Act as there was no specific direction in the award, which was made in favour of the workman that he should be given notional increments also that issue had not been adjudicated and it would therefore, not be included in the benefits that were specifically given to the respondent-workman under the award. The specific direction in the award was only towards the counting of period of discharge towards his retrial benefits and is certainly not to include the notional increments. The order passed by the Labour Court u/s 33C(2) of I.D. Act is not justified in view of the decision of Hon"ble Apex Court in the case of I. Laxma Reddy Vs. A.P.S.R.T.C. and Others, , which has been relied on by Learned Counsel for the petitioner. Hence, the impugned order is set aside. The Writ Petition is allowed. No cost.