

(2005) 09 KL CK 0005
In the High Court Of Kerala
Case No : W.A. No. 1086 of 2003

Cherootty V. and Others

APPELLANT

Vs

P.T. Ramanujan and Another

RESPONDENT

Date of Decision : 05-09-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 25FFF, 33C(2)

Citation : (2006) 2 LLJ 697 : (2006) 3 SLJ 110

Hon'ble Judges : Rajeev Gupta, C.J.;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : Joseph Markos and P.N. Ravindran, for the Appellant; U.K. Ramakrishnan, E.K. Madhavan, P.V. Lohothakshan, P. Vijayamma and Uma Gopinath and V. Krishna Menon, (GP), for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Can individual workmen invoke Section 33-C(2) of the Industrial Disputes Act to claim closure compensation where the workers represented by the Unions have already settled the claims arising from the closure of the factory is the question that has come up for consideration in these cases.

2. Unions and the management had held several discussions and ultimately settled the entire claims with provision for ex gratia amounts. Exhibit P1 is the terms and conditions of settlement entered into between the management and the four unions on May 5, 1999. the labour dispute arose from the closure of a tile factory. Conciliation talks were held at the intervention of the D.L.O. which did not bear any results and ultimately the matter was referred to the Regional Joint Labour Commissioner. On repeated discussions between the unions and the management an amicable settlement was reached. The terms of the settlement provided for payment of gratuity to all the workmen who had completed 5 years as on January 23, 1999 as though they had continued in service upto 60 years and for payment of ex gratia amounts to the workmen in 41 slabs depending

upon the total services rendered by them starting from Rs. 3000/- to Rs. 10,000/- was also agreed upon. Payment of Rs. 2000/- in addition to gratuity for all workmen who had service ranging between 5 to 15 years and who were not entitled to the ex gratia payment was also agreed upon. Payment at the rate of Rs. 6,500/- per head to all the permanent workmen who had not completed 5 years was also agreed upon. For payment of 27 days lay of wages after withdrawing the appeal which had been filed by the management was also agreed upon. Bonus at the rate of 14% of wages of 9.25 days based on the salary to which the workmen were entitled as on December, 1998 and cash equivalent to casual leave and annual leave to the credit of workmen in the year 1998 were also agreed upon. Agreement also provided for distribution of gratuity and ex gratia amounts before June 15, 1999. On the basis of the agreement amounts were paid. Majority of the workmen accepted the settlement and raised no claim. However, the individual workmen took up the matter before the Labour Court invoking provisions of Section 33-C(2) of the Industrial Disputes Act. Claim was resisted by the management. Labour Court held as follows:

It is needless to say that closure compensation is a statutory benefit entitled by the workers when an establishment is closed down. It is significant to note that it is not stipulated in the agreement (Exhibit R1) as to whether the unions have either waived or agreed to give up that statutory benefits. In the absence of anything of that sort, it appears to me that the workers are entitled to the statutory benefits provided u/s 25-FFF of the Industrial Disputes Act. Hence I hold that they are entitled to the benefits sought for in the petitions.

Aggrieved by the said order of the Labour Court, management took up the matter before this Court. Learned single Judge allowed the writ petition and set aside the judgment of the Labour Court. Aggrieved by the same this writ appeal has been preferred.

3. We may at the outset point out that all the unions have subscribed their signature to Exhibit P1 settlement. Individual workmen have approached the Labour Court u/s 33-C(2) of the Industrial Disputes Act. Majority of the workmen took the view that P1 settlement finally determined the rights of the parties. So also the stand taken by the unions as well. Main claim raised by the individual workmen before the Labour Court was u/s 25-FFF for closure compensation. We fail to see how that claim could be raised u/s 33-C(2) of the Industrial Disputes Act. The Apex Court in *Municipal Corporation of Delhi Vs. Ganesh Razak and Another*, held that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding u/s 33-C(2) of the Act. Apex Court held that the Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power u/s 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or

recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation, that the interpretation is treated as incidental to the Labour Court's power u/s 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.

4. We are of the view if the workmen have got a case that the claim u/s 25-FFF is not covered by the settlement then they have to independently raise that claim before appropriate forum. They cannot invoke the provisions of Section 33-C(2) to adjudicate the claim which is subject matter of Exhibit P1 settlement. On that ground alone, in our view, the claim made by the workmen u/s 25-FFF is unsustainable and the Labour Court was not justified in holding that the workmen are entitled to get benefit of compensation. We may hasten to add, looking at Exhibit P1 settlement is a final adjudication of rights of parties. As we have already indicated, none of the unions have approached Labour Court or this Court challenging the settlement. Majority of the workmen also accepted the settlement as a final adjudication of their rights. Individual workmen have also not disputed the settlement all these years. Consequently, in our view, there is a complete waiver of statutory rights by the workmen. Statutory right u/s 25-FFF could be waived by conduct of parties. Apex Court in Krishna Bahadur Vs. Purna Theatre and Others, held that it is for the party pleading waiver to show that some agreement waiving the right in consideration of some compromise came into being, though a statutory right may also be waived by conduct. Management, in our view, has established by conduct the rest of the workmen have waived their u/s 25-FFF.

5. In the absence of any contra evidence and taking note of the conduct of the workmen, we are of the view that the settlement has reached taking note of the claim for closure compensation as well as ex gratia payment effected by Exhibit P1 settlement would lend support that view. That being the legal position we find no infirmity in the judgment of the learned single Judge to be interfered by us in this appeal.

6. Writ appeals lack merits and they are accordingly dismissed.