

(1996) 03 SC CK 0173

In the Supreme Court Of India

Case No : Civil Appeal No. 684 Of 1993

Chief Superintendent, Government Livestock Farm, Hissar

APPELLANT

Vs

Ramesh Kumar

RESPONDENT

Date of Decision : 19-03-1996

Acts Referred:

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

Citation : (1997) 11 SCC 373 : (1998) SCC(L&S) 158

Hon'ble Judges : S. C. Agrawal, J;G. T. Nanavati, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.C. Agrawal and; G.T. Nanavati, JJ.-The respondent was employed as a Welder on daily-wage basis in the Livestock Farm at Hissar. He filed an application before the Industrial Tribunal-cum-Labour Court, Hissar (hereinafter referred to as "the Tribunal") under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") wherein he claimed that he is entitled to receive the pay and allowances equal to that of a Welder employed on regular basis in the scale of Rs 250-500 to begin with and the scale of Rs 775-1025 with effect from 1-1-1986 onwards. The said application was opposed by the Management and it was submitted that the respondent is not entitled to any amount because he has been paid wages which are payable to daily-paid labourer and he has no right to bring such an application. The Tribunal, by its order dated 8-4-1992, allowed the said application of the respondent and it directed the Management to pay to the respondent the pay and allowances in the regular scale with effect from 30-11-1987 fixing the pay of the respondent taking into consideration the length of service from the date of his initial appointment. Before the Tribunal it was urged on behalf of the Management that the respondent is not qualified for appointment on the post of Welder since he did not possess a diploma from ITI. The said contention was rejected by the Tribunal on the view that the respondent had been working since 1982 and if his work was not up to the mark he could

not be retained as a Welder for such a long time. It was also urged on behalf of the Management before the Tribunal that there is no post of Welder in the establishment and the respondent could not be paid the scale of a regular Welder. The said contention was rejected by the Tribunal on the view that the respondent had been working for the last about 10 years and if there is no work for a regular Welder how could he have been paid even on daily-wage basis for such a long time. According to the Tribunal, regularisation of a post is different from paying wages in regular scale. The Tribunal has invoked the principle of equal pay for work of equal nature. The appellant filed a writ petition in the High Court of Punjab and Haryana seeking to challenge the said order passed by the Tribunal. The said writ petition was dismissed in limine by the High Court by the impugned order dated 8-7-1992.

2. We are unable to appreciate how the application of the respondent could be entertained under Section 33-C(2) of the Act. The remedy of Section 33-C(2) is available only in those cases where there is no dispute about entitlement of the workman. The remedy of Section 33-C(2) cannot be invoked in a case where the entitlement is disputed. In the instant case, the entitlement of the respondent to regular scale was disputed by the appellant and, therefore, it was not a case in which the remedy of Section 33-C(2) could be invoked. The proper course for the respondent was to have his entitlement to regular scale determined by a competent court or tribunal and in the event of non-payment of the amount payable to him as per his entitlement under such determination he could invoke the remedy under Section 33-C(2).

3. Even on merits, we find that the order of the Tribunal cannot be upheld. The Management has taken the stand that there is no post of regular Welder and the respondent could not, therefore, seek the relief regarding regular pay of Welder. The Tribunal has negated this contention by invoking the principle of equal pay for equal work. The said principle postulates that there is a person doing similar work on regular basis in the establishment. The case of the appellant is that there is no post of regular Welder in the establishment which means that there is no person working as a regular Welder in the establishment. The principle of equal pay for equal work could, therefore, not be invoked in the present case. The order dated 8-4-1992 passed by the Tribunal cannot, therefore, be upheld and for the same reason the order of the High Court dismissing the writ petition filed by the appellant has to be set aside.

4. The appeal is accordingly allowed, the order dated 8-4-1992 passed by the Tribunal on the application submitted by the respondent under Section 33-C(2) of the Act as well as the order dated 8-7-1992 passed by the High Court in Civil Writ Petition No. 8761 of 1992 are set aside. No orders as to costs.