

(2000) 02 P&H CK 0090
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1540 of 1981

Director, P.G.I., Chandigarh	Vs	APPELLANT
Nand Kishore Sharma and another		RESPONDENT

Date of Decision : 08-02-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2), 9A

Citation : (2001) 1 LLJ 114 : (2000) 125 PLR 598

Hon'ble Judges : V.M. Jain, J

Bench : Single Bench

Advocate : Arun Nehra, for the Appellant;

Judgement

V.M. Jain, J.—The present writ petition under Articles 226 and 227 of the Constitution of India was filed by the Director, P.G.I., Chandigarh, challenging the award, dated January 20, 1981 passed by the Presiding Officer, Labour Court Chandigarh.

2. In the petition it was alleged that respondent 1 was working as Dental Mechanic with the petitioner-institution and he made an application u/s 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), claiming a sum of Rs. 2,460 on account of difference in city compensatory allowance payable to him for the period from 1973 to May 1980. It was alleged that the said petition came up before the Labour Court and the petitioner-institute had filed written statement and thereafter the Presiding Officer, Labour Court, gave the award, dated January 20, 1981 (Annexure P3). It was alleged that the only issue before the Labour Court which was contested by the parties was as to whether the workman is entitled to city compensatory allowance of 12.5 per cent on the basic pay with effect from January 1, 1973. It was alleged that the Labour Court erred in holding that respondent 1 was entitled to city compensatory allowance at the rate of 12.5 per cent even though respondent 1 was entitled to city compensatory allowance permissible to other Central Government employees at the rate of 5 per cent of the basic pay. It was alleged that respondent 1 was

appointed in the year 1965 and at that time the staff of P.G.I., was governed by Punjab Government rules and the governing body of the Institute resolved to revise the pay-scales of the various employees Of the P.G.I. and as per the resolution of the Institute, the pay-scales of Dental Mechanics at P.G.I. were equated with the pay-scales given in All India Institute of Medical Sciences, New Delhi. It was also resolved that the pay-scale of the staff of P.G.I. be governed in accordance with the Central Government rules. It was alleged that the Institute was governed and was under the control of Central Government and various employees of the Central Government were allowed city compensatory allowance at the rate of 5 per cent of the basic pay. It was alleged that the Presiding Officer, Labour Court, erred in holding that the payment of city compensatory allowance was condition of service which could not be unilaterally changed, in view of the provisions of Section 9A of the Act. It was alleged that in fact Section 9A of the Act was not applicable to the facts of the present case. It was alleged that as per the regulation framed by the institute, the employees of the P.G.I. were entitled to the allowances permissible to the Central Government employees and as such the provisions of Section 9A of the Act would not be attracted. It was further alleged that the provisions of Section 33C(2) of the Act would be attracted only if the workman had any legal right. It was alleged that in the present case the workman was not entitled to city compensatory allowance at the rate of 12.5 per cent of the basic pay and instead he was entitled to the same at the rate of 5 per cent. It was accordingly prayed that the impugned award, dated January 20, 1981 (Annexure P3) be quashed and the writ petition be allowed.

3. The said petition was contested by respondent 1 by filing the return reply, controverting the allegations contained in the petition and alleging therein that the claim of the answering respondent was rightly held to be genuine entitling him to city compensatory allowance at the rate of 12.5 per cent of the basic pay. It was admitted that the answering respondent was appointed in the year 1965 by the Punjab Government and he was entitled to city compensatory allowance at 12.5 per cent of the basic pay as per Punjab Government instructions. It was alleged that the answering respondent was allowed allowance other than city compensatory allowance as admissible to similar posts in All India Institute of Medical Sciences, New Delhi, while the city compensatory allowance was admissible to him at the rate to which the other employees of the Punjab State were entitled. It was alleged that the city compensatory allowance was withdrawn from the answering respondent arbitrarily without affording any opportunity and the action of the management was thus, not sustainable in the eye of law. It was alleged that the reduction of the city compensatory allowance from 12.5 per cent to 5 per cent of the basic pay with effect from January 1, 1973 was in violation of the provisions of Section 9A of the Act. It was alleged that the entitlement of 12.5 per cent city compensatory allowance had become the condition of service of the answering respondent which could not be changed to his disadvantage under the provisions of the Act. It was alleged that a petition

u/s 33C(2) of the Act was maintainable as the amount was computable in terms of money. It was accordingly prayed that the writ petition be dismissed.

4. At the time when the case was fixed for arguments and the arguments were heard, no one had put in appearance on behalf of the respondents and accordingly ex-parte arguments were heard.

5. The learned counsel appearing for the petitioner-Institute has submitted that the provisions of Section 33C(2) of the Act were not applicable to the facts of the present case and the Labour Court had no Jurisdiction to grant the relief to respondent I-workman under the provisions of Section 33C(2) of the Act. Reliance was placed on Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, and Bhakra Beas Management Board v. Roshan Lal Singla and others 1986 (3) S.L.R. 308.

6. After hearing learned counsel for the petitioner, I find force in the submission raised before me by the learned counsel for the petitioner-Institute. Section 33C(2) of the Act reads as under :

"33-C Recovery of money due from the employer :

(1) xxx (2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money used or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government (within a period not exceeding three months) :

Provided that where the Presiding Officer of a Labour Court considers it necessary or expedient so to do, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit".

7. The abovesaid provision of Section 33C(2) of the Act was interpreted by their Lordships of the Supreme Court in Central Inland Water Transport Corporation Ltd. case (supra), and it was held that a proceeding u/s 33C(2) is a proceeding generally, in nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer and if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit in view of its being previously adjudged or otherwise duly provided for. It was further held in this authority that since the proceedings u/s 33C(2) are in the nature of an execution proceedings, it should follow that an investigation of the nature of determination of the plaintiff's right to relief and the corresponding liability of the defendant is normally outside its scope. It was further held in the said authority that when a claim is made before the Labour Court u/s 33C(2), that Court must clearly understand the limitations under which it is to function it

cannot arrogate to itself the functions-say of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations referred to above.

8. In Bhakra Beas Management Board case (supra), it was held by this Court that u/s 33C(2) of the Act, the Labour Court can compute only the existing or determined relief and it has no Jurisdiction to compute the benefit which is yet to be determined.

9. In view of the law laid down in the above mentioned authorities, in my opinion, the Labour Court was not justified in giving the award, Annexure P3, and holding that Nand Kishore, respondent, would be entitled to Rs. 2,460 being the difference in the city compensatory allowance payable to him or holding that he would be entitled to claim the 5 said amount from the petitioner-Institute.

10. No other point has been argued before No me.

11. For the reasons recorded above the present writ petition is allowed and the award dated January 20, 1981, passed by the Presiding Officer, Labour Court, Chandigarh is set aside and the petition filed by respondent 1 u/s 33C(2) of the Act is dismissed 1 u/s 33C(2) of the Act is dismissed.

12. No costs.