

(1999) 02 AP CK 0025

In the Andhra Pradesh High Court

Case No : Writ Petition No. 29561 of 1998

Divisional Forest Officer, Nalgonda and another

APPELLANT

Vs

Dy. Commissioner of Labour, RR Zone, Chikkadpally and
others

RESPONDENT

Date of Decision : 24-02-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2

Citation : (1999) 2 ALD 551 : (1999) 2 ALT 447 : (1999) 82 FLR 946 : (1999) 2 LLJ 282

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : Mr. A. Gopal Reddy, Government Pleader for Endowments, Forest and Energy, for the Appellant; Mr. G. Vidya Sagar and Government Pleader for Labour, for the Respondent

Judgement

1. The facts in brief may be noticed before advertng to the question that arises for consideration in this writ petition, Respondent Nos.2 to 9 filed ID No.47 of 1981 on the file of the Labour Court, Hyderabad, raising an industrial dispute relating to their discontinuance of service by the petitioners herein with effect from 1-4-1980. The labour Court passed an award on 6-10-1983 directing reinstatement of the respondents with continuity of service and full backwages. The petitioners herein have questioned the said Award in WP No.10790/1984 and the same was dismissed by this Court on 31-7-1986. The Award passed by the labour Court has become final.

2, Respondent Nos.2 to 9 herein have filed MP Nos.15 and 20 to 25/1992 purporting to be u/s 33-C(2) of the Industrial Disputes Act, 1947 (for short "the Act")- The labour Court by order dated 7-12-1993 allowed the said petitions declaring that each one of the respondents is entitled to receive the difference of backwages of Rs. 180-00 per month during the period 1-4-1981 to 20-11-1984. The backwages were paid by the petitioners herein pursuant to the Award passed by the labour Court in ID No.47/1981 at the rate of Rs. 120.00, whereas the

respondents have claimed at the rate of Rs.300.00. The labour Court while disposing of the miscellaneous petitions directed the petitioners herein to workout the amount due to the respondents within two months, failing which the amount due shall carry interest at the rate of 12% until realisation. The said order has also become final, as it remained unchallenged. Since the petitioners failed to deposit the amounts in terms of the order passed by the labour Court on 7-12-1993, the respondent Nos.2 to 9 herein filed a criminal petition before the Chief Judicial Magistrate (1 Addl. District and Sessions Judge, Nalgonda) for recovery of the amount due to them as per the Award dated 7-12-1993. The said proceedings appear to have been initiated by the respondent Nos.2 to 9-workmen u/s 33-C(1) of the Act which enables the Chief Judicial Magistrate to realise money as if it were the fine imposed by the said Magistrate. It is that proceedings which is challenged in this writ petition.

3. It is also required to notice that the Deputy Commissioner of Labour, Ranga Reddy District Zone, through letter No. B/1704/94, dated 2-6-1994 used certificate u/s 33-C(1) of the Act and forwarded the same to the Chief Judicial Magistrate, Nalgonda as is required u/s 33-C(a) of the Act.

4. Sri A. Gopai Reddy, learned Government Pleader for Forests, appearing on behalf of the petitioners, submits that as per Section 17-A of the Act an Award passed by the labour Court becomes enforceable only after expiry of thirty days from the date of publication of the Award and in this case there is no such publication in the official Gazette. It is also urged by the learned Government Pleader that the decision of the labour Court u/s 33-C(2) of the Act is required to be forwarded by it to the appropriate Government and any amount awarded by the labour Court can be recovered in the manner provided in sub-section (1) of Section 33C, only after the decision is forwarded to the Government. According to the learned Government Pleader, the requirement as provided u/s 33C(1) of the Act is mandatory. It is urged that the amount cannot be recovered as the labour Court failed to forward its decision dated 7-12-1993 to the Government.

5. Sri G. Vidyasagar, learned Counsel appearing for the respondent- workmen would submit that the requirement u/s 33C(1) of the Act is not mandatory one and failure on the part of the labour Court to communicate its decision to the Government cannot deprive the workmen of their legitimate right to enforce the order passed by the labour Court. The requirement, "if any, is directory in its nature. The learned Counsel would also submit that an order passed by the labour Court u/s 33C(2) is not an Award as such and the same need not be published in the official Gazette u/s 17 of the Act. The order passed u/s 33-C(2) becomes enforceable immediately after its pronouncement or after expiry of the time fixed in the very order by the labour Court.

6. Before we proceed to discuss the points urged, it may be noticed that the Award passed by the labour Court in I.D. No. 47 of 1981 has become final and the order dated 7-12-1993 passed by the labour Court u/s 33C(2) of the Act has also become final. It is rather surprising to notice the Government resorting to

filing of this writ petition when the respondents-workmen initiated proceedings to enforce the order, which has become final in their favour. The petitioners could have as well complied with the lawful directions of the labour Court and paid the amounts to the respondents-workmen. Meagre amounts are awarded towards the difference in payment of minimum wages. It is rather difficult to appreciate as to why the State machinery has thought it fit to invoke the extraordinary jurisdiction of this Court for preventing the workmen to enforce the order.

7. The order passed by the labour Court u/s 33C(2) of the Act is not an Award within the meaning of Section 2(b) of the Act. Section 2(b) of the Act defines "Award". Award means an interim or final determination of any Industrial Dispute of any question relating thereto by any Labour Court, Industrial Tribunal or National industrial Tribunal and includes an arbitration award made u/s 10-A, and according to Section 2(k) "industrial dispute" means any dispute or difference between the employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or with the conditions of labour of any person.

8. The proceedings u/s 33-C is in the nature of execution. The labour Court which is called upon to compute in terms of money, the benefit claimed by workmen, is in such cases, in the position of an execution Court. The labour Court in exercise of its jurisdiction u/s 33C(2) does not resolve any fresh dispute as such and the dispute if any is in the nature of execution proceedings for enforcement of an existing right. The two conditions that are necessary to be decided are - (I) the workman is entitled to receive any money or benefit and (ii) that the benefit is capable of being computed in terms of money. Payment of money could be due to a workman under an Award or settlement or otherwise. The dispute relating to quantum of money, itself, cannot be said to be an industrial dispute. No dispute or difference between the employer and the employee as such is resolved. The decision u/s 33C(2) therefore, cannot be regarded as an interim or final determination of any industrial dispute and, therefore, cannot be treated as an award within the meaning of Section 2(b) of the Act.

9. The order passed by the labour Court in this very case would amply demonstrate the same. What the labour Court did while disposing of the petition u/s 33-C is that it had interpreted its own award dated 6-10-1983 and declared that at what rate the respondents-workmen are entitled for the back-wages in terms of its own Award. Undoubtedly, it is in the nature of execution proceedings. The question as to whether the respondent-workmen are entitled to backwages is already decided by the labour Court in ID No. 47/81. In the proceedings u/s 33-C(2) of the Act, the labour Court merely decides the quantum of money due to the respondents-workmen. Therefore, the order passed by the labour Court cannot be said to be an Award. An order u/s 33-C(2) is always passed on the existence of the right. The labour Court does not resolve any dispute as such.

10. What is required to be published u/s 17 of the Act is every report of a Board or Court, every arbitration award and every award of a labour Court or Tribunal or National Tribunal. Publication of only such awards u/s 17 of the Act is mandatory.

11. The issue may be looked at a slightly different angle. Section 33-C(4) of the Act, itself, provides that the decision of the labour Court shall be forwarded by it to the appropriate Government and any amount found due by the labour Court may be recovered in the manner provided for in sub-section (!) of Section 33-C. It is so obvious that Section 33-C (1) to (5) are self contained provisions which enables the labour Court to decide the question as to whether any workman is entitled to receive from the employer any money or any benefit which is capable of being paid in terms of money and also prescribes the procedure for execution of that order.

12. The labour Court u/s 33-C(2) "decides" as to the quantum of amount due to the workman and it is a "decision". That is the duty imposed upon the labour Court u/s 33-C(2), as is evident from the opening words of subsection (4) of Section 33-C; whereas the duty of the labour Court, Tribunal or National Tribunal, when an industrial dispute has been referred to them is to submit its Award to the appropriate Government. Section 15 of the Act expressly uses the expression "award"; whereas in Section 33-C (2) and (4) the expression used is "decision".

13. It is settled law that there can be general provisions and special provisions in the same enactment. Viewed from any angle it becomes clear that subsections (1) 10 (5) of Section 33-C are special provisions. The order passed u/s 33-C(2), therefore, cannot be characterised as an "award" resolving any industrial dispute. Therefore, it need not be published u/s 17 of the Act. On the other hand sub-section (4) of Section 33-C, itself, provides that the decision of the labour Court is required to be forwarded to an appropriate Government. Therefore, the Act itself provides two requirements - (1) publication of the "Award" u/s 17 and (ii) communication of its "decision" u/s 33-C(4) of the Act.

Second Contention :

14. Whether the requirement to forward the decision of the labour Court to the appropriate Government is a mandatory one ? and as to whether the amount found due by the labour Court could be recovered only after the decision of the labour Court is forwarded by it to the appropriate Government.

15. A bare reading of the Section 33C(4) does not suggest the requirement as mandatory one. The word "shall" used in Section 33-C(4), itself, may not be conclusive to construe the provision as mandatory one. Section 17A of the Act specifically provides as to when an Award becomes enforceable and says that an Award shall become enforceable on expiry of thirty days of its publication u/s 17 of the Act. Of course, subject to further provisions made u/s 17-A of the Act, itself. It is, thus, evident that if an Award is not published u/s 17, the same

cannot be enforced. Precisely for that reason the publication of reports and Awards u/s 17 of the Act is held to be mandatory requirement, as the consequences of non-publication are clearly laid down u/s 17A of the Act. If the Award is not published the same cannot be enforced. No such consequences are prescribed, if the labour Court fails to communicate its decision to the appropriate Government. Section 33C(4) of the Act does not say that the decision of the labour Court shall be enforceable only after its communication to the appropriate Government. It does not suggest that the amount found due by the labour Court could be recovered under sub-section (1) only after its decision is communicated. Communication of the decision by the labour Court to the appropriate Government is not a condition precedent for recovering the amount found due by the labour Court in the manner provided for in Section 33C(1). Sub-section (4) of Section 33C is in two parts - first part relates to forwarding of decision of the labour Court to the appropriate Government and the second part is an enabling provision, providing for execution of that order passed u/s 33-C(2) in the manner provided in sub-section (1).

16. The Supreme Court in *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, , while construing the scope of Section 25-F(c) of the Act observed that clause (c) is not intended to protect the interest of the workman as such. It is only intended to give intimation to the appropriate Government about the retrenchment, and that only helps the Government keep itself informed about the conditions of employment within its region. There does not appear to be present any compelling consideration which would justify the making of the provision prescribed by clause (c) a condition precedent as in the case of clauses (a) and (b). Therefore, having regard to the object which is intended to be achieved by clauses (a) and (b) as distinguished from the object which clause (c) has in mind, it would not be unreasonable to hold that clause (c) unlike clauses (a) and (b), is not a condition precedent. The principle enunciated by the Supreme Court would equally apply for consideration of Section 33C(4) of the Act. The Labour Court is merely required to forward its decision taken u/s 33C(2) to the appropriate Government. It is not as if the appropriate Government can refuse to accept or modify the order passed u/s 33C(2) of the Act. Therefore, the requirement of forwarding is not mandatory.

17. Both the contentions advanced by the learned Government Pleader fail. The impugned proceedings for recovery of the amount do not suffer from any infirmity whatsoever warranting interference of this Court.

18. I do not find any merit in this writ petition and the same shall accordingly stand dismissed. There shall be no order as to costs.