
(2016) 09 MP CK 0006
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1780 of 2016

Eagle Security Service

APPELLANT

Vs

Shri Avtar Paroche

RESPONDENT

Date of Decision : 06-09-2016

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 33 C(2)

Citation : (2017) 1 CLR 790 : (2017) 152 FLR 357 : (2016) LabLR 1183

Hon'ble Judges : Mr. Sanjay Yadav, J.

Bench : Single Bench

Advocate : Shri Uttam Maheshwari, learned counsel, for the Petitioner; Shri Shyam Yadav, learned counsel, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Sanjay Yadav, J.—With consent of learned counsel for the parties, the matter is finally heard.

2. This petition under Article 227 of the Constitution of India is directed against the order-dated 22.12.2015 passed by Labour Court; whereby, an application under Section 33C(2) of the Industrial Disputes Act, 1947 filed by respondent has been allowed and he is held entitled for an amount of Rs.1,23,839/- towards alleged wages for the period from January 2007 to August 2014.

3. Petitioner who have a contract for providing human resources to the Bidi Workers Hospital (Central Hospital) Sagar, which runs under the aegis of the Welfare and Cess Commissioner (Central), Govt. of India, Ministry of Labour and Employment. It is contended that under the instructions of Principal Employer, the petitioner took recourse to reduction of manpower and relieved the services of several employees including the respondent from Central Hospital, Sagar. These employees were required to report at Head Office Bhopal for their onward posting.

4. That, being a Central Organization, respondent raised an industrial dispute before the Deputy Chief Labour Commissioner (Central), Jabalpur for the salary due to him from 1.1.2007 to 1.8.2014.

5. Failure of Conciliation Report was submitted on 13.7.2014 in the following terms ?

"On examination of the file of the Labour Enforcement Officer (Central) Jabalpur File No.J- 45(17)/2015-LEO(C) HQ-II, it was found that Mr. Avtar has made a complaint to the CLC(C) New Delhi with all most similar allegations that the entries in wage register are filled up with pencil by the contractor and that he has to get wages for work on Sundays etc. The said complaint dated 18.6.2014 was entrusted to the LEO(C) Jabalpur who investigated the same. In this letter dated 20th April, 2015, addressed to LEO(C) Jabalpur, the exemployer admitted that all dues were paid to him and that he is withdrawing his complaint. The LEO(C) Jabalpur vide his letter No.J-45(17)/2015- LEO(C) HQ-II dated 18th May 2015 submitted a self contained report (Annexure P/7) to Regional Labour Commissioner (Central), Jabalpur reporting that Mr. Avtar Paroche has admitted that he has been paid all dues including PF amount and that he is withdrawing his complaint. Even in the note sheet dated 20th April, 2015 (Annexure P/6) signed by Exworkman before the LEO(C) Jabalpur, he has stated that all his complaints have been resolved. He further stated that full wages for total period of his work were paid to him on 14.8.2014 and that there are dues to be paid to him (in the note sheet dated 20.4.2014). Regarding the dues or Sunday work payment etc., the ex-workman is stopped from raising dispute again and again. Mr. Avtar Paroche's demand for payment of wages of Sundays working barred by acquiescence made by him in view of his letter dated 20th April 2015 submitted to LEO(C) Jabalpur in his own handwriting."

6. The appropriate Government vide communication dated 28.7.2015, declined to refer the matter holding that the establishment is not an industry. It says :

"It is reported that the hospital run by Welfare & Cess Commissioner, Government of India does not fall under the definition of "Industry" as defined under Section 2(j) of the ID Act, 1947. In case of Management of Safdarjung Hospital, New Delhi v. Kuldip Singh Seth, Supreme Court of India has held in C.A. in 1705 of 1969 that it is obvious that Safdarjung Hospital is not embarked on an economic activity which can be said to be analogous to trade or business. There is no evidence that it is more than a place where persons can be get treated. This is a part of the functions of Government and the hospital is run as a department of Government. It cannot, therefore, be said to be an industry. Hence, the case cannot be recommended for adjudication by CGIT." This order has been allowed to attain finality.

7. It appears that without disclosing these facts, the respondent preferred an application under Section 33C(2) of 1947 Act, claiming difference of wages for the period from January 2007 to August 2014; wherein, the Labour Court while

proceeding ex parte against the petitioner, went on to adjudge the entitlement of the respondent and computed the same in terms of money and passed the impugned order.

8. Petitioner takes exception to the order on the ground that the appropriate Government being the Central Government, the jurisdiction to entertain the application lay with the Central Government Industrial Tribunal-cum-Labour Court rather than the State Labour Court and that it was beyond the jurisdiction of the Labour Court to have first adjudged the entitlement and then compute the same.

9. Learned counsel appearing on behalf of respondent; however, supports the impugned order.

Section 33C(2) of 1947 Act mandates ?

"(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 due 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."

10. The scope of said provision came up for consideration in *Municipal Corporation of Delhi v. Ganesh Rajak*, (1995) 1 SCC 235, wherein it has been held :-

"12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates 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 under Section 33-C(2) of the Act. 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 under Section 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 under Section 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution."

11. When the facts of the present case is adjudged on the principle of law laid down in *Ganesh Rajak* (supra), its beyond any pale of doubt that the Labour

Court exceeded its jurisdiction while entertaining the application under Section 33C(2) of 1947 Act. Besides, the Labour Court also glossed over the fact which probably was not adverted to by the respondent-workman, that the appropriate Government being Central Government, it was beyond its jurisdiction to have entertained the application.

12. In view whereof, the impugned order cannot be given the stamp of approval; therefore, it is set aside. The respondent, however, can avail the remedy under any other labour law. If such an application is filed, the same be decided on its own merit without being influenced by this order.

13. Consequently, petition is disposed of finally in above terms. No costs.