

(2012) 09 JH CK 0028
In the Jharkhand High Court
Case No : Writ Petition (C) No. 5801 of 2002

Gopal Bauri

APPELLANT

Vs

The Presiding Officer, Central Government Industrial Tribunal
No. 1, Dhanbad and others

RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C, 33C(2), 33C(4)

Citation : (2013) 2 AJR 48

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : H.K. Mehta and Mr. Saibal Mitra, for the Appellant; Amit Kumar Sinha, Advocate for the BCCL, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh

1. Heard learned counsel for the parties. The petitioner is aggrieved by the order dated 22.02.2002 passed in L.C. Case No. 9 of 2000 by the Presiding Officer, Central Government Industrial Tribunal No. 1 at Dhanbad (Respondent No. 1) whereby the case was disposed of on the ground that the appellant/applicant is not interested and does not want to pursue the case as no one was appearing on behalf of the applicant and no steps whatsoever has been taken in the said case before the learned court.

2. Learned counsel for the petitioner submits that the petitioner had moved the learned Industrial Tribunal by making an application u/s 33-C(2) of the Industrial Disputes Act, 1947 for payment of salary and other benefits for the period from 15.07.1997 to 19.07.1999 alleging that the petitioner has been wrongly retired from service with effect from 15.07.1999 and was subsequently reinstated with effect from 19.07.1997. As such, he was entitled to the wages for the idle period. Learned counsel for the petitioner by referring to section 33C(2) of the Act and

the judgment of the Supreme Court passed in the case of M/s. Fabril Gasosa vs. Labour Commissioner & others with Fabril Gasosa Vs. Labour Commissioner and Others, , submitted that the applicant/petitioner was entitled to approach the Industrial Tribunal for execution of the amount of salary and other wages due to him as such payment was the for the intervening period on account of his forced retirement and reinstatement by the employer management. Section 33-C of the Industrial Disputes Act, 1947 is quoted herein below:

33C. Recovery of Money Due from an Employer:-

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of 2[Chapter VA or Chapter VB] the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(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.]

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

(4) 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 (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Explanation.-In this section "Labour Court" includes any court constituted under any law relating to investigation and settlement of industrial disputes in force in any State.

3. Learned counsel for the petitioner further submits that there was no necessity of any adjudication by the Tribunal for computation of the amount due to the workman and he could straightaway approach the Industrial Tribunal u/s 33C(2) of the Industrial Disputes Act, 1947 for realization of his dues which could be enforced in view of section 33-C(4) only by the concerned Government upon determination by the Industrial Tribunal.

4. Counsel for the respondent Management, on the other hand, submits that the petitioner was retired on 15.07.1997 treating his date of birth as 30th July 1936. Thereafter, the workman approached the conciliatory authority i.e. the Assistant Labour Commissioner (Central), Dhanbad who asked the Management to reconsider his case and directed the parties to conciliate the case amongst themselves, whereafter, a Memorandum of Settlement were arrived at between the Management and the workman and his representative on 21.06.1999 (Annexure-A to the counter affidavit). It is submitted that as per the terms of settlement, the petitioner's age was redetermined on the basis of Mining Sardar Certificate as 23rd July 1940 and he was permitted to resume his duty and to superannuate on reaching the age of retirement as on 23.07.2000. Clause 2 & 4 of the said terms of settlement are quoted herein-below:

2. No back wages for the idle period i.e. from 15.7.97 to till he resumes duty will be paid to Sri Bauri as per cordial principle of "NO WORK NO PAY" & the period of idleness will be treated as dies-non.

4. The services of Sri Gopal Bauri will be treated as continuous service and period of absence will be treated as absence without pay and no financial benefit will be paid for idle period.

5. It is categorically stated by referring to Clause-2 & 4 of the said terms of settlement that, as per the settlement, it was agreed that no back wages for the idle period from 15.07.1997 till the period the workman resumes duty would be paid to him on the principle of "No Work No Pay" and the period of idleness will be treated as dies-non.

6. Learned counsel for the respondent Management refers to the two judgments passed by the three Judges Bench of the Hon'ble Supreme Court, first in the case of State of Uttar Pradesh and Another Vs. Brijpal Singh, and second in the case of Municipal Corporation of Delhi Vs. Ganesh Razak and Another, 5 and

submits that the Hon''ble Supreme Court has categorically held in relation to the interpretation of section 33-C(2) of the Industrial Disputes Act that the right to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in course of and in relation to the relationship between an industrial workman and his employer. Counsel for the respondent Management therefore submits that from the facts, it appears that the petitioner workman was reinstated pursuant to a bilateral settlement between the Management and the workman and his representative with clear stipulation that he would not be entitled to any salary and other wages for the period of idleness and such period would be treated as dies-non. He further submits that claim for salary for the said period of idleness of the workman is therefore a matter of dispute and not flowing from any agreed settlement between the parties. In such circumstances, the workman is required to get his dispute adjudicated in a duly constituted reference before an appropriate tribunal as made by the Appropriate Government, whereafter, the proceeding for execution of the Award would be undertaken before the competent Labour Court/Industrial Tribunal in terms of section 33-C(2) of the Industrial Disputes Act.

7. I have heard learned counsel for the parties at length and gone through the materials brought on record as also the judgment cited on behalf of the rival parties. It is apparent that the petitioner was retired on 15.07.1997, whereafter, he was allowed to resume his duty on the basis of bilateral settlement arrived at between the parties under the relevant provisions of I.D. Act and Rule 58 of the Industrial Disputes (Central) Rules, 1957. From the terms of settlement, it appears that the workman was allowed to resume his duty treating his date of birth as 23rd July 1940 on the basis of Mining Sardar Certificate with the clear stipulation that he would not be entitled to any salary/back wages for the idle period on the basis of "No Work No Pay" and the period of idleness would be treated as dies non. It therefore appears that the claim raised by the petitioner workman u/s 22-C(2) of the I.D. Act is neither based upon adjudication of the Award by the competent Labour Court/Industrial Tribunal in a duly constituted reference made by the Appropriate Government, nor does it flows from the settlement arrived at between the parties. In the circumstances, application for payment of salary and other back wages for the period in question itself before the Central Industrial Tribunal No. 1, Dhanbad, is misconceived. Moreover, from the impugned order, it further appears that the petitioner workman was himself not taking any step in the matter, whereafter, the learned Tribunal proceeded to drop the said proceeding. In view of the aforesaid facts and circumstances, and the reasons discussed herein above, it appears that the petitioner did not have the valid basis or cause of action to move the Industrial Tribunal concerned u/s 22-C(2) of the I.D. Act for payment of alleged dues of salary and therefore, this court is not required to go in other question whether the proceeding itself was dismissed on account of non-appearance of the parties because of non-compliance of any alleged rule of the concerned Industrial Tribunal. It further

appears that continuance of the L.C. case on the said cause of action would be futile exercise and therefore, no direction, writ or order needs to be passed in favour of the workman by interfering with the impugned order. This writ petition is devoid of any merit and it is accordingly dismissed.