

(1994) 12 P&H CK 0051
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 1343 of 1992

Gurminder Singh and Others

APPELLANT

Vs

Batala Co-operative Sugar Mills Ltd. and Another

RESPONDENT

Date of Decision : 14-12-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33C(2)

Citation : (1995) 71 FLR 166 : (1997) 3 LLJ 695 : (1995) 109 PLR 445

Hon'ble Judges : S.P. Kurdukar, C.J.; V.K. Bali, J

Bench : Division Bench

Advocate : D.V. Sharma, for the Appellant; Vinod Sharma, Rajesh Kalra and Dinesh Badhwan, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Bali, J.—By this Common order, we propose to dispose of four connected Letters Patent Appeals bearing Nos. 1343, 1344, 1345 and 1346 of 1992. As the facts have been elaborately recited by the learned single Judge, there is no need to burden the present order by reiterating the same except in so far as, these are necessary to decide the sole question mooted out in the present appeals.

2. The appellant-workmen filed an application before the Labour Court u/s 33C(2) of the Industrial Disputes Act, 1947 (hereinafter to be referred to as "the Act") claiming retaining allowance for the off-season when they were laid off and the higher scales of pay as they had been working against clerical and other posts though appointed as kamdars. The aforesaid claim of the workmen was hotly contested in their reply filed by the respondent-management by pointing out that the workmen had been appointed as kamdars purely on temporary basis on specified terms and conditions which they had accepted over a number of years and as such there was no merit in the application. It was also pleaded that there was no existing right in favour of the workmen which could be enforced through the application filed by them u/s 33C(2) of the Act.

3. The Labour Court, on the sole issue framed by it as to whether the applicants, i.e., the workmen were entitled to any of the amounts claimed held that the workmen had been employed during every season for at least 15 years in each case and their appointments were no longer temporary. Application u/s 33C(2) of the Act was, thus, allowed, vide order dated May 6, 1991 (Annexure P-7). This award of the Labour Court was successfully challenged by respondent-management in civil petitions filed by it, thus giving rise to the present appeals impugning the order of learned Single Judge.

4. The learned Single Judge relied upon several judgments of the Supreme Court and in particular, P.K. Singh and Others Vs. Presiding Officer and Others, , Heavy Engg. Corporation Ltd. v. Labour Court 1990 Lab IC 1057 and Harnam Chand v. Punjab University Printing Press 1990 76 FLR 320 to hold that "Where a dispute is squarely covered by Section 10 of the Act, that cannot be determined by the Labour Court while exercising the powers u/s 33C(2), which are in the nature of execution proceedings, though the Labour Court is competent to interpret the award or the settlement in order to execute the same". On facts, it was held that " the respondent -management had denied that there was any settlement with the workmen that entitled them to the benefit of the recommendations of the Sugar Wage Board as the retaining allowance was to be paid only to seasonal permanent workers who had been specified, in the staffing pattern approved by the Board of Directors of the management and the Registrar, Co-operative Societies. The basis of the recommendations of the Wage Board was also denied by the respondent management and it was further available to unskilled workmen such as kamdars.

5. Mr. Sharma, learned counsel appearing on behalf of appellant-workmen, however, argued that before the Labour Court the right of the appellants for retaining allowance was proved by overwhelming evidence and if the findings on such evidence clothed the workmen with the right of retaining allowance, the same could not be denied on the sole ground that respondent-management had, in its pleadings, denied the right of the workmen.

6. There is absolutely no substance in the sole contention of learned counsel, as noticed above. It is not within the purview of the Labour Court to make an investigation with a view to determine the status of the workmen on the basis of evidence produced before it u/s 33C(2) of the Act. We are in complete agreement with the view expressed by learned single Judge that it is only the pre-existing rights which can be agitated before the Labour Court u/s 33C(2) of the Act and wherever it might be a question of determination of rights of the workmen, necessarily a reference has to be sought u/s 10 of the Act. The contention of learned counsel for the appellants that there was already a settlement in existence between the parties and, therefore, the only proper remedy was to file an application u/s 33C(2) of the Act, has no merit as the settlement qua the category of workmen, such as appellants, was specifically denied with reference to Standing Orders as also with reference to the Wage

Board recommendations. It shall further be seen that the difference of salary on account of working on the higher post has been determined at Rs. 210 per month and the retaining allowance has been determined at Rs. 500 per month for a period of six months in a year right from 1972-73, even though the salary of the workmen or even of the higher category of workmen was much less during the period in question. Grant of Rs. 210 on account of difference in pay and Rs. 500 as retaining allowance was absolutely unjustified in view of the salary that was being paid to the appellant workmen.

7. Finding no merit in these appeals, we dismiss the same leaving, however, the parties to bear their own costs.