
(2006) 03 KL CK 0047
In the High Court Of Kerala
Case No : W.A. No. 2577 of 2005

Haridas

APPELLANT

Vs

Labour Court

RESPONDENT

Date of Decision : 14-03-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 25(F), 33(2)

Citation : (2006) 2 ILR (Ker) 73 : (2006) 2 KLT 641 : (2006) 3 LLJ 63

Hon'ble Judges : V.K. Bali, C.J;J.B. Koshy, J

Bench : Division Bench

Advocate : Jimmy George and M. Jose Antony, for the Appellant; P.K. Aboobacker (Edappally) and Lakshminarayanan, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—Appellants challenge Ext.P14 order of the Labour Court passed u/s 33C(2) of the Industrial Disputes Act. Respondents 2 and 3 approached the Labour Court contending that their services were terminated with effect from 31-12-1997 due to superannuation. The claimants were served with Ext.Pl notice dated 28-12-1997 that their services are terminated due to superannuation with effect from 31-12-1997 and they can collect their salary upto 31-12-1997 and retiral benefits from the office. They contended that they were illegally terminated, as there is no retirement age in the establishment. Therefore, they cannot be superannuated at the age of 60. The claimants had filed claim petitions for gratuity before the controlling authority under the Payment of Gratuity Act. As stated in the petition, they filed representations before the Labour Officer alleging denial of employment. On his advice the claim petition was filed before the Labour Court. But, petition was filed only for retrenchment compensation and notice pay payable u/s 25(F) of the Industrial Disputes Act. That was allowed by the Labour Court by Ext.P14 order. Contention of the writ petitioner was that both the above workers met the managing partners and

submitted that they are overaged as they completed 60 years of age and they cannot work and, therefore, they should be relieved and then only their termination order was issued. It is their further contention that when the workers complained to the Deputy Labour Officer, Labour Officer was also informed that termination orders were issued on the basis of their request and if they are willing to work, they can work in the company and there is no denial of employment or illegal retrenchment. Therefore, he did not send a report to the Government for referring the matter to the Labour Court for adjudication.

2. The learned single Judge ordered as follows:

3. The Tribunal was justified in upholding the plea of the workman that since the age of superannuation from the service of the establishment was not fixed by the writ petitioners, they are entitled to the benefits due. It was accordingly that the Labour Court relied on materials including those referable to proceedings under the Payment of Gratuity Act and quantified the amounts due to the two workmen as Rs. 22,286/- and Rs. 22,619/- respectively retrenchment compensation.

In fact, gratuity was not ordered by the Labour Court. That application is pending before the District Labour Officer who is the controlling authority under the Payment of Gratuity Act. Apex Court in State of Punjab Vs. Labour Court Jullunder and Others, held that claim for gratuity can be made only before the authorities mentioned under Payment of Gratuity Act and not before the Labour Court u/s 33C (2) of the I.D. Act. What is ordered in this case by the Labour Court is retrenchment compensation and notice pay. Retrenchment compensation and notice pay is payable only if there is a finding that petitioners were illegally retrenched violating the statutory provisions. That claim was disputed by the management. That matter cannot be decided in a petition u/s 33 C (2) of the I.D. Act.

3. Section 33 C(2) of the Industrial Disputes Act reads as follows:

33C. Recovery of money due from an employer:

XXX XXX 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 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.

Section 33C(2) petition is akin to execution proceedings. Without adjudicating

whether there was retrenchment or not and if so whether it was illegal or not, the Labour Court cannot compute retrenchment compensation and notice pay in a proceedings u/s 33C(2). Whether termination of the services of the claimants and superannuation was made on their request or it is retrenchment and contention of the management that when they complained regarding termination before the Labour Officer, they offered that they can continue to work, but, they refused to work etc. are matters to be decided in an industrial dispute. Therefore, the Labour court cannot grant retrenchment compensation and notice pay without adjudication. In Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, , P.K. Singh and Others Vs. Presiding Officer and Others, , Municipal Corporation of Delhi Vs. Ganesh Razak and Another, etc., the Apex Court clearly held that proceedings u/s 33C (2) are in the nature of execution proceedings and right and liability or entitlement cannot be adjudicated. Once entitlement is adjudicated or admitted, the amounts due can be computed in a petition u/s 33C(2). If retrenchment is admitted, compensation amount can be computed. Disputed amounts on the basis of award or settlement can be computed in that proceedings. The legal position on the point was summarised by the Apex Court in State Bank of India v. Ram Chandra Dubey and Ors. (2001) 1 SCC 73 : 2001 (1) KLT (SC) 102 as follows:

8. The principles enunciated in the decisions referred by either side can be summed up as follows:

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court u/s 33-C(2) of the Act. The benefit sought to be enforced u/s 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers u/s 33-C(2) of the Act while the later does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages.

The above legal position is reiterated by the Apex Court in State of Uttar Pradesh and Another Vs. Brijpal Singh, . In APSRTC and Anr. v. B.S. David Paul 2006 (1) Supreme 564, the Apex Court was of the opinion that back wages cannot be computed in a proceeding u/s 33C (2) even though the Labour Court in the award held that termination of services was illegal and workman is entitled to reinstatement as entitlement of back wages was not adjudicated. Here, entitlement of retrenchment compensation is not adjudicated by the Labour Court in an adjudication. It is disputed by the management. Hence amount of compensation and notice pay cannot be computed by the Labour Court in a petition u/s 33C (2). In the above circumstances, we set aside the judgment of

the learned single Judge and Ext.P14 order of the Labour Court passed u/s 33C (2) of the ID Act, without prejudice to the right of the workmen in raising industrial dispute, the Writ Appeal is allowed.