

(2015) 12 KAR CK 0180
In the Karnataka High Court
Case No : Writ Appeal Nos. 200097-98/2015

Hyderabad Karnataka Education Society and Others
Vs

APPELLANT

Malhari

RESPONDENT

Date of Decision : 02-12-2015

Acts Referred:

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

Citation : (2015) 12 KAR CK 0180

Hon'ble Judges : A.S. Bopanna and G. Narendra, JJ.

Bench : Division Bench

Advocate : Ashok S. Kinagi, Advocate, for the Appellant; P. Vilas Kumar, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The appellants are before this Court assailing the order dated 11.02.2015 passed in W.P. No. 82275/2012. By the said order, the learned Single Judge has upheld the order passed by the Labour Court in Application No. 43/2011 wherein the Labour Court had computed the benefits payable to the respondent by the appellants.

2. Learned counsel for the appellants while assailing the order passed by the Labour Court as well as the order passed by the learned Single Judge would contend that an application under Section 33(C-2) of the Industrial Disputes Act, 1947 ("the Act" for short) was not maintainable as there was no predetermined right in favour of the respondent but, both the Labour Court as well as the learned Single Judge have overlooked this aspect of the matter and have entertained the claim as put forth by the respondent. It is in that view contended that the order passed by the learned Single Judge is liable to be set aside and consequently the order of the Labour Court is also to be set aside.

3. In the light of the contention put forth by the learned counsel for the appellants and also the contention put forth by the learned counsel for the

respondent, we have perused the petition papers.

4. In order to substantiate the contentions put forth by the learned counsel for the appellant, he has placed reliance on the following decisions:

"i) Municipal Corporation of Delhi Vs. Ganesh Razak and Another,

ii) Bimla Lekha v. State of Rajasthan and another [2005 SCC (L & S) 1080]

iii) U.P. State Road Transport Corporation Vs. Shri Birendra Bhandari, "

5. We have perused the above cited judgments relied on by the learned counsel for the appellants. The position as stated therein is the reiteration of the existing position that the application under Section 33(C-2) of the Act would be maintainable to enforce a pre-existing benefit or one flowing from a pre-existing right. There is no dispute with regard to the said well established position of law. In that light, having taken note of the same, a perusal of the order passed by the learned Single Judge would indicate that in fact this aspect of the matter has been adverted to by the learned Single Judge. While doing so, the learned Single Judge has in fact referred to the decision of the Hon'ble Supreme Court in the case of The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., and also kept in view the decision of a Division Bench of this Court in the case of G. Venkataramanappa Vs. C. Kotappa, .

6. Having referred to the said decisions, the learned Single Judge has analysed the situation to find out as to whether in the instant facts, the contention as raised by the appellants herein could be considered as a dispute which required a predetermination or adjudication before an application under Section 33(C-2) of the Act was to be considered. In that light, having taken note of the nature of the claim, learned Single Judge has arrived at the conclusion that the Labour Court has not committed any error.

7. In the light of the conclusion reached by the learned Single Judge, we have adverted to the proceedings before the Labour Court wherein the respondent herein had filed the application seeking computation of the amount. It is no doubt true that the respondent had retired from the services as on the day the said application had been filed. In the application, the respondent was seeking for the benefit, which according to the respondent was a benefit being paid to the employees but had not been paid to the respondent. It is no doubt true that as contended by the learned counsel for the appellants, in the objection statement filed before the Labour Court the amount as claimed by the respondent had been disputed. Such dispute alone cannot be the basis to come to the conclusion that adjudication in an appropriate proceedings was required. The objections filed by the appellants herein before the Labour Court is only to the extent of denying the claim that had been put forth by the respondent. The entitlement of such amount as a condition of service has not been specifically denied by the appellants herein.

8. If that be the position and the nature of the claim that is made before the

Labour Court is kept in view, in addition to the amount of unpaid bonus, the respondent had also claimed the amount which was payable to him, in view of the revision of the wages and also the DA that had been enhanced. Therefore in that light, taking into consideration the nature of the contentions that had been put forth and the evidence that had been tendered before the Labour Court, the Labour Court was of the opinion that the claim for the bonus would not be admissible at this stage. It is in that view the Labour Court having rejected the said claim had thereafter taken into consideration the revised pay scale that had been made applicable to the employees of the appellants and also the DA that was payable in view of such revision. It is the said benefit that was available to an employee who was working in the appellants. Accordingly, the same was taken into consideration by the Labour Court for the purpose of computation. Therefore, even in the light of the decisions rendered by the learned counsel for the appellants, the fact situation in the instant case is taken into consideration. The respondent herein was only seeking computation of a pre-existing right which was available not only to the respondent, but also to similarly placed employees like that of the respondent who was working in the appellant. In this regard, it is also relevant to notice when certain other similarly placed employees of the appellants were before this Court in W.P. No. 81344/2010 disposed of on 01.08.2012 and W.P. No. 83775/2012 and 86386/2012 dated 07.11.2015, the said petitions were also considered in a similar fashion by this Court. It is contended by the learned counsel for the respondent that in the said cases, the orders have been complied and the benefit has been extended.

9. If these aspects of the matter are kept in view, we are of the opinion that neither the Labour Court has committed any error in computing the amount in the facts and circumstances herein nor the learned Single Judge committed any error in approving such order passed by the Labour Court. Therefore, we see no merit in these appeals. The same are accordingly disposed of.