

(1974) 01 DEL CK 0029

In the Delhi High Court

Indian Refrigeration Industries

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 25-01-1974

Acts Referred:

Citation : (1974) 2 LLJ 426

Hon'ble Judges : B.C. Misra, J

Bench : Single Bench

Judgement

B.C. Misra, J.—This writ petition has been filed by the management against an order of Shri Ved Parkash Aggarwal, Labour Court, Delhi, dated December 18, 1965 (Annexure "L"). By this order the Labour Court has awarded to the workman Hardial Singh back wages at the rate of Rs. 100 per month from September 16, 1964 to February 28, 1965, computed at Rs. 550 besides Rs. 150 on account of bonus, making a total of Rs. 700 while the claim of the workman for traveling allowance and dearness allowance has been rejected in an application u/s 33C of the Industrial Disputes Act.

2. The material facts of the case are that Hardial Singh (second respondent) was an employee of the petitioners and was dismissed by them on May 2, 1963. Since an industrial dispute had been pending, the petitioners applied to the Industrial Tribunal for grant of approval of dismissal of the workman. The same was, however, refused by Shri Anand Narain Kaul. Industrial Tribunal, Delhi, by order dated October 24, 1963. In view of the authorities reported in Straw Board Manufacturing Company, Saharanpur v. Govind 1962-I L.L.J. 420, and Kesoram Cotton Mills Ltd. Vs. Gangadhar and Others, , the legal effect of the refusal of approval by the Industrial Tribunal is that the dismissal of the workman concerned is void and ineffective and the workman continues to be in service.

3. Thereafter the petitioners did not pay the wages of the workman and so he was obliged to institute proceedings for computation of the benefits by the Labour Court. One such computation was made for the period May 2, 1963 to November 30, 1963 and an appeal and a writ petition against the same failed.

The workman also obtained some relief under the Payment of Wages Act for another period. The period in dispute in the writ petition is from September 16, 1964 to February 28, 1965. The workman had made an application under Sub-section (2) of Section 33C of the Industrial Disputes Act. The management (petitioners before me) raised a number of objections including the non-maintainability of the petition and alleged failure of the workman to report for duty up to February 3, 1964. They also pleaded the bar of res judicata.

4. On the pleadings of the parties, the following four issues were framed:

1. Whether the application is not maintained on the grounds alleged ?
2. To what benefits is the applicant entitled ?
3. Whether the applicant reported for duty after February 3, 1964?
4. Whether issue No. 3 is barred by principles of res judicata?

The labour Court decided all the issues against the petitioners before me and computed the amount payable to the workman at Rs. 700 for the period in dispute as mentioned above. In deciding the case, the Labour Court disbelieved the version of the management that the workman had not returned to report for duty and that the management had by Px W-3 which corresponds to Annexure "M" dismissed the workman and terminated his services and so his services had come to an end. The Labour Court, Therefore, held that it had jurisdiction to entertain the application.

5. The said award has been challenged in the present writ petition on the grounds (1) that the finding of the Labour Court that the workman had offered to do duty was not based on any evidence and was contrary to the record and (2) the finding about the jurisdiction of the Labour Court was contrary to law since the management had in fact and in law terminated the services of the workman by Annexure "M" and at all events, this had raised a disputed question of fact which could be tried only by the Industrial Tribunal on the raising of an industrial dispute and not by the Labour Court in an application filed u/s 33C of the Act. The writ petition has been opposed by the workman who has filed a counter-affidavit contesting the pleas raised by the petitioners.

6. Before I proceed to consider the aforesaid contentions, I may point out that in the writ petition, a plea had been taken that the Authority under the Payment of Wages Act had refused to pass an order for payment of wages for an earlier period, namely, March 29, 1964 to September 15, 1964, but in reply to the same, the workman had stated that the said decision of the Authority had been reversed on appeal by the Additional District Judge and a writ petition against the same had been dismissed in limine. In this view of the matter, the plea of res judicata raised by the petitioners has not been pressed before me.

7. So far as the first contention is concerned, I am of the view that the Labour Court had deposition of workman and other ample material before it to come to

the conclusion it has arrived at, namely, that the workman had been reporting for duty while it was the management which had defaulted in giving it to him. It is significant that after the refusal of the approval on October 24, 1963 to the dismissal of the workman on May 2, 1963, the management voluntarily and willingly never paid any wages to the workman and time and again coercive measures had to be taken against the management. The claim for one of such periods has been noticed in a decision of this Court (P. N. Khanna, J.) in *Indian Refrigeration Industries v. S. Balwant Singh*, Civil Writ No. 432-D of 1964, decided on March 30, 1973. The Labor Court was, Therefore, justified in law in drawing the inference it has done. It is evident that the adequacy or sufficiency of the evidence before the Labour Court is not reviewable by the High Court in exercise of its writ jurisdiction. In *Management of Hamdard (Wadf) Laboratory, Lal Kuan, Delhi v. Raunaq Hussain and Anr.* 1971-I L.L.J. 456 : (1971) I ILR Delhi 308, a Division Bench of this Court (H.R. Khanna, C. J. (as he then was) and Jagjit Singh, J.) has held that the adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal and the said points cannot be allowed to be agitated before a writ Court. This authority has further laid down that a writ of certiorari can only issue if there be an error of law apparent on the face of the record or a finding of fact recorded by the Tribunal should be based on erroneously inadmissible evidence or on no evidence, but not otherwise. In the present case, the finding of the Labour Court does not suffer from any legal infirmity and is based on proper appreciation of evidence and so cannot be interfered with by this Court in exercise of its writ jurisdiction.

8. So far as the second contention is concerned, Mr. D. N. Vohra, counsel for the petitioners, has laid great stress on Annexure "M" dated October 29, 1964. The letter is addressed by the management to the workman concerned and reads as follows:

Your letter dated October 7, 1964 is an attempt on your part to twist the facts to your advantage. The facts have already been communicated to you in our letter dated September 18, 1964. As you have not cared to report for duty so far, you have lost your claim for service.

The Tribunal has construed this letter as not an order terminating the services of the workman. It is only a protest of the management against the claim for the salary of the workman. The petitioners have filed other letters Annexures "D", "F", "G", "H", "I" and "J" which purport to have been issued by the management to the workmen. The said letters were filed before the Labour Court, but it has not believed those letters and has declined to rely on them. There is no legal infirmity in the finding of the Labour Court, but assuming for the sake of argument, the said letters purport to ask the workmen to report for duty and Annexures "G" to "K" state that if the workmen does not report for duly, it would be presumed that he was no longer interested in service, or as in another letter, the company would be obliged to presume that he had lost lien on the job by his

long absence. In Annexure "J" the same idea is repeated, namely, that it would be presumed that he was not interested in service and this was a final opportunity afforded to him. I am using those letters to show that at no stage did the petitioners even purport to dismiss the workmen or terminate his services subsequent to the refusal of approval. The expression, Therefore, used in Annexure "M" that he had lost his claim for service cannot, in the circumstances of the case, be construed as meaning that the management had effected the termination of the services of the workman. Mr. Vohra purported to argue that the services of the workman had come to an end by the force of the standing orders of the management. This point had never been raised before the Labour Court and the standing orders have neither been placed before me, nor before the Labour Court. At all events, Annexure "M" again does not make any reference to the alleged standing orders. As such, it is difficult to accept the contention that by the issue of this letter Annexure "M" the management has terminated or purported to terminate the services of the workman either in fact or in law. Moreover, the management has not taken care to file the letter of the workmen dated October 7, 1964 to which Annexure "M" purports to be a reply. This letter, if filed, would have thrown light on the circumstances in which Annexure "M" has been issued and is to be construed. An important significant fact is that, as noticed in the impugned order of the Labour Court, the management had never taken up the plea in their pleadings that they had, at any time, subsequent to refusal of approval, terminated the services of the workman concerned. Accordingly, I find that no dispute had been raised between the parties with regard to the termination of the services of the workman by the management subsequent to refusal of approval either by any express or implied order or by reference to any standing orders, nor had any disputed question of fact or law in this behalf been raised. The management had throughout been contending that the workman was not entitled to the various claims made by him, but that is an entirely different plea from the ground of injection that the management had subsequently terminated his services. Considered from any point of view, I do not find any infirmity in the impugned order of the Labour Court and I endorse its finding on issue No. 1.

9. Mr. Vohra has next contended as another aspect of his second contention that the Labour Court had no jurisdiction to compute the benefits under Sub-section (2) of Section 33C of the Industrial Disputes Act. The scope of Sub-section (2) of Section 33C has been authoritatively laid down by the Supreme Court in *The Central Bank of India v. R.S. Rajagopalan, etc.* 1963-II L.L.J. 89; In this case, the Court observed that Sub-section (2) of Section 33C refers to any workman entitled to receive from the employer any benefit there specified ; it does not mean that he must be a workman whose right to receive the said benefit is not disputed by the employer; this provision takes within its purview cases of workmen who claimed that the benefit to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers; the claim clearly postulates that

the determination of the question about computing the benefits in terms of money, may, in some cases have to be preceded by an enquiry into the existence of the right and such an enquiry must be incidental to the main determination which has been assigned to the Labour Court under this provision of law. The Court further observed that the scope of Sub-section (2) is wider than Sub-section (1) and that claims which are not based on settlements, awards or under the provisions of Chapter VA would also be competent under Sub-section (2). The Court, however, pointed out that some of the claims would be outside the scope of Section 33C(2), namely, those relating to the dismissal or demotion of the employee being wrongful. In the instant case, there is no dispute with regard to the continuance of the workman. His dismissal had not been proved and so in view of the authorities of the Supreme Court mentioned above, namely, *Straw Board Manufacturing Company, Saharanpur v. Govind*, (supra) and *Kesoram Cotton Mills Limited v. Gangadhar and Ors.* (supra) the workman continued to be in service and was, Therefore, entitled to the benefits of the service applicable to him. I have found that the management had never alleged or established any subsequent dismissal or discharge of the workman and so no industrial dispute had been raised between the parties. The question whether the workman had reported for duty or the management had refused to give work to him was certainly a matter incidental to the question and so the Labour Court had ample jurisdiction to decide the matter under Sub-section (2) of Section 33C of the Act and consequently Sub-section (1) would not come into play. Therefore, the power and jurisdiction of the Labour Court to determine the question it had decided is unassailable. On the merits of its decision with regard to the quantum of salary and bonus is not reviewable by this Court in exercise of writ jurisdiction, since it does not involve any error of law apparent on the face of the record.

10. As a result, I find that there is no legal infirmity in the impugned order of the Labour Court. The writ petition, Therefore, fails and is dismissed with costs.