
(1991) 04 DEL CK 0048

In the Delhi High Court

Case No : Civil Writ Petition No. 76 of 1989

Indian Refrigeration Industries

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 10-04-1991

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(1)

Citation : (1991) 44 DLT 552 : (1991) 63 FLR 235

Hon'ble Judges : Milap Chand Jain, C.J.; Arun Kumar, J

Bench : Division Bench

Judgement

M.C. Jain, C.J.

(1) By this writ petition, the petitioner seeks to quash the recovery order (Annexure-I), impugned notice dated 25.2.1988 (Annexure XI), and impugned show cause notice dated 26th September, 1988 (Annexure XVII).

(2) We may state a new relevant facts leading to the present writ petition.

(3) There was an industrial dispute in connection with termination of 11 workmen and on reference of the dispute to the Addl. Industrial Tribunal No. 1, Delhi, an Award (Annexure II) dated 18th December, 1973 was given. The termination was held to be illegal and the 11 workmen were ordered to be reinstated with continuity of service with full back wages w.e.f. 9th January, 1971. It was also observed that, that would be without prejudice to such disciplinary action as the management may like to take against the six permanent workmen arising out of charges of misconduct framed against them. The Award was challenged by the present petitioner before this Court in C.W.P. No. 381/74 and this court on 26th April, 1983, maintained the Award by which the termination of the workmen was quashed but set aside the direction of reinstatement and instead awarded compensation to all the respondents equal to 75 per cent of the back wages from 9.1.1971 till the date of the Judgment i.e. 26.4.1983. After the award, it appears that disciplinary proceeding were initiated

against the six workmen and dismissal order dated 13th February, 1974 were passed against them. However, the workmen presented an application u/s 33-A of the Industrial Disputes Act which application was withdrawn by the respondents on 12th April, 1984. However, in the aforesaid writ petition C.M.P. No. 3632/84 was filed", on which the agreed order was passed which is as under :-

"PRESENT: Mr. D.R. Gupta for applicants, Mrs. Uma Mehta Jain with Mr. R.K. Mehta, counsel for the non-applicants. C.M. 3632/84 On 29th October, 1975, the following was the agreed order between the parties. (i) The petitioner shall pay within 15 days the back wages of the respondents under the impugned award which are due to them according to the records of the petitioner including the settlements which are alleged to have been arrived at between the petitioner and some of the respondents. (ii) If any of the respondents after receiving the amount are dissatisfied with the payment, the dispute between the parties shall be decided by the Labour Court u/s 33-C(2) of the Industrial Disputes Act, 1947 including any other disputes which the petitioner may raise regarding the future wage also. (iii) The petitioner and the respondents shall appear before the Labour Commissioner for paying and receiving the money referred to in para (i) above at 10 A.M. on 12th November, 1975, The management paid full wages to the workmen till the date of the award. A writ petition filed by the management against the award was dismissed by this court on April 26, 1983. The workmen by this application have claimed wages for the period up to 26th April, 1983 in terms of the judgment of this court dated 26th April, 1983. The only remedy available to my mind, is to move the labour court u/s 33-C(1) & (2) of the Industrial Disputes Act. The application is misconceived and is dismissed. R.N. Aggarwal, J. January 15, 1985."

(4) Application u/s 33-C(1) of the Industrial Disputes Act was presented by the workmen before the Labour Commissioner. Reply to the same was filed and an objection was taken that the application is not maintainable. Only application 33-C(2) could be filed before the Labour Court and in respect of the demand made by the workmen, it was stated that the demand is not legal and justified. However, it appears that the Labour Commissioner on the basis of the calculation made by the present petitioners in their application dated 19.10.88 issued the recovery order. The Labour Commissioner did not go into the question as to whether the application under Sec. 33-C(1) was at all maintainable. It would appear from the order dated 19th October, 1975 that, this court left it open that the workmen can move an application u/s 33-C(1) and (2) before the Labour Court. In para (ii) of the order dated 15.1.1985, it was observed that, if any of the respondents after receiving the amount are dissatisfied with the payment, the dispute between the parties shall be decided by the Labour Court u/s 33-C(2) of the Industrial Disputes Act, 1947, including any other disputes which the petitioner may raise regarding the future wage also.

(5) The first question that requires consideration is as to whether an application

u/s 33-C(1) was at all maintainable in respect of the wages after the date of the Award. It is not in dispute that the wages up to the date of Award have already been paid. The dispute is about the wages after the date of the Award and for that no application u/s 33-C(2) was filed by the workmen before the Labour Court. To our mind, the application u/s 33-C(1) was misconceived as there was a dispute between the parties as to whether the workmen are entitled to any wages after the date of the Award. The workmen ought to have filed application u/s 33-C(2) before the Labour Court. Counsel for the respondents submitted that as there was admission made by the present petitioner and the present petitioner gave calculation of the amount which was payable to the workmen, the Labour Commissioner was justified in issuing recovery order. Suffice it to say that the calculation was given in the alternative. Other objections were raised by the petitioner before the Labour Commissioner and the same were not considered and as such the recovery order as well as the notice and show cause notice are liable to be quashed.

(6) Accordingly, this writ petition is allowed and the notice and show cause notice and the recovery order stated above are quashed.

(7) However, we may observe that it would be open to the workmen to move an application u/s 33-C(2) before the Labour Court. Parties to bear their own costs.