
(2001) 07 DEL CK 0047
In the Delhi High Court
Case No : CWP No. 6466 of 1998

Jagdish Chander Anand

APPELLANT

Vs

M/s. Madan Babu and Co. and another

RESPONDENT

Date of Decision : 26-07-2001

Acts Referred:

Constitution of India, 1950 — Article 32
Industrial Disputes Act, 1947 — Section 25

Citation : (2001) 94 DLT 20 : (2001) 60 DRJ 141

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Mr. S.K. Jain, for the Appellant;

Final Decision : Allowed

Judgement

Vikramajit Sen, J.—The Petitioner had filed an application u/s 33-C(2) of the Industrial Disputes Act, 1947 staking a claim for closure compensation as well as a small amount on account of the difference between the wages paid to him and the applicable minimum wages. In its Reply, the Management had not challenged the Petitioner's right to invoke Section 33-C(2) or the jurisdiction of the Court. From a reading of this Reply, the only dispute raised was that the Petitioner's entitlement was only with effect from 1.1.1996. The Petitioner had contended that he was in service with effect from 1.1.1954 and that computation should be made keeping this date in mind.

2. In the proceedings before the Labour Court-VI no issue as to the maintainability of the application u/s 33-C(2) had been framed as no objection or demur had been raised by the Management. In the Award, however, the Labour Court has dismissed the claim on the grounds that this provision, namely, 33-C(2) was not attracted in the circumstances of the case. Reliance was placed on Municipal Corporation of Delhi Vs. Ganesh Razak and Another, . The facts of that case, however, appear to have escaped the attention of the Labour court. The claim was on account of equal pay for equal work. This entitlement had not been

adjudicated upon at any previous time by any other Authority. It was in this context that the Hon''ble Supreme Court had made the following observations already extracted by the Labour Court.

"12. ... The Labour Court has not jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power u/s 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power u/s 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution."

3. A perusal of paragraph 13 of the said judgment, however, clarifies the factors which had weighed in the mind of the Hon''ble Supreme Court in arriving at this decision. A reading of this paragraph makes this position clear.

"13. In these matters, the claim of the respondent-workmen who were all daily-rated/casual works, to be paid wages at the same rate as the regular works, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of "equal pay for equal work" being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before the computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in the writ petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, Therefore, no relevance for the present purpose. It must, Therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made u/s 33-C(2) of the Act by these respondents."

4. Learned counsel for the Petitioner has placed reliance on two recent decisions of this Court in *Jeet Lal Sharma v. Presiding Officer, Labour Court-VI & Anr.*, 2000 9 AD (Delhi) 1 and *Om Prakash Mathur v. M/s. Panjon Ltd. & Ors.*, 2000 7 AD (Delhi) 625. In *Jeet Lal's* case (supra) the Court had cautioned against adopting an approach where undue importance was given to denials recorded on behalf of the Respondent Managements. The Court had observed that it is the claim which must be kept in perspective. In *Om Prakash Mathur's* case (supra) the Court had observed that the entitlement to claim minimum wage arises because of the

statutory provisions contained in the Minimum Wages Act and for this purpose no prior adjudication is required.

5. Returning to the facts of the present case it is not in dispute that the Respondent-Company had closed down on 28.2.1994. This is specifically admitted in the first paragraph of the Reply filed on behalf of Respondents in the Labour Court-VI. The only question is controversy was whether the Petitioner's services had commenced from 1.1.1954 or 1.1.1986 as per the stand taken by the Management. It was in this regard that the Petitioner-Workman had approached the Controlling Authority under The Payment of Gratuity Act, 1972. By its order dated 10.10.1996 of the Authority had held that "from the evidence of both the parties and their cross examination, it is clear that the tenure of the workman from 1.1.54 to the date of closure of firm i.e. 28.2.94, remained uninterrupted and it is held accordingly." The Respondent-Company had assailed this Order before the Appellate Authority under The Payment of Gratuity Act, 1972, which Authority by its Order dated 12.1.1998 had upheld the impugned order of the Controlling Authority. The amount claimed by the Workman was allowed along with interest at the rate of 10 per cent per annum. This adjudication removes the existence of any controvertible facts, and Therefore Ganesh Razak's case (supra) is clearly distinguishable.

Section 33-C(2) reads as under:

"33-C(1) X X X X X

(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".

6. This provision has been construed in Ganesh Razak's case (supra) to necessitate a prior adjudication by the Competent Authority if a disputed question of fact occurred or arose. As has been clarified in Om Prakash Mathur's case (supra) case such a dispute should not be held to arise only on the basis of a bare denial made on behalf of the Management, and especially in view of the adjudication upon the controversy by two Authorities under the Payment of Gratuity Act, 1972.

7. The question that immediately arises, Therefore, is whether there was a previous adjudication on this subject. Unlike was a Ganesh Razak's case (supra), where the claim was for equal pay for equal work, on which there had been no

determination whatsoever by any Authority, in the facts of the present case, the parties herein have already litigated against each other in proceedings under The Payment of Gratuity Act. The question which had arisen in those proceedings specifically related to the entitlement of the Petitioner with effect from 1.1.1954. The Petitioner's contention had been upheld. So far as this controversy is concerned, Therefore, there is already a determination by an Appropriate Authority. The only other consideration is whether a fresh determination on the question of closure compensation has been necessitated. In this respect, no possible controversy can arise. The right emanates and flows from Section 25-FFF of the Industrial Disputes Act. For a determination of both these claims, all that would be expected is to compute the entitlement of the Petitioner keeping in view the admitted position that the closure took place on 28.2.1994. Since there has already been a determination that the Petitioner's services commenced with effect from 1.1.1954 this is only an arithmetical exercise. In these circumstances the Labour Court was not correct in holding that the decision of the Hon''ble Supreme Court in Ganesh Razak's case (supra) precluded it from entertaining the application u/s 33-C(2) of the Industrial Disputes Act.

8. In these circumstances the petition is allowed and the case is remanded back for a fresh consideration and determination by the Labour Court-IV.

9. The Petitioner will appear before the said Court on 3.9.2001.