
(2015) 03 RAJ CK 0083
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3786/2004

Jagdish Prasad Yadav

APPELLANT

Vs

Labour Court No. 2, Jaipur and Others

RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

Constitution of India, 1950 — Article 32

Industrial Disputes Act, 1947 — Section 10, 33A, 33C (2), 33-C (2)

Citation : (2015) 03 RAJ CK 0083

Hon'ble Judges : Veerender Singh Siradhana, J.

Bench : Single Bench

Final Decision : Dismissed

Judgement

Veerender Singh Siradhana, J.—On 20th January, 2015 none appeared on behalf of the petitioner. Taking note of the fact that none appeared to prosecute the matter on 16th July, 2014. However, the matter was adjourned four two weeks, to enable the counsel/petitioner, to put in appearance to pursue the matter. It was made clear that if none appeared on the next date, the matter would be proceeded with on the basis of pleadings including proceedings ex-parte. Again 9th February, 2015 none appeared on behalf of the petitioner. Mr. Sanjeev Singhal, Dy. G.C., appeared on behalf of the State-respondents and undertook to collect the information about the petitioner as to his present posting as well as the counsel representing him, and therefore, the matter was deferred to 23rd February, 2015. None of the parties appeared before the court on 23rd February, 2015 and the position remains the same today.

2. The petitioner, in the instant writ application, has assailed the legality, validity and correctness of the order dated 10th November, 2003, passed by the Labour Court No. 2, on an application filed under Section 33-C (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act of 1947", for short). The grievance of the petitioner is that the Labour Court under Section 33-C (2) of the Act of 1947, carried out the computation on the basis of daily wages instead of

regular pay scale. The conclusion arrived at by the Labour Court has been assailed for being illegal and invalid. Further, the Labour Court has not furnished any cogent and convincing reason for not computing the back wages on the basis of regular pay scale. It is also pleaded that the petitioner has been rendering service since 1986, whereas the similarly situated employees namely; Shiv Ram and others, have been accorded the benefits of back wages on the basis of regular pay scale.

3. In response to the notice of the writ application the respondents have filed their counter affidavit supporting the impugned order dated 10th November, 2003. It is specifically pleaded that in compliance of the order dated 13th May 1991 passed in SBCWP No. 229/1989; the petitioner reported for duty on 17th May, 1991 and he has been accorded the benefit of regular pay scale of Rs. 750-940 w.e.f August, 1991. The Labour Court computed an amount of Rs. 10738/- (Rupees ten thousand seven hundred thirty eight) in favour of the petitioner vide impugned order dated 10th November, 2003, and the matter for payment of the aforesaid amount was already forwarded to the State Government for financial sanction.

4. I have carefully considered the pleadings of the parties and also perused the impugned order dated 10th November, 2003.

5. Indisputably, no material was placed on record by the petitioner-workman while staking his claim for computation of amount of back wages for the period w.e.f. March, 1986 to 30th November, 1988, on the basis of regular pay scale. No such direction was issued by the Court as well as the claim for pay scale was not admitted by the respondent-employer.

6. At this juncture, it will be relevant to consider the text of Section 33-C (2) of the Act of 1947, which reads thus:-

"33. C. Recovery of money due from an employer.-

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA or Chapter VB, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said

period.

(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.]"

7. The proceedings under Section 33-C (2) of the Act of 1947, are in the nature of execution proceedings. A glance at the contents of Section 33-C (2) of the Act of 1947, would further reflect that the recovery of money due from the employer is only with reference to an existing right of the workman admitted by the employer in regard to the benefit which the workman is entitled to receive from the employer.

8. The controversy raised in the instant writ application is no more res-integra in view of several opinions on the Hon"ble Supreme Court. In the case of State of Uttar Pradesh and Another Vs. Brijpal Singh, , on a survey of several earlier precedent, held thus:

"10. It is well settled that the workman can proceed under Section 33C (2) only after the Tribunal has adjudicated on a complaint under Section 33A or on a reference under Section 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. This Court in the case of Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another, held that a proceeding under Section 33C (2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. Proceeding further, this Court held that the right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman, and his employer. This Court further held as follows:

"It is not competent to the Labour Court exercising jurisdiction under Section 33C (2) to arrogate to itself the functions of an industrial tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute in a reference under Section 10 of the Act"

11. In the case of Municipal Corporation of Delhi Vs. Ganesh Razak and Another, , this Court held as under.

"12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, dearily outside the scope of a proceeding under Section 33C (2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compare the benefit so adjudicated on that basis in exercise of its power under Section 33C (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 required interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33C (2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.

13. In these matters, the claim of the respondent-workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, 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 33C (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 computation of such a benefit could be sought Respondents' claim is not based on a prior adjudication made in the writ petition filed by some other workmen upholding a similar claim which could be relied on as an adjudication enduring 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 under Section 33C (2) of the Act by these respondents."

12. In the case of State Bank of India Vs. Ram Chandra Dubey and Others, , this Court held as under:

"7. When a reference is made to an industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a

question is one of fact depending upon the evidence to be produced before the Tribunal, if after the termination of the employment the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

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 under Section 33C (2) of the Act. The benefit sought to be enforced under Section 33C (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 under Section 33C (2) of the Act while the latter 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. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding before a forum to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to at his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages"

9. From the materials available on record and the impugned order passed by the Labour Court, it is reflected that there was no admission by the employer of an existing right with reference to entitlement of the pay scale to the petitioner-workman. Further, while dealing with the matter of computation of back wages under Section 33-C (2) of the Act of 1947, the Labour Court has no jurisdiction to go beyond the award passed by the Presiding Officer.

10. The Labour Court rightly computed the amount of back wages on the basis of daily wages for the relevant period and there is no error or illegality calling for any interference by this Court.

11. For the reasons and discussions hereinabove, the writ application is devoid of any substance and lacks in merit, and therefore, deserves to be dismissed.

12. Ordered accordingly.

13. However, in the fact and circumstances of the case, there shall be no order as to costs.