
(1986) 10 RAJ CK 0074
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1324 of 1986

Jagjit Cotton Textiles Mills Ltd.

APPELLANT

Vs

Authority Appointed under the Payment of Wages Act

RESPONDENT

Date of Decision : 28-10-1986

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 33, 33A
Payment of Wages Act, 1936 — Section 15

Citation : (1987) 2 WLN 237

Hon'ble Judges : Kanta Bhatnagar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kanta Bhatnagar, J.—In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for the quashing of the Order dated June 13, 1986 passed by the Authority under the Payment of Wages Act (here in after to be referred as "(he Authority)") by which the objection of the petitioner regarding the jurisdiction of the Authority to entertain the application of the non-petitioners No. 2 to 11 u/s 15(2) of the Payment of Wages Act, 1936 was over-ruled.

2. The petitioner, a registered company under the Company Act, having a Textile Mill at Sri Ganganagar Rajasthan, dismissed some workmen from service on the ground that they were guilty of serious acts of misconduct under the Certified Standing orders of the Company. A reference in a matter relating to one Hukma Ram and the management was pending in the Labour Court Bikaner. The management, taking it to be proceedings pending before the Labour Court made an application u/s 33(2)(b) of the Industrial Disputes Act (to be referred as the Act here in after) for approval of the action taken by the petitioner in dismissing certain workmen including non-petitioners No. 2 to II from service, A preliminary objection was raised by the workmen so dismissed, in the Labour Court on the

ground that 21 persons against whom approval was sought u/s 33(2)(b) of the Act were not the workmen concerned in the dispute and therefore Section 33(2) (b) was not attracted in their matter. The Management objected to the right of the workmen to raise such a preliminary objection, but the Court did not agree with the plea of the Management and held that just as an employer can raise such a preliminary objection, the workmen are also equally competent to raise such a preliminary objection in the proceedings of approval of their dismissal and the Court is bound to answer it. The finding of the learned Labour Judge was that, 21 persons, whose order of dismissal was sought to be approved by the Management, were not workmen concerned in the dispute and as such the provisions of Section 33(2)(b) of the Act were not attracted in the matter. Accordingly the learned Judge held that in such an eventuality the Court was not required to consider the applications further on merit and directed (he Management to withdraw the applications with further order that in case it is not so done the applications will be returned by the clerk of the Court.

3. On December 19, 1985 non-petitioners No. 2 to 11 filed an application u/s 15 of the Payment of Wages Act for payment of wages from the date of the order of the dismissal up to February 27, 1985, the date of passing of the aforesaid order Annexure-I by the Labour Court. The petitioner was directed to file the reply. In reply the objection about the maintainability of the application was taken on two grounds. Firstly, on the question of limitation and secondly, on the lack of jurisdiction of the Authority to decide such a matter. Both the objections, were over-ruled. That caused grievance to the petitioner and he has approached this Court.

4. It is only the finding of the Authority on the question of its jurisdiction to entertain the application u/s 15(2) of the Payment of Wages Act in the matter, which has been assailed by the learned Counsel for the petitioner.

5. Mr. C.N. Sharma, learned Counsel for the petitioner submitted that the scope of Section 15(2) of the Payment of Wages Act is limited to the deduction made from the wages or delayed payment of wages and, therefore, the question about the validity of the order of the dismissal cannot be gone into by the Authority. According to the learned Counsel it is not the case where the application u/s 33(2)(b) of the Act might have been rejected, rendering the order of dismissal invalid or void so as to give a cause of action to the respondents to approach the Authority u/s 15(2) of the Payment of Wages Act. Mr. Sharma, emphasized that the order of dismissal having not been challenged by the non-petitioners, had become final from the date it was passed and, therefore, there was no question of any payment of wages from (but date to the date of order of the Labour Court.

6. Mr. D.K. Parihar, learned Counsel for the non-petitioners No. 2 to 11 the workmen, has contended that up to February 27, 1985 the applications for the approval of the order of dismissal were before the Labour Court and therefore, till that date the concerned workmen should be considered to be in service and their claim for recovery of wages for that period falls within the ambit of Section

15(2) of the Payment of Wages Act.

7. Both the learned Counsel have referred to certain decisions dealing with the scope of Section 33C(2) of the Act and Section 15(2) of the Payment of Wages Act in matters of dismissal of the employees.

8. Section 15(2) of the Payment of Wages Act reads as under:

Section 15 : AIR 1978 SC 995 "Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, Or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or any person acting with the permission of the Authority appointed under Sub-section (1); may apply to such authority for a direction under subSection (3);

Provided that every such application shall be presented within twelve months from the date on which the deduction from wages was made or from the date on which the payment case may be;

Provided further that any application may be admitted after the said period of twelve months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

9 The application under this section can be made under two contingencies. Firstly, when any deduction contrary to the provisions of that Act has been made by the employer and secondly, where any payment of wages has been delayed. The case of the non-petitioners No. 2 to 11 does not fall in either of the categories because during the period of their claim for wages they were not in service. On the other hand the argument of Mr. D.K. Parihar is that the filing of the applications for approval shows that the order of dismissal was only a proposal to dismiss, depending for its finality upon the approval of the Labour Court and therefore till the date of the order directing the withdrawal of the applications file. February 27, 1985, the respondents No. 2 to 11 should be deemed to be in service and as such it was a case of delay in making payment bringing the matter within the preview of Section 15(2) of the Payment of Wages Act.

10. Both the learned Counsel have made submissions on the point as to whether the order of dismissal had become final and in this connection referred to certain authorities where scope of Section 33(2) of the laying down the method of recovery of money due from an employer, just as Section 15(2) of the Payment of Wages lays down the procedure for the claim out of deduction from wages or delay in payment of wages of the employee, has been discussed.

11. In Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, it has been held that a proceeding u/s 33C(2) is a proceeding generally in the nature of an execution proceeding where in the Labour Court calculates the amount of money due to a workman from his employer, or in the workman is

entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. It has been observed that merely by making a claim in a loaded form the workmen cannot give the Labour Court jurisdiction u/s 33C(2). The workman who has been dismissed would no longer be in the employment of the employer. That, it may be that an industrial tribunal may find on an investigation into the circumstances of the dismissal, that the dismissal was unjustified. But, when he comes before the Labour Court with his claim for computation of his wages u/s 33C(2) he cannot ask the Labour Court to disregard his dismissal as wrongful and on that basis compute his wages. According to their Lordships in such matters a determination as to whether the dismissal was unjustified would be the principal matter, and computation of wages just consequential upon such adjudication. It was considered to be wrong to consider the principal adjudication as incidental to computation. It was therefore held that the Labour Court exercising jurisdiction u/s 33C(2) has got to be circumspect before it undertakes an investigation, reminding itself that any investigation it undertakes is, in a real sense, incidental to its computation of a benefit under an existing right, which is its principal.

12. In the case of *M/s Punjab Beverages Pvt. Ltd. v. Suresh Chand* (2) the question arose as to what would be the effect of contravention of Section 33(2) (b) and in that concern the scope of Section 33C(2) of the Act was discussed and it was held that the withdrawal of the application for approval stands on the same footing as if no application u/s 33(2)(b) has been made at all, and in such cases it cannot be said that the approval has been refused by the Tribunal. The Tribunal having had no occasion to consider the application on merits, there can be no question of the Tribunal refusing approval to the employer. Regarding the remedy available it was held as under:

The contravention of Section 33 does not render the order of discharge or dismissal void and inoperative. The only remedy available to the workman for challenging the order of discharge or dismissal is that provided u/s 33A, apart of course from the remedy u/s 10, and he cannot maintain an application u/s 33C(2) for determination and payment of wages on the basis that he continues to be in service. The workman can proceed u/s 33C(2) only after the Tribunal has adjudicated, on a complaint u/s 33A or on a reference u/s 10, that the order of discharge or dismissal passed by the employer was not justified and has set aside that order and reinstated the workman.

13. It was further observed that if the contravention of Section 33 was construed as having an invalidating effect on the order of discharge or dismissal, Section 33A would be rendered meaningless and futile. Such a highly anomalous result would never have been intended by the Legislature.

14. The principle enunciated in the above referred case supports the contention of the learned Counsel for the petitioner that unless, the application u/s 33(2)(b) is rejected by the Labour Court, the order of dismissal would not become void and the employee cannot claim reinstatement or payment of wages subsequent

to the order of dismissal.

15. In the present case the circumstances were peculiar. There was no Industrial Dispute concerning the workmen in question. The matter pending before the Labour Court referred to some other employee Hukma Ram. Though the 21 employees including respondents No. 2 to 11, were not the persons concerned in a dispute before the Labour Court, still by way of abundant caution the Management filed the applications u/s 33(2)(b) of the Act. it is not a case where the petitioner might have contravened the provisions of Section 33(2)(b). It is rather a case where the workmen them-selves raised the objection regarding (he entertainability of the applications so filed by the Management and as their contention found favour with the Labour Court it passed the order dated February 27, 1985, directing the Management to withdraw the application, with further order that on the Manager of the employer failing to do so, the clerk of the Court would return the applications. When the Labour Court did not consider the necessity of the application u/s 33(2)(b) there arises no question of any contravention of any provision of Section 33 by the Management nor would it mean that the Labour Court after application of mind rejected the applications, and thereby rendered invalid the order passed by the Management.

16. In view of the circumstances discussed above the order of dismissal unless set aside by a competent authority in regular process of law, would be treated as final.

17. The pertinent question emerging for determination would therefore be as to whether in a matter like the present one, where the order of dismissal stands. The Authority has jurisdiction to entertain an application u/s 15(2) of the Payment of Wages Act and decide the question regarding the validity of the order of dismissal and then determine as to whether the applicants before the Authority, are entitled to any wages subsequent to the order of dismissal so passed.

18. The question regarding the jurisdiction and findings of the Authority came for consideration before a Full Bench of the Bombay High Court in the case of Viswanath Tukaram Vs. General Manager, Central Railway and Others, . Their Lordships reiterated the principle enunciated by a Division Bench of that Court in the case of A.R. Sarin Vs. B.C. Patil and Another, The Division Bench was called upon to consider the scheme of the Payment of Wages Act and the jurisdiction of the Authority under that Act, and in that decision it was laid down that the Authority had no jurisdiction to decide whether the services of an employee had been rightly or wrongly terminated or whether the dismissal was lawful or unlawful Their Lordships sitting in the Division Bench had observed that such a question would not come within the purview of the special tribunal set up under that Act. While discussing the nature and ambit of the jurisdiction of the Authority, it was observed that the primary function of the Authority was to determine what the wages of the employee were and whether there had been a delay in payment of those wages or a deduction from those wages, and in order

to determine the wages it may be necessary to determine what the terms of the contract were under which the employee was employed and under which he was claiming his wages.

19. Mr. Parihar learned Counsel for non-petitioners No. 2 to 11 has placed reliance on the principle enunciated in the case of Anglo India Jute Mills Co. Ltd. v. The Authority under the Payment of Wages Act and Ors. 1976 Lab. I.C. 946 The Authority has also followed that principle while passing the order challenged in the writ petition. In that case, the Authority Was held to have jurisdiction for deciding the claim of workmen for wages and salary from the date of dismissal to the date of final rejection of employer's application u/s 33(2)(b) of the Act. The facts leading to such a conclusion were that, the petitioner Company, by an order dated September 26, 1966 dismissed the workman from service on certain allegation. At the time of such dismissal, proceedings were pending before the Second Industrial Tribunal of West Bengal in respect of an industrial dispute between the petitioner and its workmen. As such in view of the provisions of Section 33(2)(b) of the Act, the petitioner made an application to the Tribunal for approval of its action of dismissal of the employee. By the order dated November 20, 1968, the said Tribunal refused such approval The petitioner preferred appeal before Hon'ble the Supreme Court. The appeal was dismissed on April 26, 1973 and the application for review was also rejected in January, 1974. By a letter dated May 7, 1983, the aggrieved employee made a prayer for his reinstatement and payment of wages for the period from August 1, 1966 to May 31, 1973, including bonus. The reply was sent to the employee that the matter was being studied. On August 7, 1973 the respondent employee filed the application u/s 15(2) of the Payment of Wages Act for payment of arrears of wages from August (sic), 1966 to July 31, 1973 On September 29, 1973 a second order of dismissal was passed by the petitioner in respect of that employee. On the same date another application u/s 33(2)(b) of the Act was made before the Tribunal for approval of the action of the petitioner, which was pending when the objection of entertain ability of application u/s 15(2) of the Payment of Wages Act was raised before the Authority under that Act. The subject matter of the application before the Authority was the claim of salary for the period from August 1, 1966 to July 31, 1973. The second order of dismissal was passed subsequent to that period, i.e., on September 29, 1973 approval for which had been sought for by an application u/s 33(2)(b) of the Act. In view of the facts that the Tribunal had not approved the order of dismissal passed on September 26, 1966 his Lordship held the employee entitled to claim to be in service of the petitioner at the relevant time. His Lordship did not find any reason to disentitle the employee to wages for the period from August 1, 1966 to July 31, 1973 as claimed by him. It is thus clear that because of the refusal of the Tribunal to approve the first order of dismissal the petitioner was deemed to be in service till the second order of dismissal and as such the Authority under the Payment of Wages Act was held to have jurisdiction to entertain the application u/s 15(2) of the Payment of Wages Act for the period in which the petitioner's order of dismissal was not effective

on account of the refusal of the Tribunal to approve the same.

20. The facts of the present case stand on an altogether different footing. Here neither the provisions of Section 33(2)(b) were attracted nor was the application made under that provision rejected, nor was the order of dismissal set aside by any competent authority.

21. There would be marked distinction between two types of cases i.e. in which either application u/s 33(2)(b) is not filed or is withdrawn and the second, in which the application filed under that provision has been rejected. In the first type of cases, the question of the validity of the order of discharge or dismissal will require probe into the matter while in the second type of cases, it is after the application of mind that the approval is refused.

22. In the present case, the petitioner was not even required to file applications u/s 33(2)(b) still by way of abundant caution he filed the same but was ordered to withdraw it. The order of dismissal in such a situation cannot be said to have been set aside by the Labour Court so as to create a right for the non-petitioners Nos. 2 to 11 to claim the wages for the period in between the order of dismissal and the order of the Labour Court allowing the objection of the workmen regarding the entertainability of the application u/s 33(2)(b) of the Act and directing the petitioner to withdraw them.

23. The case of Sunil Kumar v. Naihati Electrical Supply Co. Ltd. 1986 Lab. I.C. 769 is also of no help to the respondents Nos. 2 to 11 because of the case before the Court being of an altogether different nature. The petitioner in that case was dismissed by the Company he was employed under. The Company filed an application u/s 33(2)(b) of the Act before the Labour Court for approval of the order of dismissal. The Labour Court rejected the prayer. The Company moved the High Court under Article 226 of the Constitution, where the Order of the Labour Court was held. The petitioner approached the Company for the reinstatement and also claimed arrears of wages. The claim of the petitioner was turned down by the Company. The petitioner thereafter filed an application before the Authority under the Payment of Wages Act for directing the Company to pay him the arrears of wages. The Authority dismissed the claim on the ground that it was not maintainable. On appeal the Chief Judge, Small Causes Court, Calcutta, the appellate Authority under the Act, upheld the order of the Authority and dismissed the appeal. The Authority as well as the Appellate Authority placed reliance on the principles enunciated in the case of M/s Punjab Beverages Pvt. Ltd. v. Suresh Chand and Ors. (supra). Their Lordships of the Calcutta High Court, dealing with the case before them, opined that the observations of the Supreme Court had been made relating to a case where application for permission u/s 33(2)(b) is not made or if made and withdrawn. Reference was also made to the observations of the Supreme Court that if the permission or approval is refused by the Tribunal, the employer would be precluded from discharging or punishing the workman by way of dismissal and the action of discharge or dismissal already taken would be void. Their Lordships in view of

these observations opined that there is a distinction between" the two cases where application u/s 33(2)(b) is made and dismissed and the case where the application is not made or made and withdrawn. As observed in the Supreme Court decision, the withdrawal of the application for approval stands on the same footing as if no application u/s 33(2)(b) of the Act has been made at all and in such cases it cannot be said that the approval has been refused. Their Lordships of the Calcutta High Court were of the view that in the case before them as the application u/s 33(2)(b) was dismissed and the dismissal of the petitioner was not approved, the order of the dismissal of the petitioner from service would be considered void and he should be considered as in continuous employment. Considering the application before the Authority under the Payment of Wages Act as maintainable, the orders of the Appellate Authority and the Authority were set aside and the matter was remanded to the Authority with direction to dispose of the application of the petitioner for payment of arrears of wages on merits.

24. The present case, as I have elaborately discussed above stands on an altogether different footing. It is neither a case of contravention of provisions of Section 33 of the Act nor a case where an application required might have been made and rejected. It is rather a case where the petitioner without required to do so had made an application u/s 33(2)(b) of the Act in the Labour Court and was directed to withdraw it on an objection for its maintainability being raised by the workmen.

25. In view of the limited scope of Section 15(2) of the Payment of Wages Act, the Authority under that Act has no jurisdiction to probe into the question of the validity of the order of dismissal. So long that order stands the Authority has no jurisdiction to entertain the application for payment of wages subsequent to the order of dismissal. When, as held by the Labour Court, the provisions of Section 33(2)(b) of the Act were not attracted, the order of dismissal cannot be considered to be inoperative and ineffective till it is set aside by a competent authority in accordance with law. Mere filing an unrequired application and its remaining pending for some time, till the Court directed the petitioner to withdraw the same, would not substantiate the case of the non-petitioners No. 2 to 11 that they were continuing in service during that period and were entitled to wages. The Authority was therefore, in error in assuming jurisdiction to entertain the applications and its order deserves to be quashed.

26 Consequently, the writ petition is allowed. The order dated June 13, 1986 (Annexure-IV) passed by the Authority under the Payment of Wages Act is quashed and the proceedings, if any, taken in consequence to that order are set aside. In the circumstances of the case, there will be no order as to costs.