

(1996) 09 P&H CK 0126
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9028 of 1994

Kehar Singh Sahota

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 20-09-1996

Acts Referred:

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

Citation : (1997) 115 PLR 117

Hon'ble Judges : N.K. Agrawal, J

Bench : Single Bench

Advocate : S.P. Sharma, for the Appellant; R.K. Chhibbar and Anand Chhibbar, for the Respondent

Judgement

N.K. Agrawal, J.—Petitioner Kehar Singh Sahota (since deceased) had filed this petition under Articles 226/227 of the Constitution of India against the order dated 28.1.1994, passed by the Labour Court, Ambala, whereby his application u/s 33-C(2) of the Industrial Disputes Act, 1947 (for short, the Act), was rejected. Since the petitioner died during the pendency of the writ petition, his legal heirs have been brought on record.

2. The workman Kehar Singh Sahota was working as a Senior Clerk. His services were terminated by the employer, M/s. Hindustan Machine Tools Ltd., Pinjore (respondent No. 2), vide order dated 7.9.1979 after enquiry. The petitioner was, however, reinstated with continuity of service and back wages, vide award dated 2.5.1989 given by the Labour Court. The petitioner thereafter filed an application before the Labour Court u/s 33-C(2) of the Act claiming all the benefits like promotion, annual bonus, incentive bonus, earned leave, sick leave, leave encashment, leave travel concession, stitching and washing allowance, etc. that application was, however, dismissed by the Labour Court without going into the merits of the claim on the solitary ground that the petitioner had failed to file a copy of the award.

3. The petitioner's claim is said to have been rejected by the Labour Court

without going into the merits of the matter. Though the petitioner had failed to produce a copy of the award, that was not itself sufficient to dislodge the petitioner's claim. However, the petitioner has now confined his claim to annual bonus and incentive bonus, vide order of this Court dated 13.7.1994.

4. The learned counsel for the petitioner has argued that, since the petitioner was treated to be in service for all purposes under the award, all consequential benefits should follow. The petitioner was reinstated with continuity of service and back wages. Besides, section 33-C(2) did not restrict a claim to the award granted by the Labour Court. A workman could claim from his employer any money or any benefit which is capable of being computed in terms of money u/s 33-C(2) of the Act. If any question arose as to the amount at which such benefit should be computed, then the question may be decided by the Labour Court. The provisions contained in section 33C(2) thus appear to be wide enough and cannot be treated to be in the nature of executing provisions for the purposes of executing an award. If a workman seeks a benefit under the terms of his employment, the matter may be examined on merits u/s 33-C(2) of the Act.

5. The respondent employer has resisted the claim with the plea that whatever has been allowed under the award, that has already been paid to the workman and, therefore, the award stands fully implemented. A total sum of Rs. 2,10,039/- was determined as payable to the workman and, thereafter, the net amount of Rs. 1,15,349/- was paid after adjusting a sum of Rs. 16,331/- towards the General Provident Fund contribution and Rs. 78,359/- as the Income Tax deducted at source. It is also pointed out that, while working out the total amount, a sum of Rs. 14,420/- has been determined as the amount of production incentive onus. This is how the workman is said to have been paid in full satisfaction, and in terms, of the award dated 2.5.1989.

6. The respondents' primary objection to the claim in respect of annual bonus and incentive bonus is based on the plea that the petitioner was entitled to get back wages alone and nothing more. Bonus and incentive bonus were not part of the back wages and, therefore, the petitioner could claim neither annual bonus nor incentive bonus in terms of the award.

7. The petitioner has already been paid a sum of Rs. 14,420/- by way of production incentive bonus. It is, therefore, clear that petitioner's claim has partly been met by the employer. It is not clear as to how much more remains to be paid by way of bonus or incentive bonus for the period of termination. So far as the allowability of bonus and incentive bonus is concerned, a similar matter has been examined by this High Court in *The Haryana State Federation of Consumers Co-operative Wholesale Stores Ltd. (Confed) Vs. Siri Kishan and Another*, Recent Service Judgments 446. That was a case where a workman had been transferred by his employer to a mini Bank which, in turn, terminated his services. The Union raised an industrial dispute and thereupon the Labour Court held the transfer of the workman to the mini Bank as invalid. The workman was reinstated after a lapse of more than 3 years. The employer did not pay back-

wages or other dues to the respondent and, Therefore, a petition was filed by the workman u/s 33-C(2) of the Act claiming wages, bonus, Provident Fund, and interest on arrears. It was held that, after the order of transfer was held to be illegal and the workman was deemed to have continued in service of the earlier employer, the consequence was that the employer had to pay salary and give him all other benefits on the assumption that the workman had continued to serve like the other employees. It was observed that section 33-C(2) did not provide that the workman can claim only wages. On the contrary, it permits the workman to claim the amount of money as well as the other benefits admissible to him. It may be that the amount of money or other benefits are admissible by virtue of an agreement and these may not be wages. Whatever is computable in terms of money can be awarded u/s 33-C(2). Therefore, the workman was held to be entitled to the benefits of Provident Fund and bonus.

8. The Supreme Court had an occasion to examine a matter regarding claim for back wages and bonus in *Suresh Sakharam Chaugule and others Vs. M/s. Parel Cotton Press Factory Pvt. Ltd.*, . In that case, certain workmen were estopped from working in the factory by their employer. Subsequently, they were dismissed from service. From the date of dismissal, a reference regarding the general demands of the workmen was pending before the Industrial Tribunal. Since the order of dismissal was passed without the approval of the Industrial Tribunal, the workers' Union resisted dismissal and thereupon the Management made a statement before the Tribunal that it has withdrawn the dismissal order. The Tribunal, by its award, held that the workmen were entitled to the minimum wages. Thereafter, the workmen moved an application u/s 33-C(2) of the Act, claiming wages and bonus for the period from the date of dismissal. That application was dismissed by the Labour Court on the ground that there were no specific orders reinstating the workmen into service and, therefore, they could not invoke the jurisdiction of the Labour Court u/s 33-C(2) of the Act. Their Lordships of the Supreme Court held that, since the order of dismissal had been withdrawn by the Management, the appellants would be deemed to be taken back in service and entitled to all the back wages from the date when they were estopped from working in the factory; The employer was directed to pay the back wages and bonus as claimed by the appellants.

9. The learned counsel for the respondents has, in support of his contention that no bonus could be paid as it did not form part of the wages, placed reliance on a decision of the Andhra Pradesh High Court in *The Management of Andhra Scientific Co. Masulipatnam, represented by Y.S. Narayana, General Manager, Masulipatnam and Anr. v. The Presiding Officer, Labour Court, Government of Andhra Pradesh, Guntur and Anr.* 1971 LIC 513. It has been observed in that case that the jurisdiction of the Labour Court u/s 33C(2) is like that of executing Court executing a decree. Therefore, the Labour Court can interpret the award for the purposes of execution, though it cannot go beyond it or add to, or subtract from, it. The learned counsel has argued that, since the Labour Court had, in the present case, permitted the payment of back wages only, the

workman could not claim payment of bonus or incentive bonus for the period of his absence from duty. A similar matter has been examined by the Allahabad High Court in *State Bank of India, Lucknow v. Central Government Industrial Tribunal-cum-Labour Court*, and Anr. 83 FJR 514, wherein it was observed that wages "would not include bonus". That was a case where an award was made by the Industrial Tribunal on the basis of a settlement arrived at between the employer and the workman wherein it was provided that the employer would pay to the workman total back wages, besides retrenchment compensation and three months' wages in lieu of notice. On the facts and in the circumstances of that case, petitioner's claim was rejected. Reliance placed by the learned counsel for the respondent on the decision of the Supreme Court in *Bharat Electronics Ltd. Bangalore v. Industrial Tribunal, Karnataka, Bangalore*, and Anr. 1990 (2) S.L.R. 711, is also not of any help to him because, in that case, the question for examination before their Lordships of the Supreme Court related to the night shift allowance. It was held that the workman has to earn night shift allowance by actually working at the night shift and it did not form part of the wages.

10. In the light of the part payment of Rs. 14,420/- made by the respondent-employer to the petitioner in compliance of the award dated 2.5.1989 and also in the light of the view taken by this Court in *Haryana State Federation of Consumers Cooperative's case* (supra) on the question of payment of bonus and the ratio of the decision of the Supreme Court in *Suresh Sakharam Chaugule's case* (supra) the petitioner is held to be entitled to the annual bonus as well as incentive bonus for the period of termination. The amount already paid shall be adjusted and the balance money shall be paid to the petitioner within a period of three months from the date of this order. The writ petition is disposed of accordingly.