

(2015) 09 KAR CK 0226

In the Karnataka High Court

Case No : Writ Petition No. 45224 of 2012 (L-TER)

K.R. Revanna

APPELLANT

Vs

R.V. Savani and Others

RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

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

Citation : (2016) 148 FLR 686 : (2015) 6 KarLJ 669 : (2016) 1 KCCR 281

Hon'ble Judges : S. Abdul Nazeer, J.

Bench : Single Bench

Advocate : A.V. Gangadharappa, Advocate, for the Appellant; V.R. Prasanna, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—Petitioner filed an application at Annexure-A, dated 5-6-2008 before the I Additional Labour Court, Bangalore under Section 33-C(2) of the Industrial Disputes Act, 1947 seeking a direction to the respondents for payment of arrears of salary, gratuity, bonus and other benefits. According to him, he has worked with the respondents for a period of 27 years and that he is entitled for salary for the month of July 2007, gratuity from the date of appointment till the date of dismissal, bonus for the year 2007-2008 and other benefits which are capable of being computed in terms of money, had the petitioner continued in service and retired in the normal course. The respondents have entered appearance and filed their objections. The parties have let in evidence. The Labour Court dismissed the application by order at Annexure-F, dated 30-12-2011. The petitioner has called in question the validity of the said order in this writ petition.

2. Sri A.V. Gangadharappa, learned Counsel for the petitioner would submit that the Labour Court was not justified in rejecting the application of the petitioner on the ground that the claim is not based on any award or settlement. The petitioner has worked with the respondents for over 27 years. He was dismissed

from service without any just cause.

3. On the other hand, learned Counsel appearing for the respondents submits that the claim made by the petitioner is not based on any settlement or award of the Labour Court. The respondents have also denied that the petitioner was terminated from service. It is contended that the petitioner had remained absent without any reason with effect from 2-7-2007.

4. Perusal of the order at Annexure-F shows that the application was rejected mainly on the ground that the claim is not based on any award or settlement. The conclusion of the Labour Court is at paragraph 7, which is as under:

"From the examination of oral and documentary evidence placed on record makes it clear that applicant has failed to prove that with effect from 17-7-2007 he has been refused work by the respondents. On the other hand his evidence and admissions given makes it clear that upto the end of December 2007 he was under treatment and rest. Moreover as noted earlier, the claim made by the applicant is not based on any award or settlement. The claim of the applicant that he has put in 27 years of service and he was working as an accountant is also disputed by the respondent. In an application under Section 33-C(2) of ID Act, this Court has no jurisdiction to enquire about these aspects and give a finding and thereafter compute the amount payable and decide the entitlement."

5. The Hon"ble Supreme Court in State of Uttar Pradesh and Another Vs. Brijpal Singh, has held that a proceeding under Section 33-C(2) is 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. 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. The Labour Court has no jurisdiction to first decide the workman's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. In the instant case, the claim of the petitioner has not been adjudicated by the Labour Court or recognized by the employer. The respondents have contended that the second respondent is not an industry. Therefore, the application is not maintainable. The respondents have also contended that the petitioner has unauthorisedly remained absent from duty from 2-7-2007. These questions have not been factually adjudicated by a Competent Court/Tribunal. The application filed by the petitioner under Section 33-C(2) seeking to decide his entitlement and thereafter to compute the benefit is not maintainable. Therefore, the Labour Court has rightly rejected the application. I do not find any error in the order. The writ petition fails and it is accordingly dismissed. No costs.