
(1993) 03 CAL CK 0064
In the Calcutta High Court
Case No : Appeal No. 648 of 1992

Madan Mohan Das

APPELLANT

Vs

G.T.R. Co. Pvt. Ltd.

RESPONDENT

Date of Decision : 04-03-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 33A, 33C, 33C(2), 33C(3)
Payment of Wages Act, 1936 — Section 15(2), 15(3)

Citation : (1993) 2 ILR (Cal) 155

Hon'ble Judges : Bhagabati Prasad Banerjee, J; Amal Kami Bhattacharjee, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Bhagabati Prasad Banerjee, J.—This is an appeal against the order passed by the learned trial Judge dated May 14, 1992, in matter No. 2225 of 1990 setting aside that part of the order of Payment of Wages authority by which the compensation to the tune of 10 times of the back wages was determined and directed to be paid by the management. The facts are not in dispute.

2. The Appellant was a workman whose service was terminated. After the termination of service there was an Industrial dispute u/s 33A of the Industrial Disputes Act before the Seventh Industrial Tribunal and the said Industrial Tribunal, on consideration of the matter, passed an award dated March 22, 1974, inter alia, holding that the order of dismissal was unjustified and that the workman was entitled to reinstatement with full back wages.

3. Being aggrieved by and dissatisfied with the said award dated March 22, 1974, the management filed a writ application before this Court and obtained a rule and Interim Order of Injunction, but subsequently the said civil rule was dismissed for non-prosecution. The application for restoration was also rejected. Accordingly, the said award reached its finality. Thereafter, the Appellant filed an application u/s 15(2) of the Payment of Wages Act for determination of wages consequent upon the said award of the Tribunal whereupon the authorities under

the Payment of Wages Act directed to pay the back wages together with compensation which was assessed to 10 times of the full back wages.

4. Being aggrieved by and dissatisfied with the said determination made by the Payment of Wages authority the management filed a writ application and that the learned trial Judge on hearing the matter and also considering the facts and circumstances of the case set aside the payment of compensation to the tune of 10 times of the back wages. and the award only to that extent was set aside by the learned trial Judge.

5. Being aggrieved by and dissatisfied with the said order dated May 14, 1992, the workman filed this appeal.

6. Mr. Dasan, the learned Advocate appearing on behalf of the workman, contended that the determination made by the authorities under the Payment of Wages Act u/s 15(3) was validly made inasmuch as the said authority had the jurisdiction to decide what is the amount of back wages and the Payment of Wages authority can also impose compensation as provided u/s 15(3) of the said Act, and in support of his contention reliance was also placed on a Division Bench judgment of this Court in the case of Delta Forging Works v. Manik Karmakar 1977 Lab. I.C. 207 wherein it was held that where the employer asserts that the employee has no right to get wages for the period in question and as such the total wages is refused to him is a clear case of deducted wages and not of delayed payment of wages and the authority under the said Act was justified according to law of compensation to the maximum limit of 10 times of the amount deducted. Accordingly, it was submitted that after the award was made the said non-payment of the back wages amounts to deducted wages for which not only the provisions of payment of wages applies but also the authority under the said Act had also jurisdiction to impose penalty as provided u/s 15(3) of the said Act.

7. Dr. Mukherjee, the learned Counsel appearing on behalf of the Respondent-management, referred to a decision of the Madras High Court in the case of M.S.N.S. Transports, Tiruchirapalli Vs. K. Rajaram and Another, wherein it was held by the Division Bench of Madras High Court that Section 33C(2) of the Industrial Disputes Act is wide enough to cover the case where an award of a Labour Court merely gave a benefit of back wages without specifying the amount the workman had become entitled to receive from the employer. In other words, this is an authority for the proposition that after the award is made the amount of back wages should be computed u/s 33C(2) of the Industrial Disputes Act and that the Labour Court had the authority to decide this question. Reference was also made in the case of Payment of Wages Inspector Vs. Surajmal Mehta and Another, in which it was held by the Supreme Court that where the right of a workman is disputed by an employer, the Labour Court can go into the question whether the workman had a right to receive the said benefit. Sub-section (3) of Section 33C of the Act under which the Labour Court can appoint a Commissioner to take evidence for computing the benefit postulates that it had

jurisdiction to decide whether the workman claiming benefit was entitled to payment where such right was disputed by the employer. A workman whose claim, monetary or otherwise, is disputed by the employer can lodge such a claim before the specified Labour Court u/s 33C of the Act and obtain inexpensive and expeditious remedy for such a claim. The Legislature did not intend to provide alternative remedy both under the Industrial Disputes Act and the Payment of Wages Act. It is clear that the scope of the two Acts, viz., the Payment of Wages Act and Industrial Disputes Act are quite distinct and separate and one cannot be said to overlap the other. Where an Industrial Court passes an award setting aside the termination and also reinstatement with back wages, the provisions of Section 33C(2) is the only forum for determination of the back wages and that in such a case the workman cannot approach the Payment of Wages authority for the purpose of computation of wages and for compensation. No compensation is provided under the provisions of Industrial Disputes Act after an award is passed. What is due on reinstatement is a question to be decided and computed in accordance with the provisions of Section 33C(2) of the said Act. Accordingly, we are of the view of the learned trial Judge even though did not go into the question in detail, but the conclusion reached by the learned trial Judge that compensation to the tune of 10 times of the back wages in the, facts and circumstances of the case cannot be sustained in correct and, accordingly, we are of the view that the Payment of Wages authority had no jurisdiction in the facts and circumstances to compute the back wages inasmuch as such a determination is without jurisdiction and without authority of law. Accordingly we do not find any reason to interfere with the order passed by the learned trial Judge. Accordingly, the appeal is dismissed without any order as to costs.

8. In terms of our order a substantial amount has been paid towards the back wages. In this case the Payment of Wages authority have determined Rs. 76,000 whereas, according to the management, the amount is Rs. 38,000. By the interim order we directed the management to pay total " sum of Rs. 66,000 by instalments, but when the Payment of Wages authority has determined a sum of Rs. 76,000 by way of back wages only. We direct the management to pay the balance sum by monthly instalments of Rs. 5,000 in terms of order dated September 24, 1992, until the sum of Rs. 76,000 are paid. This order is passed considering the fact that the company is not functioning and that the workman concerned must get back wages determined by whatever authority in terms of our order.

9. While making the balance payment the payment already made should be taken into consideration.

10. On the prayer of the learned Advocate appearing for the workman let there be a stay of the operation of the order for 4 weeks as prayed for.

Amai Kanti Bhattacharjee, J.: I Agree.