
(2020) 08 MP CK 0271

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2694 Of 2019

Madhya Pradesh Audyogik Vikas Nigam, Indore

APPELLANT

Vs

Shyamlal S/o Shri Babulal

RESPONDENT

Date of Decision : 31-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 32, 227, 309
Industrial Disputes Act, 1947 — Section 10, 33A, 33(C)(2)

Citation : (2020) 08 MP CK 0271

Hon'ble Judges : Vandana Kasrekar, J

Bench : Single Bench

Advocate : Vivek Nagar, Karpe Prakhar Mohan

Final Decision : Allowed

Judgement

1. The petitioner has filed the present petition under Article 227 of the Constitution of India challenging order dated 13.2.2019 passed by the Presiding Officer, Labour Court, Dhar in Case No.07/IDCLAIM/2018.

2. The petitioner was previously known as M.P. Audyogik Kendra Vikas Nigam (Indore) Ltd. and now known as Madhya Pradesh Industrial Development Corporation. The respondent is an employee of the petitioner/Corporation, who is working on daily wages. That, the respondent/employee filed an application under Section 33 (C) (2) of Industrial Disputes Act, 1947 (hereinafter referred as the I.D. Act) in which it was stated that he is working in the establishment since 21 years and, therefore, as per the circulars issued by the State Government regarding payment of special allowance of Rs.500/- and Rs.1000/- on completion of 10 years and 20 years of service, he is entitled to receive an amount of Rs.1,64,000/-. The petitioner/Corporation filed its reply and contended that under Section 33 (C) (2) of I. D. Act only pre-determined claims can be adjudicated. The proceedings under 33 (C) (2) of I.D. Act are in the nature of execution proceedings and if therefore, is a dispute regarding entitlement of an employee to receive the amount then the same cannot be decided in such

proceedings. It has further been contended that the circular dated 6.9.2008 is not applicable on the petitioner and, therefore, the claim is not maintainable. That, the statement of both the parties was recorded. Ultimately, the Labour court has passed award dated 13.2.2019 and held that the respondent is entitled to receive an amount of Rs.1,14,000/- from the petitioner. Being aggrieved with the said order, the petitioner/Corporation has filed the present petition.

3. Learned counsel for the petitioner has submitted that the Award passed by the Labour Court is illegal. He submitted that while deciding the preliminary objection raised by the petitioner, the learned court below while deciding the said issue, has erred in placing reliance upon M.P. Dainik Vetan Bhogi Karmachari (Seva Ki Sharte) Nigam, 2013. The said rules stands repealed by order dated 7.10.2016 issued by the State Government. He further submitted that the learned court below has failed to consider that circular dated 6.9.2008 is not applicable upon the petitioner/Corporation. The witness of the petitioner had specifically stated that government circulars are not applicable on the Corporation unless adopted and, therefore, also respondent is not entitled to receive any amount. He further submitted that the learned Labour Court has erred in relying upon statement recorded in some other case. He also submitted that the learned court below has failed to consider that the proceedings under Section 33 (C) (2) of I.D. Act are in the nature of execution proceedings. The application is maintainable where the right of a worker is pre-determined by an award, settlement or under any provision of the Act and only quantification is required is to be done. In the present case, no such award, order or settlement has been brought on record wherein it has been held that the respondent is entitled to receive the amount as per circular issued by the State Government. He further submitted that, the learned Court below has failed to consider the judgment of Full Bench of Hon'ble Supreme Court in the case of Municipal Corporation of Delhi vs. Ganesh Razak and another: reported in (1995)1 SCC 235 and it has been held thus:

"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, clearly outside the scope of a proceeding under Section 33 (C) (2) of I.D. Act. The Labour Court has no jurisdiction to first decide the Workman's entitlement and then proceed to compare the benefit so adjudicated on that basis in exercise of its power under Section 33 (C) (2) of I.D. Act. It has further been held that, 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 prior adjudication made in the writ petition filed by some other workmen upholding a similar claim which could be relied on as an adjudication ensuring 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."

Learned counsel for the petitioner has further relied on the judgment passed by the Apex Court in the case of State of Uttar Pradesh and another vs. Brijpal Singh: reported in (2005) SCC (L and S) 1081 and has held that the workman can proceed under Section 33 (C) (2) only after Tribunal has adjudicated on a complaint under Section 33-A 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.

4. Learned counsel for the respondent has submitted that, the Presiding Officer, Labour Court, Dhar by exercising the powers of 33 (C) (2) of I.D. Act has passed an award dated 13. 2.2019 in favour of the respondent. This award is not challenged by the petitioner. The petitioner has contested the award mainly on two points as, firstly; the claim under 33 (C) (2) of I.D. Act is not maintainable before the learned Labour Court as it is not a pre-determined or pre-adjudicated claim and, therefore, needs to be adjudicated under Section 10 of I.D. Act, since the same has not been computed by the Labour Court. Secondly, the rules of 2013 (F-5-3/2006/1/3 dated 30.5.2016) has been revoked vide circular of the State Government dated 7.10.2016 and, therefore, the respondent is not eligible to take benefit of the revoked policy of 2013. He further submitted that the learned Labour court has allowed the claim of the respondent and has granted the arrears of special allowances after completion of 10 years and 15 years of services to the respondent amounting to Rs.1,14,000/- in the light of circulars issued by the State Government under Article 309 of the Constitution of India, dated 6.9.2008 and 30.5.2013. It is undisputed fact that the respondent is a daily wage employee and entitled for special allowances as per circulars dated 6.9.2008 and 30.5.2013 and since the said claim is a statutory right of the respondent therefore, the same is recoverable from the petitioner employer under Section 33 (C) (2) of I.D. Act. That, since the claim of the respondent is a statutory right which tantamount to, an existing right and thus he is entitled to receive the same from the employer and without a cavil of doubt the arrears of special allowance is capable of being computed in terms of money. It is an undisputed fact that the respondent has been working since 1997 and has been reinstated in service as per award dated 27.7.2006. It is further not in dispute that the respondent has completed 10 years of service in year 2007 and he has been working as a daily wager with the petitioner. He further submitted that, the circulars for grant of monetary benefits in terms of special allowances are beneficial in nature for employee and if the said benefits have not been granted to the employee at the time of implementation of the circular then the employee cannot be made suffer for the loss of such benefits. The grant of benefits like special allowances are automatic and ought to be granted as soon as the same are promulgated. To bolster his submissions, learned counsel for the respondent has placed reliance on the following judgments:-

(i) Chief Mining Engineer East India Coal Co. vs. Rameswar and others : AIR 1968 SC 218

(ii) Goverdhan Prasad and others vs. Management of India Oxygen Ltd. : AIR 1984 SC 27.

(iii) The Central Bank of India Ltd. vs. P.S. Rajagopalan and others: AIR 1964 SC 743.

(iv) Nagar Council, Rajpura vs. Tajinder Singh & Others: CA 5873/2006 - Supreme Court of India.

(v) G4S Security Services (India) Pvt. Ltd. vs. Satheesh Kumar K. and others: 2010 (124) FLR 888.

In the light of the aforesaid judgments, learned counsel for the respondent has submitted that, the proceedings under Section 33 (C) (2) of I.D. Act can be raised before the learned Labour court to raise a claim for existing rights and statutory rights tantamount to existing right. Moreover, the scope of 33

(C) (2) of I.D. Act are different and sub Section 2 being wider is not confined to any settlement or award and, therefore, when the existing right is provided for by the statute then the respondent is eligible to raise a claim. Therefore, the petitioner's contentions needs to be set aside and the petitioner may kindly be dismissed with cost.

5. Heard learned counsel for the parties and also perused the record.

6. In the present case, the respondent/employee filed an application 33 (C) (2) of I.D. Act, in which it was stated that he is working in the establishment from so many years and therefore, as per the circulars issued by the State Government regarding payment of special allowance of Rs.500/- and Rs.1000/- on completion of 20 years of service, he is entitled to receive an amount of Rs.1,64,000/-. The petitioner/Corporation filed its reply and contended that under Section 33 (C) (2) of I.D. Act only pre-determined claims can be adjudicated. The proceedings under Section 33 (C) (2) of I.D. Act are in the nature of execution proceedings and if therefore, is a dispute regarding entitlement of an employee to receive the amount then the same cannot be decided in such proceedings.

Section 33 C(2) in The Industrial Disputes Act, 1947 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 4 Chapter VA or Chapter VB], the workman himself or any other person authorized 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"

7. That, statement of the respondent was recorded and on behalf of the petitioner statement of Shri Pradeep Pandit, Assistant Manager was recorded. Ultimately, by 13.2.2019, it was held that the respondent is entitled to receive an amount of Rs.1,14,000/- from the petitioner. That, issue no.2 was framed on the basis of preliminary objection raised by the petitioner that application filed by the respondent is not maintainable. The learned Court below while deciding the said issue has erred in placing reliance upon M.P. Dainik Vetan Bhogi Karmachari (Seva Ki Sharte) Niyam, 2013. The said rules stand repealed by order dated 7.10.2016 issued by the State Government, that is prior to pronouncement of judgment.

8. Learned counsel for the respondent has argued that the proceedings under Section 33(C)(2) of the I.D. Act are in the nature of execution proceedings. He submitted that, as per Section 33 (C) (2) of the I.D. Act, if an employee is entitled to receive from employer any money or any benefit which is capable of being computed in terms of money then in that case an application under Section 33(C)(2) of the I.D. Act is maintainable. The respondent is a daily wage employee and entitled for special allowances as per circulars dated 6.9.2008 and 30.5.2013. However, according to the petitioner/Corporation, only those circulars issued by the State Government would be applicable on the petitioner/Corporation which are adopted by the petitioner/Corporation.

9. In the present case, no document on record which filed by the respondent to show that these circulars are adopted by the Corporation. Therefore, learned Labour Court has erred in relying on these circulars while passing the impugned award. Learned counsel for the respondent has further submitted that the respondent has a statutory right to receive the amount and, therefore, the same is recoverable from the petitioner/employer, as per Section 33(C)(2) of the I.D. Act. However, there is no provision under the Act which provides the said benefit to the respondent. Therefore, it cannot be said to a statutory right. He further contended that neither raised any dispute pertaining to the employment of the respondent with the employer nor any bonafide reason has been expressed

which requires adjudication, therefore, there is no need of any adjudication under Section 10 of the I.D. Act and forcing the respondent to take such a recourse would defy the purpose and scope of Section 33(C)(2) of the I.D. Act. As per the language Section 33(C) it provides that where any employee is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money. In the present case, the issue involved is whether the respondent is entitled for special allowances after completion of 5 years and 10 years of services and for the said purpose entitlement of the employee has to be seen and determined there should be an adjudication. As in the present case there is no adjudication by the Labour Court on this issue. Therefore, the application under Section 33(C)(2) of the I.D. Act is not maintainable.

10. In view of the aforesaid facts and circumstances of the case, the present petition deserves to be allowed and is hereby allowed.

No order as to costs.