
(2009) 06 KAR CK 0016
In the Karnataka High Court
Case No : Writ Petition 6234 of 2006

Management of International Travel Service	APPELLANT
Vs	
Sri A.S. Devaraja	RESPONDENT

Date of Decision : 23-06-2009

Acts Referred:

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

Citation : (2010) 124 FLR 1089 : (2009) ILR (Kar) 3441 : (2009) 6 KarLJ 703 : (2010) 1 KCCR 130 : (2010) 3 LLJ 528 : (2010) 1 SLR 345

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : S.V. Bhat, for the Appellant; A.J. Srinivasan, for the Respondent

Final Decision : Allowed

Judgement

Huluvadi G. Ramesh, J.—Petition is by the management assailing the order passed on the application filed u/s 33(c)(2) of the Industrial Disputes Act, by the Labour Court, Bangalore in Appln. No. 12/1995 on 14.2.2006.

2. The applicant worked under the petitioner management since February 1980 as an Office Boy till he resigned during April 1995 expressing his grievance that due to the ill-treatment, he resigned. Thereafter, he tiled an application u/s 33(c) (2) of the Act to settle his benefits. Labour Court by order dated 8.5.2003, dismissed the application against which, writ petition was filed before this Court. This Court, having observed that the Labour Court failed to apply its mind to the evidence already on record and giving liberty to the parties to adduce evidence, remanded the matter back to the Labour court. On such remand, the award dated 14.2.2006 came to be passed by the Labour Court. Hence, this petition by the management raising several grounds.

3. Heard the counsel appearing for the parties.

4. According to the petitioner's counsel, Labour Court erred in not noticing that it is an application u/s 33(c)(2) of the Act. It is in the nature of an execution

proceedings. Pursuant to adjudication of the claim by the Tribunal/Labour Court, application u/s 33(c)(2) is not maintainable. According to the learned Counsel, without admitting the claim, application u/s 33(c)(2) is maintainable. It is stated the Labour Court erred in not noticing the minimum wages paid for the period from 1.4.1992 to 31.3.1993 and also from 1.4.1994 to 31.3.1995 i.e., difference of Rs. 828/- and Rs. 1100/- respectively and according to them, they have paid more than the minimum wages. The Labour Court has also erred in not noticing that bonus is not applicable to the case of this petitioner as such, his claim ought to have been rejected. Even the leave encashment ordered to be paid is erroneous.

5. Per contra, counsel representing the workman submitted that there is no bar for the Labour Court to adjudicate a statutory claim. The claim of the workman is for more than Rs. 75,000/- but, Labour Court only taking into consideration the non-payment of minimum wages, leave encashment and also bonus for the said period, has awarded a small amount. Although application u/s 33(c)(2) is in the nature of execution proceedings, but in a summary inquiry having determined the same, has passed an order and there is no violation of the provisions of Section 33(c)(2) much less the order does not call for interference.

6. In the light of the arguments advanced, the point for consideration is whether the impugned order requires interference.

7. In the case of *Municipal Corporation of Delhi Vs. Ganesh Razak and Another*, , the Apex Court with reference to Section 33(c)(2) application has held that it cannot adjudicate a dispute of entitlement or basis of claim of the workman. It can only interpret the award or settlement on which the claim is based. It is also stated that without prior adjudication or recognition of the disputed claim of the workman to be paid at the same rate as the regular employees. The proceedings for computation of arrears of wages claimed on that basis is not maintainable.

8. In the case of *Ram Kewal Vs. The Presiding Officer, Labour Court and Another*, , it is held that Section 33(c)(2) and applications under the Industrial Disputes Act are independent of each other and the scope u/s 33(c)(2) is wider and takes within its purview the case of the workman who claims any benefit which could be computed in terms of money just as an executing court is competent to compute the dues. The Labour Court is also competent to construe the settlement, award or a statute under which the right is claimed.

9. In the instant case, on noticing the order passed by the Labour Court, in computing the income although it has acted as an executing court, as a matter of entitlement it has proceeded to calculate by way of arithmetical calculations. Although the management has disputed this aspect, as a matter of preliminary inquiry, it has proceeded to pass an order calculating the number of years service rendered and non-payment of minimum wages for the period and non-payment of earned leave encashment and bonus. Although the dispute has not been

resolved but, in the same proceedings while extending the benefit as per entitlement under the Statute, if a preliminary work is done, it is not in negation of Section 33(c)(2) of the Act much less the ratio of the Apex Court in the decisions noted above, is not applicable to the case on hand as the exercise is being done only to calculate the statutory entitlement and not otherwise.

10. In that view of the matter, the order passed by the Labour Court does not call for interference. Accordingly, petition is dismissed. Amount awarded be settled to the workman within two months.