

(2016) 02 J&K CK 0043

In the Jammu And Kashmir High Court

Case No : OWP Nos. 792 of 2014, 793 of 2014, 794 of 2014, 795 of 2014, 796 of 2014, 894 of 2014, 895 of 2014, 896 of 2014, 897 of 2014, 898 of 2014, 899 of 2014, 900 of 2014, 901 of 2014, 902 of 2014, 903 of 2014, 904 of 2014, 905 of 2014, 906 of 2014, 907 of 2014,

Managing Director JKPCC

APPELLANT

Vs

J&K Industrial Tribunal

RESPONDENT

Date of Decision : 16-02-2016

Acts Referred:

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

Citation : (2016) 2 JKJ 516

Hon'ble Judges : Mr. B.S. Walia, J.

Bench : Single Bench

Advocate : Mr. Muzaffar Ahmad Baqal, Advocate, for the Respondent No. 2.; Mr. S.S. Rizvi, Advocate, for the Appellant/Petitioners

Final Decision : Dismissed

Judgement

'''

Mr. B.S. Walia, J. - This order will decide OWP Nos. 792/2014, 793/2014, 794/2014, 795/2014, 796/2014, 894/2014, 895/2014,"'''

896/2014, 897/2014, 898/2014, 899/2014, 900/2014, 901/2014, 902/2014, 903/2014, 904/2014, 905/2014, 906/2014, 907/2014, 908/2014,"'''

909/2014, 910/2014 and 911/2014 as identical point for determination is involved in all the writ petitions."'''

2. At the very outset, it needs mention that on 3rd February 2016, learned counsel for the petitioners requested for the cases to be kept on board"'''

for 4th February, 2016 in order to enable him to make submissions. Acceding to the request, the cases were adjourned to 4th February 2016."'''

However, on 4th February, 2016, learned counsel for the petitioner did not put in appearance despite the cases having been called out in the pre-"",

lunch as well as post lunch session. In the interest of justice, the cases were kept on board for 5th February, 2016 to be taken up for hearing at Sr."",

No. 1 while making it clear in the order that in case of non-representation on behalf of the petitioner on 5th February, 2016, the cases would be"","",

considered on the basis of submissions by learned counsel for the respondents as well as material on record. On 5th February 2016, when the"","",

cases were called out for hearing, learned counsel for the petitioner again did not put in appearance. In the circumstances, arguments of learned"","",

counsel for the respondent workmen were heard and orders passed dismissing the writ petitions with costs of Rs. 5000/- in each case."","",

3. However, before the orders could be signed, learned counsel for the petitioners appeared and stated that he had not been able to appear due to"","",

circumstances beyond his control and requested that he be given an opportunity of hearing. In the interest of justice, the cases were listed for re-"","",

hearing for February 12, 2016 on which date both learned counsel were heard but the matter was again listed for February 16, 2016 in order to"","",

enable learned counsel for the respondent workmen to address concluding arguments qua OWP No. 894/2014 and 908/2014."","",

4. Learned counsel for the petitioners contended that vide office Order No. 82 of 2008, dated July 10, 2008 the J&K Service (Leave) Rules were"","",

made applicable by the petitioner Corporation to its employees w.e.f. April 1, 2008, that no doubt in terms thereof, the respondent workmen were"","",

entitled to 300 day' earned leave salary encashment as against the earlier entitlement of 120 days earned leave encashment as per leave rules of"","",

J&KPCC Ltd. but as per the decision, cases already settled after April 1, 2008 till date of issuance of orders i.e. July 10,2008 were not to be re-"","",

opened, secondly, respondent workmen having been paid 120 days earned leave encashment on retirement, could not have made a claim"","",

thereafter, thirdly, the petitioner Corporation was paying dues to its employees out of its own resources and had no budgetary support of the State"","",

or Central Government, lastly, the application before the Industrial Tribunal cum Labour Court was hit by delay, therefore ought to have been"","",

dismissed."","",

5. Learned counsel for the respondent workmen on the other hand reiterated his Submissions that the grievance of the respondent workmen,,,

leading to passing of the impugned order was that prior to April 1, 2008, earned leave salary admissible to an employee of the petitioner",,,

Corporation on retirement was 120 days but a decision was taken by the petitioner Corporation on July 10,2008 that with effect from April 1,",,

2008, leave rules as applicable to State Government employees were made applicable to the employees of the petitioner Corporation in terms of",,,

which the respondent workmen were entitled to 300 days earned leave salary encashment on retirement. Learned counsel contended that the,,,

respondent workmen in all the writ petitions had retired after April 1,2008, consequently were entitled to payment of 300 days earned leave salary",,,

encashment instead of 120 days as was the position prevailing prior to April 1, 2008. He contended that in view of the decision of the petitioner",,,

Corporation dated July 10, 2008, the petitioner Corporation was duty bound under law to make payment of earned leave salary encashment to its",,,

retired employees in accordance with the rules and regulations applicable i.e. @ 300 days.,,,

6. Learned counsel further argued that on non grant of earned leave salary to the private respondents as per the criteria applicable as per decision,,,

dated July 10, 2008, the respondent workmen represented vide representation dated June 9,2010 for grant of benefits as per decision dated July",,,

10, 2008 but on failure of the petitioner Corporation to redress the grievances of the respondent workmen, the respondent workmen left with no",,,

choice were constrained to invoke the jurisdiction of the Industrial Tribunal/ Labour Court, Srinagar, under the Industrial Disputes Act, Act, which",,,

vide a well reasoned Award dated June 28,2013, allowed their claim.",,,

7. Learned counsel argued that the challenge by the petitioner Corporation to the Award of the Industrial Tribunal Cum Labour Court, J&K",,,

Srinagar, on the ground that earned leave encashment had been made to the respondent workmen @ 120 days and that the jurisdiction of the",,,

Industrial Tribunal Cum Labour Court had been invoked after a lapse of 2 to 3 years was misconceived since the petitioner Corporation was duty,,,

bound under law to make payment of earned leave salary to its retired employees in accordance with the rules and regulations applicable. Learned,,,

counsel contended that once it was the admitted position that a decision had been taken by the petitioner Corporation on July 10, 2008 to apply",,,

the leave rules of the State Government where under the respondent workmen were entitled to grant of 300 days earned leave salary in case of",,,

retirement after April 1, 2008 instead of @ 120 days as prevailing prior to April 1, 2008, then the petitioner Corporation was duty bound under",,,

law to release earned leave salary of 300 days to its employees retiring after April 1, 2008. Learned counsel contended that in the circumstances",,,

the action of the petitioner Corporation in denying release of 300 days earned leave salary to the respondent employees retiring after April 1, 2008",,,

instead, making payment of 120 days earned leave salary was legally unsustainable and it did not lie in the mouth of the petitioner Corporation to",,,

deprive the respondent employees of their legal entitlement. It is contended that all the respondent workmen retired after April 1, 2008, therefore",,,

in the circumstances, it was not open to the petitioner Corporation to deny the benefit of 300 days earned leave salary to the respondent workmen",,,

in view of adoption of State Government Leave Rules w.e.f. April 1, 2008.",,,

8. With regard to the plea that payment had been made to the respondent workmen @ 120 days, it was contended that the respondent workmen",,,

could not be denied their legal entitlement in view of decision of the petitioner Corporation dated July 10, 2008 in favour of the respondent",,,

workmen. With regard to the plea that the respondent employees had approached the Industrial Tribunal Cum Labour Court after a lapse of 2 to 3",,,

years, learned counsel for the respondent workmen states that the respondent employees were in no position to bargain with the petitioner",,,

Corporation, therefore had been pursuing the matter with the petitioner Corporation besides had represented to the petitioner Corporation for",,,

redress of their grievance vide representation dated June 9, 2010 and it was on failure of the petitioner Corporation to redress the grievance of the",,,

respondent workmen that the respondent workmen invoked the jurisdiction under the Industrial Disputes Act, 1947. It was contended that in view",,,

of entitlement of the respondent workmen to the benefit claimed in terms of the decision of the petitioner Corporation, the question of funds if any",,,

was the responsibility of the petitioner Corporation. It was contended that on the failure of the petitioner Corporation to meet the just demands of",,,

the respondent workmen, the respondent employees had no option but to approach the Industrial Tribunal Cum Labour Court, Srinagar." ,,,

9. Learned counsel states that in the circumstances, the writ petitions filed by the petitioner Corporation are without any merit and liable to be" ,,,

dismissed with costs.,,,

10. I have considered the submissions advanced by learned counsel for the parties and I am of the considered view that for the reasons recorded,,,

hereunder, all the writ petitions are without merit, therefore, liable to be dismissed." ,,,

11. Applications were filed by the respondent workmen u/s Section 33-C(2) of the Industrial Disputes Act, 1947 read with Section 15 of the" ,,,

Payment of Wages Act. However, in essence the claim is in terms of Section 33(C) (2) of the Industrial Disputes Act, 1947. Section 33 (C) (2) of" ,,,

the Industrial Disputes Act, 1947 is reproduced hereunder for ready reference:" ,,,

33C. Recovery of money due from an employer.- ,,,

(1)XXX ,,,

(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:] ,,,

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in" ,,,

writing, extend such period by such further period as he may think fit.]" ,,,

(3) xxx (5) ,,,

12. The scope of Section 33 (C) (2) was interpreted by the Hon'ble Supreme Court in MCD v. Ganesh Razak reported as (1995) 1 SCC ,,,

235 Relevant extract of the said judgment is reproduced hereunder: ,,,

12. The High Court has referred to some of these decisions but missed the true import thereof. 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 the Act. The Labour Court has no jurisdiction to first decide the workmen'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. It is only when the,,,

entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof,,,

some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33-C(2) like that,,,

of the Executing Court's power to interpret the decree for the purpose of its execution.""" ,,,

13. It is not the stand of the petitioner Corporation of decision not having been taken enhancing the earned leave salary encashment for employees,,,

of the petitioner Corporation from 120 days as prevailing prior to April 1, 2008 to 300 days w.e.f. April 1, 2008 vide decision dated July 10, 2008",,,

though subject to the condition that cases already decided after April 1, 2008 till July 10, 2008 would not be re-opened. Thus the entitlement to",,,

300 days i.e. 10 months earned leave salary qua employees retiring after April 1, 2008 has been admitted by the petitioner Corporation." ,,,

Reference in this connection is made to paragraph No. 3 and 4 of the petitioner Corporations reply to the application u/s 33(C)(2) besides,,,

decision dated July 10, 2008 wherein sanction was accorded to the implementation of Leave Rules, T.A. Rules and J&K (Civil Service) Medical",,,

Attendance Rules as applicable to State Government Employees to employees of the petitioner Corporation w.e.f. April 1, 2008." ,,,

14. Relevant paragraphs of the application as also reply of the petitioner Corporation thereto before the Labour Court are reproduced hereunder:,,,

3. That in terms of SRO 124, dated 17-04-1998 the opposite party bound to pay 10 monthly leave salary to the applicant. Also vide Government",,,

Notification Order No. 19-GR of 1980, dated 20-04-1980, 10 monthly leave salary is admissible to the Corporation as per Factories Act." ,,,

4. That the applicant is a workman and the Opposite Party No. 1 is the employer under the Section 22 of Industrial Disputes Act. That the,,,

opposite party is the person responsible for the payment of wages under Section 3 of the Act.,,,

6. That the applicant had time and again requested the opposite party to pay the remaining leave salary of 6 months which is due to the applicant.,,,

7. That the applicant has given joint representation to the opposite party along with other employee of the opposite party. Copy of representation,,
annexed herewith.,,,

12. That the cause of action has accrued to the applicant firstly on the date when the leave salary became due i.e. 30/09/2008 and finally on,,,

09/06/2010 when the applicant gave joint representation to the opposite party No. 1 and is still continuing.,,,

Reply filed by the petitioner corporation to paragraph No. 3, 4 and 6 only of the application filed by the respondent workmen.".,,,

3. That this Hon'ble Court has no jurisdiction to entertain such claims after the retirement of any employee as the applicant has accepted the,,,

benefits at the time of retirement from the employment of the Corporation and the applicant has no reason to claim the benefits, which are not",,,

admissible under JKPC rules, as the Corporation is paying salary, gratuity etc. to the employee out of its own resources and has no budgetary",,,

support of the state or central government.,,,

S.No.,OWP No./Year,Date of retirement,"Date of institution of
application

1.,792/2014,30.09.2008,20.04.2011

2.,793/2014,30.09.2008,27.04.2011

3.,794/2014,31.01.2009,20.04.2011

4.,795/2014,30.04.2011,13.02.2012

5.,796/2014,30.04.2010,20.04.2011

6.,894/2014,30.04.2008,20.04.2011

7.,895/2014,28.02.2010,13.02.2012

8.,896/2014,31.01.2011,13.02.2012

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9.,897/2014,30.04.2010,11.05.2011

10.,898/2014,30.08.2010,06.02.2012

11.,899/2014,31.03.2009,11.05.2011
12.,900/2014,31.07.2008,11.05.2011
13.,901/2014,31.10.2009,11.05.2011
14.,902/2014,31.07.2008,11.05.2011
15.,903/2014,31.05.2009,27.04.2011
16.,904/2014,30.06.2011,13.02.2012
17.,905/2014,31.03.2010,13.02.2012
18.,906/2014,31.03.2011,13.05.2011
19.,907/2014,31.01.2011,13.02.2012
20.,908/2014,30.06.2008,27.04.2011
21.,909/2014,31.03.2009,11.05.2011
22.,910/2014,30.09.2008,20.04.2011
23.,911/2014,30.04.2010,10.08.2011