

(2009) 04 BOM CK 0124

In the Bombay High Court

Case No : Writ Petition No. 167 of 2002

Managing Director, Kannad Sahakari Sahkar Karkhana Ltd.,
Aurangabad

APPELLANT

Vs

Vishwanath Jagannath Kshirsagar and others

RESPONDENT

Date of Decision : 22-04-2009

Acts Referred:

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

Citation : (2009) 122 FLR 948

Hon'ble Judges : V.R. Kingaonkar, J

Bench : Single Bench

Advocate : V.N. Upadhye, for the Appellant; A.S. Shelke, for the Respondent

Final Decision : Dismissed

Judgement

V.R. Kingaonkar, J.—By this petition, petitioner challenges the order passed by learned Presiding Officer of Labour Court, Aurangabad, in proceedings u/s 33-C (2) of the Industrial Disputes Act, 1947 initiated vide application (IDA) No. 15 of 1990. By the impugned order, the Labour Court allowed application of the respondent No. 1 and directed the petitioner to pay an amount of Rs. 80,150.89 alongwith interest @ 6% p.a. to him.

2. Indisputably, the respondent No. 1 was appointed by the petitioner as Godown Keeper in the year 1975. He was placed under suspension due to alleged misconduct and thereafter, on 5.12.1981, his services were terminated. He challenged the order of termination by filing an application (BIR) No. 32/1982 in the Labour Court, Aurangabad. The termination order was set aside. The Labour Court granted reinstatement with full backwages and benefit of continuity of service to him. The petitioner challenged the said order of the Labour Court by filing an appeal which was dismissed by the Industrial Court. The High Court, in writ petition No. 656/1989, confirmed orders of both the Courts and thus, ended the first round of litigation.

3. The respondent No. 1 filed contempt petition No. 6/1990 alleging that though he was entitled to seek backwages, yet, he was not paid the due amount. This Court held that in the contempt petition the lis is between the Court and the litigant. This Court held that the contempt proceedings could not be utilised as a lever to execute the order of the Labour Court regarding payment of backwages. The respondent No. 1 thereafter preferred contempt appeal which came to be dismissed by a Division Bench of this Court. The respondent No. 1 thereafter approached the Labour Court by filing an application under the provisions of section 33-C (2) of the Industrial Disputes Act, 1947 seeking recovery of the monetary benefits. On consideration of rival contentions, the Labour Court allowed the application.

4. Mr. Upadhye would submit, that the recovery certificate has been issued by the respondent No. 3 without giving proper opportunity of hearing to the petitioner. He would further submit that the time-barred claim could not have been allowed. He seeks to rely upon observations in *State of Uttar Pradesh and Another Vs. Brijpal Singh*, . It is the contention of Mr. Upadhye that the application should not have been allowed because similar prayers put forth by the respondent No. 1 in the contempt proceedings have been rejected by this Court and, therefore, the issue has been decided in the earlier proceedings. Consequently, he urged to allow the petition.

5. So far as earlier decision of this Court in contempt proceedings is concerned, let it be noted that no specific finding has been rendered by this Court on the question of eligibility of the respondent No. 1 to recover the backwages as directed by the Labour Court and the Industrial Court in the previous proceedings. What this Court observed was that the contempt proceedings cannot be utilized for the purpose of execution of such order. In other words, this Court held that the question of execution is outside the realm of the contempt which was alleged to have been committed. It is pertinent to note that the amount of backwages was not crystallized at that stage. The Court held that for such unspecific amount, the contempt proceedings could not be resorted to and particularly in the teeth of alternate remedy available u/s 33-C of the Industrial Disputes Act. Needless to say, the observations of this Court in contempt proceedings cannot be regarded as *res judicata*. This Court, in the exercise of contempt jurisdiction, was not competent to determine the issue regarding a particular amount payable to the respondent No. 1 towards the arrears of the backwages. Nor any particular finding is recorded which would disentitle the respondent No. 1 from claiming the backwages. In this view of the matter, it cannot be said that the claim of the respondent No. 1 is abrogated or that he is barred from seeking recovery of such amount.

6. It cannot be ignored that the respondent No. 1 is litigating continuously to establish his rights, he never abandoned the claim for backwages. The Courts found, during course of first round of litigation, that the termination order issued by the petitioner was illegal and erroneous. The reinstatement was directed by

the Labour Court and the Industrial Court. The contention of the petitioner before the Labour Court was that the calculations made by the respondent No. 1 are improper. It was also contended that he was not entitled to seek interest amount. In view of continuity of the cause of action, his claim could not be treated as barred by limitation. There is no specific limitation to apply for backwages u/s 33-C (2) of the Industrial Disputes Act, 1947. The speedy remedy is provided for decision of just claims u/s 33-C (2) of the Industrial Disputes Act. The quantification of the payable amount is the main, subject matter to be dealt with in such proceedings. The Labour Court has quantified the amount having regard to the relevant documents placed on record. The finding on this issue about, quantum of amount payable cannot be disturbed nor any ground is put forth to dislodge such finding.

7. A Co-ordinate Bench of this Court, in "The Municipal Council Amalner v. Ashok Dashrath Sali and another" in Writ Petition No. 6888/2004, held that interest could be granted at rate of 9% p.m. from the date of the order relating to the payment due. Similarly, a Single Bench of Allahabad High Court, in "Union of India and another v. S.B. Agnihotri and another 1999 (II) LLJ 603", held that Labour Court has equitable jurisdiction to award the interest. It is well settled that the Labour Court or the Industrial Court are the Courts of equity and, therefore, in as appropriate case, the interest can be granted. The reliance placed by learned Counsel for the petitioner on "State of U.P. and another v. Brijpal Singh" (supra) is rather misplaced. In the given case, the Apex Court held that appropriate proceedings could be before a forum to which reference u/s 10 of the Industrial Disputes Act was made. The fact situation in the given case was altogether different. It has been held that the workman can proceed u/s 33-C (2) only after the Tribunal has adjudicated on a complaint u/s 33-A or reference u/s 10 of the Industrial Disputes Act. In the present case, there was already adjudication in the first round of litigation and the respondent No. 1 was found entitled to recover the backwages as a consequential relief on his reinstatement. It is explicit that after adjudication of his entitlement, he initiated the proceedings u/s 33-C (2) of the Industrial Disputes Act.

8. For the reasons aforesaid, there is hardly any merit in the writ petition. Consequently, the petition is dismissed, with costs which are quantified at Rs. 2000/-. Rule is discharged accordingly.