
(2002) 11 P&H CK 0038
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4380 of 1982

Mange Ram

APPELLANT

Vs

The Presiding Officer Labour Court and Others

RESPONDENT

Date of Decision : 25-11-2002

Acts Referred:

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

Citation : (2003) 97 FLR 137 : (2003) 133 PLR 439

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : R.K. Malik, for the Appellant; Liakat Ali, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—Petitioner-workman, Mange Ram has invoked the extra ordinary writ jurisdiction of this Court under Article 226 of the Constitution by challenging the order dated 9.4.1982 passed by the Labour Court, Rohtak in application No. 6 of 1979 filed u/s 33C(2) of the Industrial Disputes Act, 1947 (for brevity the Act) in which prayer was made for grant of salary from 13.11.1972 till 10.12.1975.

2. Brief facts of the case as revealed in the present petition are that the petitioner was a regular employee of the Haryana State Electricity Board (for brevity the Board). He proceeded on leave on the ground of sickness on 6.11.1972 and on recovery from sickness on 13.11.1972 he reported for duty alongwith a medical fitness certificate from a registered medical practitioner. However, the allegation is that he was not allowed to join the duty. He represented to the Executive Engineer as well as Chief Engineer (Operation) of the Board at Chandigarh by sending registered AD notices dated 21.3.1973, 12.1.1974, 28.9.1974, 24.12.1974, 4.3.1975 and 18.8.1975. Eventually he was allowed to join on 10.12.1975. Charge sheet is alleged to have been issued on 15.9.1977 which is received by the petitioner on 21.8.1978 in which allegations have been levelled that the petitioner remained absent from duty from 6.11.1972

to 10.12.1975. He replied to the charge sheet on 20.9.1978. However, no action was taken by the respondent No. 2. Thereafter, petitioner filed an application u/s 33C(2) of the Act claiming salary for the period 6.11.1972 to 10.12.1975. After the filing of this application, respondent No. 3 on 29.2.1980 (Annexure P. 1) passed an order that the period of absence from 6.1.1972 to 10.12.1975 would be treated as leave of the kind due.

3. In the written statement filed on behalf of respondent Nos.2 and 3, the stand taken is that the petitioner was asked to submit medical certificate on 17.11.1972 by the S.D.O. (Operations), H.S.E.B, Panipat vide letter Annexure R/3/1 but he failed. It has further been averred that the petitioner did not wish to join at the place of posting given to him after transfer i.e. Pehowa. Copy of the order dated 21.3.1973 posting the petitioner at Pehowa has been placed on record as Annexure R/3/2. Thereafter on 28.2.1974, the petitioner was given posting in the office of Chief Auditor HSEB Chandigarh vide Annexure R/3/3. He did not even joined at Chandigarh. On 24.11.1975, he was again: given posting order and he joined accordingly. Therefore, it is asserted that the petitioner remained absent from duty from 6.11.1972 to 10.12.1975. With regard to the application filed u/s 33C(2) of the Act, the respondents have admitted this fact.

4. The Labour Court on the basis of the averments made, framed the following issues:

1. Whether the issuance of charge sheet to the applicant amounts to divesting this Court from its jurisdiction?

2. Whether the applicant was prevented from resuming his duties on 13.11.1972 after availing sick leave, by the concerned authorities? If so to what effect?

3. To what amount the applicant is entitled to in terms of money computation of his claim?"

5. On issue No. 1, the Labour Court reached the conclusion that in view of the order dated 29.2.1980 passed by respondent Nos.2 and 3, which has been duly admitted by the petitioner-workman and accordingly the period from 6.11.1972 to 10.12.1975 has been treated as leave of the kind due. Therefore, it had no jurisdiction to decide and entertain the application because it would require decision on validity or invalidity of the aforementioned order. The Labour Court further observed that u/s 33C(2) of the Act, the question of validity or invalidity of the order cannot be gone into. Another reason for dismissing the application u/s 33C(2) of the Act is that the matter was under consideration of the departmental authorities and the claim application was premature as the matter was not finally decided one way or the other.

6. On Issue Nos.2 and 3 it was held that the petitioner-workmen is not entitled to computation of his benefits as he has no existing right to claim those benefits in view of the order dated 29.2.1980.

7. Shri R.K. Malik, learned counsel for the petitioner has argued that the Labour

Court should have decided whether the petitioner-workman was entitled to the benefit of salary from 3.11.1972 to 10.12.1975. According to the learned counsel, the Labour Court has committed an error in law by refusing to decide the afore mentioned question on an illegal ground that he was not entitled to the benefit in view of the order dated 29.2.1980 treating the afore mentioned period as leave of the kind due. According to the learned counsel the question before the Labour Court was incidental as to whether there was any existing right u/s 33C(2) of the Act which should have been decided. In support of his submission, the learned counsel has placed reliance on a Division Bench judgment of this Court in the case of Ashok Kutnar v. Presiding Officer, Labour Court 1992(5) S.L.R. 302.

8. Shri Liakat AH, learned counsel for the respondents has supported the order of the Labour Court by arguing that the provisions of Section 33C(2) of the Act would not be attracted because the proceedings u/s 33C(2) of the Act are in the nature of execution proceedings and once it is shown that the period for which the wages are claimed has been treated as leave of the kind due then the Labour Court would be divested of its jurisdiction to decide the application u/s 33C(2) of the Act.

9. After hearing the learned counsel for the parties and perusing the impugned order passed by the Labour Court, I am of the considered view that there is merit in this petition and the same is liable to be dismissed. Section 33(2) of the Act pre-supposes the existence of a right of the workman to receive the benefit from the employer. The afore mentioned provision reads as under:-

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

(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."

10. A perusal of Section 33(2) of the Act shows that in cases where computation of benefit in terms of money is involved, the Labour Court would have the jurisdiction to even interpret the award or the settlement reached, for example under Sections 18 and 19 of the Act. The Section pre-supposes the existence of a right and not of a dispute with regard to that entitlement. The provision is analogous to execution proceedings. It is well settled that the Labour Court can even interpret the award or the settlement as has been held by a Constitution Bench of the Supreme Court in the case of The Central Bank of India Ltd. Vs. P.S.

Rajagopalan etc., . To the same effect are the judgments in the cases of Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others, . Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others, . Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, . The question whether Section 33C(2) of the Act would apply to the facts and circumstances of the case in hand is to be answered by finding out whether the claim of entitlement of the petitioner-workman is admitted either by recognition of the employer or by some earlier adjudication like the award or settlement. In case of dispute, the Labour Court cannot assume jurisdiction and start deciding first the question of entitlement and then computing the same. In Municipal Corporation of Delhi Vs. Ganesh Razak and Another, , this question again fell for consideration where some daily rated/casual worker has made a claim that they be paid wages at the same rate as that of a regular worker as it was asserted that they have been doing the same kind of work and were thus entitled to be paid wages at the same rate as regular worker on the principle of equal pay for equal work. The employer disputed and there was no earlier adjudication by way of award or settlement showing that they were entitled to be paid at the same rate as a regular worker. It was in these circumstances that the claim of the petitioner-workman was declined and relying on the judgments mentioned in this para above, concluded as under:

"... 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 u/s 33C(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 u/s 33C(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 u/s 33C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution."

11. The judgment of this Court in Ashok Kumar's case relied upon by Mr. R.K. Malik would not come to the rescue of the petitioner-workman because in that case already award dated 4.12.1981 was in existence and the workman under the award has reported for duty. Therefore, there was a clear determination of the rights of the parties by the adjudication before the Labour Court by the earlier award which according to the judgment in Ganesh Razak's case (supra) is a condition precedent for exercising jurisdiction by the Labour Court u/s 33C(2) of the Act. Therefore, I have no hesitation to conclude that the afore mentioned judgment has no bearing on the facts of the present case. The writ petition is thus devoid of any merit and is thus liable to be dismissed,

12. For the reasons recorded above, this petition fails and the same is dismissed.