

(2015) 04 RAJ CK 0095
In the Rajasthan High Court
Case No : Civil Writ Petition No. 17165 of 2012

Mathura Prasad Sharma

APPELLANT

Vs

The S.D.O. and Others

RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(C)(2), 33(C)(4)

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 18(3), 18(8)

Citation : (2015) 04 RAJ CK 0095

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : J.P. Sharma, for the Appellant; Dharmendra Pareek, Addl. Govt. Counsel, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Alok Sharma, J.

1. Vide award dated 17.2.1994 the Labour Court, Bharatpur directed reinstatement of the petitioner in service with full back-wages by the respondent No. 1-CIMMCO Limited (hereinafter "the respondent company"). The said award was challenged before this Court as also before the Hon'ble Apex Court-without success and has attained finality.

2. Subsequent to the passing of the award dated 17.2.1994 by the Labour Court, Bharatpur the petitioner has not been conferred the benefit of back-wages as directed. In the circumstances he moved an application under section 33(C)(2) of the Industrial Disputes Act, 1947 (hereinafter "the Act of 1947") before the Labour Court for payment of due wages. Vide judgment dated 30.5.2000 the Labour Court directed the payment of Rs. 2,53,559/- along-with interest @ 12% p.a. from the date the said amount became payable till the date of payment. The payment even as per the judgment dated 30.5.2000 not having been made by the respondent company, an application for execution was moved by the petitioner whereon the Labour Court forwarded its judgment dated 30.5.2000 to

the State Government for recovery of the amounts due to the petitioner from the respondent company as arrears of land revenue.

3. Following the reference aforesaid, on 11.5.2001 the SDO, Bharatpur issued notice to the respondent company for recovery of an amount of Rs. 2,53,559/- + interest @ 12% p.a in terms of the Judgment dated 30.5.2000 passed by the Labour Court. On 26.6.2001 the Tehsildar attached the property of the respondent company and fixed the date in the matter as 23.7.2001 for auctioning it for recovery of the amount due under the Judgment of the Labour Court rendered on 30.5.2000. The order-sheet dated 29.8.2005 before the SDO, Bharatpur records that the respondent company filed an application on 30.5.2005 accepting its liability to pay in terms of the Judgment dated 30.5.2000.

4. Counsel for the petitioner submits that despite a right vesting in the petitioner in terms of the final Judgment dated 30.5.2000 passed by the Labour Court under section 33(C)(2) of the Act of 1947 pursuant to the award dated 17.2.1994 and despite the initiation of proceedings under section 33(C)(4) and attachment of the property of the respondent company, no further steps have been taken for the last about 13 years and the petitioner- a poor workman continues to suffer penury and mental trauma. It has been submitted that in these circumstances the SDO, Bharatpur be directed to immediately take effective steps for recovery of the amount due under the Judgment dated 30.5.2000 and to facilitate making it over to the petitioner without any further delay.

5. Mr. G.K Garg appearing for the respondent company has submitted that in compliance with the award dated 17.2.1994 the petitioner was taken back on duty. He submits that there was subsequent a lock out in the respondent company at Bharatpur on 13.11.2000. A reference was thereafter made to the BIFR by the respondent company under section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter "the Act of 1985"). It has been submitted that during the proceedings under the Act of 1985 M/s. Titagarh Wagons Ltd. agreed to take over the industrial unit of the respondent company situate at Bharatpur. A notice was also issued on 14.9.2008 lifting the lockout. Counsel submitted that prior to the lock-out being lifted, on 5.3.2008 a tripartite agreement was entered into between the co-promoters namely; Titagarh Wagons Ltd., 13 union of the workers of the respondent company and the Dy. Labour Commissioner, Bharatpur to the effect that all the dues of the workmen would continue to the liability of the respondent company. It has been submitted that the BIFR has thereafter sanctioned a scheme for revival of the respondent company on 11.3.2010. As per clause 10.6.1 of the aforesaid scheme it has been mentioned that only statutory dues of the workers upto the date of lock out i.e. 13.11.2000 would be paid- which includes the unpaid wages including variable dearness allowance, if any but does not entail payment of interest on the amounts due to the workers of the respondent company. It is submitted that in terms of section 18(3) read with section 18(8) of the Act of 1985 a sanctioned

scheme has over-riding effect even over final award/judgment of the Labour Court/Industrial Tribunals. Hence interest is not payable to the petitioner on the sum of Rs. 2,53,559/- found as wages due to the petitioner despite the Judgment dated 30.5.2000 passed by the Labour Court. It has been submitted that the respondent company is, for the present, however willing to pay to the petitioner the principal amount of Rs. 2,53,559/- as per the Labour Court's Judgment dated 30.5.2000.

6. Having heard the counsel for the parties, I am of the considered view that as the proceedings are pending before the SDO, Bharatpur in terms of the reference made by the State Government under section 33(C)(4), there is no occasion for this Court to address the matter on merits except to note that the respondent company has agreed to pay a sum of Rs. 2,53,559/- to the petitioner being the principal amount under the Labour Court's Judgment dated 30.5.2000. It would however be in place to immediately record that the payment of principal amount would not entail the exclusion of the petitioner's claim for interest thereon in terms of the Judgment dated 30.5.2000 subject to all legal objections available to the respondent company under the obtaining procedural law for recovery of amounts as arrears of land revenue.

7. Recovery of amounts as arrears of land revenue as in the present case in terms of the reference made by the Labour Court to the State Government under section 33(C)(4) is to be made with reference to the Rajasthan Land Revenue (Payments, Credits, Refunds And Recovery) Rules, 1958 (hereinafter "the Rules of 1958"). A specific procedure for recovery of amounts as land revenue has been provided for by the Legislature but it is not for this Court to make any observations with regard to the rights of the parties in the proceedings in issue before the SDO at the instance of the petitioner. It is however extremely shocking and distressing that despite a reference under section 33(C)(4) having been made in the year 2001 by the State Government, the concerned SDO as a public servant has failed to discharge his duties by keeping the matter pending before him without any recorded reason or stay of a Court overlooking the fact that the case before him related to a right of a worker to his due wages. This Court therefore deprecates the concerned SDO/SDOs and directs the disciplinary authority to take disciplinary action if so warranted on a preliminary enquiry. The preliminary enquiry should be completed within eight weeks from receipt of a certified copy of this order and its result conveyed to the Dy. Registrar (Judicial) of this Court for being placed on this case file.

8. In the circumstances the writ petition is disposed of with the direction to the SDO, Bharatpur to forthwith proceed on the reference made by the State Government under section 33(C)(4) for recovery of amounts under the Judgment dated 30.5.2000 strictly in accordance with the Rules of 1958. The respondent No. 2- CIMMCO Limited is directed to pay Rs. 50,000/- as costs of this writ petition to the petitioner within a period of 30 days from today. Further, as stated by the counsel for the respondent company that the payment of principal amount

due to the petitioner i.e. Rs. 2,53,559/- under the Labour Court's Judgment dated 30.5.2000 shall be made, it be so made within a period of 15 days from today. The petitioner shall be entitled to press before the SDO for payment of due interest as per the Judgment dated 30.5.2000. The said claim shall be adjudicated by the SDO as per the Rules of 1958 and other relevant law, if any. The claim for interest as stated above be decided within eight weeks of the presentation of a certified copy of this order.