
(1996) 10 AP CK 0067

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 5742 of 1988

M.D., A.P. State Construction Corpn. Ltd.

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 10-10-1996

Acts Referred:

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

Citation : (1998) 3 LLJ 858

Hon'ble Judges : P. Venkatarami Reddy, J;A. Hanumanthu, J

Bench : Division Bench

Advocate : V. Venkataramana, S.C, for the Appellant; A.K. Jayaprakash, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

A. Hanumahthu, J.—As the point involved in all these writ petitions is common, they are being disposed of by a common order.

2. These writ petitions are filed under Article 226 of the Constitution of India to quash the common order dated May 28, 1987 passed in M.P.No. 825/1985 and batch on the file of the Labour Court, Hyderabad. The petitioner in all the writ petitions is the Managing Director of A.P. State Construction Corporation Ltd.. Hyderabad (hereinafter called as the "Corporation") and the 2nd Respondents in all these petitions are the monthly rated workers working in the work charged establishment of the said Corporation and the 1st Respondent is the Labour Court, Hyderabad whose order is impugned in writ petitions.

3. The respondents-workmen have been working under the Corporation. By its Circular (Ex.M1), dated April 30, 1979, the Corporation introduced the pay scales applicable to the work-charged establishment of Irrigation and Power Department of the State Government for the monthly rated workers in the work establishments of the Corporation under the 25% regularisation scheme with effect from January 1, 1979 in all its units other than Srisailem where it had

already been introduced. As per the said Circular, the workers were given option either to the pay scales and allowances of work charged establishments of Irrigation and Power Department of State Govt. with effect from January 1, 1979 or to continue in the existing Corporation- monthly rated workers' scales of pay for works establishments. The respondents-workmen opted for the work-charged scales of pay of Irrigation & Power Department introduced with effect from January 1, 1979. In pursuance of their options, they were given their wages and allowances of the work charged establishments of Irrigation Department as on that date. At that time, the Government was not paying House Rent Allowance and Project Allowance to the employees of work-charged establishment of Irrigation Department, but, the Corporation as a gesture of good-will, agreed to pay the House Rent Allowance and Project Allowance at the Company rates to the workers who were brought on work charged scales and accordingly, the Corporation paid at the rate of $7\frac{1}{2}\%$ and 4% respectively. Later on, the Government decided to pay H.R.A. as per the normal rates existing to the employees working in certain localities in the Projects only from 1980. In 1982, by its G.O.Ms.No 49, dated February 5, 1982 and its Memo dated August 27, 1982 of Irrigation (Power) Department. State Govt. enhanced the Project Construction Allowance and House Rent Allowance at 10% and 14% of the salary respectively with retrospective effect. The respondent-workmen who opted for the scale of the work charged establishments of Irrigation and Power Departments, who were paid House Rent Allowance and Project Allowance at 4% and $7\frac{1}{2}\%$ respectively by the Corporation have claimed that they are entitled for 10% and 14% in pursuance of the enhanced rates introduced by the Government with retrospective effect. They have filed Miscellaneous Petitions u/s 33C(2) of Industrial Disputes Act, 1947 claiming the arrears of House Rent Allowance and Project Construction Allowance for the period from March 1, 1979 to November 1, 1984.

4. The Corporation resisted the claims of its workmen contending that the workers are entitled to the allowances applicable to the work-charged establishments of Irrigation and Power-Departments at the rates as existed on the date of Circular (Ex.M I) i.e., April 30, 1979 and they are not entitled to the allowances at the rates raised subsequent to Ex.M1, that there is no existing liability on the part of the Corporation to pay the said allowances, that the petitions are not maintainable u/s 33C(2) of I.D. Act and the workers ought to have raised an industrial dispute for declaration of their right to claim such allowances, and the workers are not entitled for the allowances, as claimed in their petitions.

5. During the enquiry, no oral evidence was adduced on either side, but by consent, Exs.M1 to M4 were marked on behalf of the Corporation. On a consideration of the evidence on record, and the submissions made by the learned Counsel, the Presiding Officer of the Labour Court held that the petitions are maintainable u/s 33C(2) of the I.D. Act, and that the workers are entitled for House Rent Allowances and Project Construction Allowance at 10% and 14%

respectively from March 1, 1979 and accordingly, he allowed all the petitions. Assailing that common order, the Corporation has come up with these writ petitions.

6. Heard the learned Standing Counsel for the Corporation, and the learned Counsel for the respondent-workers.

7. It is contended on behalf of the Corporation firstly, that these petitions are not maintainable u/s 33C(2) of Industrial Disputes Act, 1947 as the workers have no existing right to claim the allowances at the enhanced rates from the Corporation, and that as workers right to claim the relief has been disputed by the Corporation the workers ought to have raised an industrial dispute under the provisions of I .D. Act. Secondly, that as per the Circular Ex.MI, dated April 30, 1979, the workers who opted for work charged establishment pay scales will be entitled for the Service conditions including allowances, leave, etc. at the rates as existed on the date of Ex.MI and that they are not entitled to the rates by the Government in Irrigation and Power Department subsequently. The learned Counsel for the respondent-workers submitted his arguments in support of the impugned order.

8. Now, we consider the contentions raised by the learned Counsel for the Corporation. For proper appreciation of the contentions raised by the Counsel, it is necessary to look into the provisions in Section 33C(2) of Industrial Disputes Act, 1947 which reads as follows:

"Section 33C(2):--Where any workman is entitled to receive from the employer, any money, or any benefit which is being capable of being computed in terms of money and if any question arises as to the amount due or as to the amount at which such benefit should be computed, then the question may, subject to any rule 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."

The legislative intention disclosed by Section 33C(2) is fairly clear. u/s 33C(2) where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A and B, the workman himself, or any other person authorised by him in writing in that behalf, may, make an application to the appropriate Government to recover the money due to him. Where a workman entitled to receive from an employer any benefit which is capable of being computed in terms of money applies in that behalf; the Labour Court may, u/s 33C(2) decide the questions arising as to the amount of money due or as to the amount at which such benefit shall be computed. It is now settled that a proceeding u/s 33C(2) is a proceeding, generally in the nature of execution proceeding wherein the Labour Court calculates the amount of money

due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation of computation follows upon an existing right to the money or benefit, in view of its previously adjudged claim or otherwise provided by statute or scheme made thereunder.

9. As regards the scope of enquiry under i Section 33C their Lordships of Supreme Court " in Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others, observed thus at pp. 9-10 :

"The right to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation, to the relationship between an industrial workman and his employer. Since the scope of Sub-section (2) of Section 33C is wider than that of Sub-section (1) and the Sub-section is not confined to cases arising under an award, settlement or under the provisions of Chapter V-A there is no reason to hold that a benefit provided by Statute or a Scheme made³ thereunder, without there being anything contrary under such Statute or Section 33C(2), cannot fall within Sub-section 2."

In Voltas Ltd. Vs. J.M. Demello and Another, the Supreme Court observed thus at p 314 :

"A claim u/s 33C(2) postulates that the determination of the question about computing in terms of money in some cases -have to be preceded by an inquiry into the existence of the right. Such an inquiry is incidental to the main determination assigned to the Labour Court by that sub-section."

In Central Inland Water Transport Corporation" v. Workmen, 1975(1) SCR 153, the Apex Court observed that the investigation the Labour Court undertake u/s 33C(2) is incidental to computation of a benefit under an existing right which is its principal concern. It is also well settled" that mere denial by the Management of the right of a workman to receive money does not oust the jurisdiction of the Labour Court u/s 33C(2) vide Mandegam Radhakrishna Reddy Vs. Sri Bharathi Velu Bus Service and Presiding Officer, Labour Court, Guntur, . .

10. In the instant case, the workers are claiming the benefits under the G.O.Ms. No. 49, dated February 5.1982 and Memo dated August 27, 1982 issued by the State Government in Irrigation and Power Department by virtue of the Circular dated: April 30, 1979 (Ex.MI). It is necessary to construe the scope of Circular Ex.M 1 in order to determine whether the rights or benefits as claimed by the workers exist or not. In the light of the law laid down by the Supreme Court in cases referred to above (Central Inland Water Transport Corporation v. Workmen (supra), Voltas Ltd. v. J.M Demello (supra) and Chief Mining Engineer, East India Coal Co. Ltd. v. Rameswar and Ors.) it can safely be held such construction of interpretation of the Circular is the purview of the Labour Court in an enquiry u/s 33C(2) of I.D. Act. Such enquiry is incidental to the computation of the benefit to

which the workers are entitled under the Circular read with the said G.O. Hence, we have no hesitation to reject the first contention of the learned Counsel for the Corporation and we hold that Miscellaneous Petitions filed by the workers are maintainable u/s 33C(2) of the Industrial Disputes Act.

11. Admittedly, the respondents-workers are working as monthly rated workers of the Corporation and by the Circular dated April 30, 1979 (Ex.M I), they were given option either to the work charged scales of pay applicable to the work charged establishments of Irrigation and Power Department of State Government with effect from January 1, 1979 or to continue in the "existing Corporation"s monthly rated scales of pay for work establishments and these workers opted for the pay scales applicable to the work charged establishments of Irrigation and Power Department with effect from January 1, 1979. Ex.MI is the "Circular dated April 30, 1979 along with the proforma option form. The relevant portion of this Circular Ex.MI reads as follows :

"Workers who opt for work charged pay scales will be entitled for the service conditions i (including allowances, leave, etc.) as admissible to work charged establishments of Irrigation and Power Department being the principal employer. Workers who opt for continuing the Company"s existing monthly rated pay scales will be eligible for the service conditions as admissible for Company Workers (including allowances, leave, etc.). The option once exercised will be final and cannot be revised."

We do not find any ambiguity in the above clause in the Circular Ex.M I. It is crystal clear from the above that the workers who opt for work-charged pay scales will be entitled for the service conditions including the allowances leave, etc. as admissible to work charged establishment of the irrigation and Power Department of the State Government, and the option once exercised cannot be revised.

12. It is contended by the Standing Counsel for the Corporation that the workers who opted for pay scales of work charged establishment will i be entitled for the service conditions including allowance, leave, etc. at the rate as existed on the date of the Circular Ex.MI and the workers are not entitled at the rates as revised by the Government for work-charged establishments 1 from time to time. On a close consideration of the contents of Ex.MI, there is nothing in it to draw such an inference as contended by the learned Standing Counsel for the Corporation. If really the intention of the Corporation is such that the; workers who opted for work charged pay scales should not claim enhanced wages or allowances as revised by the Government from time to time, there would have been a clause to that effect in the Circular Ex.MI. In the absence of such a-clause, the reasonable construction of the relevant terms of Ex.MI is that the workers who opted for work charged pay scales will be entitled for allowances, leave, etc. at the rates at which they are payable to the employees of the Government; in the similar categories from time to time and not at the rates at which they existed at the time of Ex.MI. Therefore,we have no hesitation to conclude that the respondents-

workers who opted for work charged pay scales are entitled to the, allowances and service conditions as admissible to the work charged establishment of the Irrigation and Power Department of the State Government as revised from time to time. Hence, they are entitled to Project Allowance and House Rent Allowance at the rates as claimed by them in pursuance of G.O.Ms.No.49, dated February 5, 1982 and Memo dated August 27, 1982 issued by the Government in Irrigation and Power Department. The second contention raised by the learned Counsel for the Corporation is, therefore, rejected.

13. The learned Standing Counsel appearing for the Petitioner Corporation has argued that in the communication dated May 22, 1980 (Ex.M3), the Corporation made it clear that the allowances would be paid only at the existing rates of the Corporation. It is submitted that unless and until those instructions are challenged and declared invalid, the workman has no existing right to the benefit of the enhanced scales of allowances. We cannot accept this contention for the reason that Ex.M3, dated May 22, 1980 which is in the nature of inter-departmental communication cannot override the Circular dated April 30, 1979 (Ex.M 1) under which opportunity was given to the employees to opt for the pay and allowance applicable to work-charged employees of Irrigation Department of the Government. The Corporation, by its own interpretation cannot take away the effect of Ex.M1 which is sheet-anchor of the workman's claim. In the face of Ex.M1 which has been interpreted by the Labour Court and by us, the inter-departmental communication not to pay the allowances at enhanced rate, is of no material consequence and is liable to be ignored.

14. Therefore, we do not find any reason to exercise discretion under Article 226 of the Constitution of India to quash the impugned common order dated May 28, 1987 passed in M.P.No.825 of 1935 and batch.

15. In the result, all the writ petitions are dismissed, but without costs.