(1964) 04 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 1077-D of 1983

Messrs Pearl Cycle Industries Ltd., New Delhi — APPELLANT

Vs

A.N. Kaul and Another — RESPONDENT

Date of Decision : 08-04-1964

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : AIR 1964 P&H 482

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : Hadaval Hardy, for the Appellant; Madan Mohan, for the Respondent

Final Decision : Dismissed

Judgement

Shamsher Bahadur, J.—The petitioner Pearl Cycle Industries Ltd. has moved this Court under Articles 226 and 227 of the Constitution of India to quash the order passed by the first respondent as Presiding Officer of the Labour Court, Delhi, computing the bonus payable to the workmen of the company represented by the second respondent S. L. Kumar, and to restrain him from recovering the sums computed by the Labour Court.

2. It is not disputed that an agreement was executed between the petitioner on the one hand and the Engineering Mazdoor Union on the other as a representative of the workmen and clerical staff of the petitioner on 23rd of September, 1959. This agreement purported to resolve by way of settlement the demand made by the Union for the payment of the bonus for the calendar years 1958, 1959, 1960, 1961 and 1962. It is mentioned in this agreement Annexure A) that "without creating a precedent for the year thereafter", the workmen and the staff of the company "Shall accept...a bonus for each of the calendar or accounting years, namely, from 1958 to 1962, as under":

For each of the years ending with December, 1958. and 1959, the bonus was to be paid at one month''s consolidated wages or salary. In respect of the year ending with December, 1960, the bonus was to be paid at the rate of 1 1/4 month''s consolidated wages or salary. For the remaining two years ending with December, 1961 and 962, it was to be computed at 1 1/2 month''s consolidated wages or salary. It was stipulated that the Union will not make any further demand for bonus in addition to the one which was payable under this agreement in respect of these five calendar years. There are other details about the calculation of bonus but these are not important for the purpose of deciding this petition. Reference may be made to a further agreement between the parties made on 3rd of March, 1962. This is Annexure "A" filed with the written statement of the workers. The management, it appears, had given notices of termination of all the settlements with the Union of the workmen. Clause I of this Agreement of 3rd of March, 1962, states that all the settlements arrived at between the management and workmen "stand terminated and are superseded by this settlement except the following-

Settlement on bonus arrived at between the parties on 23rd of September, 1959....

Thus, the agreement made on 23rd of September, 1959, came to be confirmed by the parties on 3rd March, 1962.

3. Despite these two agreements the management of the petitioner-company declined to make any payment of bonus for the year 1961 which in terms of the agreement of 1959 was to be computed at 1 1/2 month''s consolidated wages or salary. 237 applications were made to the Labour Court, Delhi, which after full consideration ruled by its detailed order of 13th May, 1963, that the petitioner is liable to pay bonus at the rate stipulated. This order has been made in respect of 79 applications and the remaining ones have yet to be dealt with.

4. In impugning this order Mr. Hardy questions in the first place the applicability of sub-section (2) of section 33C of the Industrial Disputes Act under which the Labour Court was moved to make a computation of benefit in favour of the workmen. It is submitted that the agreement which was sought to be enforced not having been made in the course of conciliation proceedings, the requirements of rule 58 of the Industrial Disputes (Central) Rules, 1957 had to be satisfied and its copies had to be sent to the various authorities mentioned in sub-rule (4). In order to examine the validity of this contention, it is necessary to set out the provisions of section 33C of the Industrial Disputes Act. The first subsection of section 33C is concerned with recovery of money due from an employer under a settlement or an award, and an application can be made to the appropriate Government for this purpose which if satisfied that any money is so due "shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner'' as an arrear of land revenue". Sub section (2) says that:

Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under this Act, be determined by such Labour Court as may be specified in this behalf by the appropriate Government, and the amount so determined may be recovered as provided for in subsection (i).

It is manifest that the only link between the two sub-sections is the common mode of recovery. The first sub-section relates only to the satisfaction of the Government that money is due under an award or a settlement, whereas the situation contemplated in sub section (2) is that the Labour Court has to reach the conclusion that a workman is entitled to receive from the employer a benefit which is capable of being computed in terms of money. The agreement which is sought to be enforced in sub section (2) is not a settlement as defined in clause (p) of section 2 of the Act which says that it means-

a settlement arrived at in the course of conciliation proceedings and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by parties thereto in such a manner as may be prescribed and a copy thereof has been sent to the appropriate Government and the conciliation officer.

Mr. Hardy argues that an agreement having been arrived at otherwise than in the course of conciliation proceedings, copies of it should have been sent to the appropriate Government and the Conciliation Officer. Now, it is important to remember that the benefit under the agreement is not sought to be enforced as a settlement, and it is open to the Labour Court to examine the agreement "otherwise than as a settlement". The wide scope and amplitude of sub-section (2) of section 33C was recently under discussion by their Lordships of the Supreme Court in The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., Chief Justice Gajendragadkar at page 95 observed with regard to section 33C(2) that :

According to the appellant, the scope of sub-section (2) is similar to that of sub-section (1), and it is pointed out that just as under subsection (1) any disputed question about the workman''s right to receive them one due under an award cannot be adjudicated upon by the appropriate Government, so under sub section (2) if a dispute is raised about the workman''s right to receive the benefit in question, that cannot be determined by the labour Court...it seems to us that the opening clause of sub-section (2) does not admit of the construction for which the appellant contends unless we add some words in that clause.

At page 96, the conclusion is thus reached :

It is thus clear that claims made u/s 33C (i), by itself can be only claims referable to the settlement, award or the relevant provisions of Chapter VA. These words of limitations are not to be found in section 33C (2) and to that extent, the scope of section 33C (2) is undoubtedly wider than that of section 33C(1) and cannot be wholly assimilated with it.

It was also observed that the claims not based on settlements, awards or made under the provisions of Chapter VA may also be competent u/s 33C (2) and that may illustrate its wider scope.

5. It seems clear, therefore, that an agreement which is sought to be enforced u/s 33C (2) does not have to fall within the purview of the settlement defined in clause (p) of section 2 and even it the copies of it have not been sent to the appropriate Government, the Labour Court has the jurisdiction to entertain the dispute. The noncompliance with rule 58 (4) which says that "where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceeding before a Board or Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the Central Government, the Chief Labour Commissioner (Central) New Delhi and the Regional Labour Commissioner (Central) and to the Conciliation Officer (Central) concerned" does not affect the validity of the agreement on whose basis benefit is to be computed.

6. The second ground on which Mr. Hardy assails the order demands more serious consideration, not because of its intrinsic merit but because of the pressure of his argument on this point. It is argued by Mr. Hardy that the petitioner-company has suffered losses and as a matter of principle bonus can be paid only out of profits and not when the company has incurred losses. It is important to point out that this, point was never raised before the Tribunal and has been argued at length only before this Court. My attention has been invited to a judgment of their Lordships of the Supreme Court in Muir Mills Limited v. Suti Mill Mazdoor Union (1955) L.A.C 1, where it was said that bonus is not a deferred wage and there are two conditions which must be satisfied before a. demand for it can be justified, one of these being that the industry makes huge profits part of which are due to the contribution which the workmen make in increasing production. The grant of bonus which is mere gift or gratuity cannot be based on the concept of social justice which is a very vague and indeterminate expression. Now, the principle of this-authority will apply only if the workmen more claim for bonus which is-disputed by the employees. In the present instance, the claim to bonus has been recognized by the employers not only by the agreement of 23rd of September, 1959, but by a subsequent ratification of it on 3rd of March, 1962. It is true that in paragraph 4 of the petition, an assertion has been made that the financial position of the company has received a severe setback in the year 1959 when a loss of Rs. 8,000/- was suffered, and in the subsequent year 1960, a small profit of Rs. 4,000/- only has been shown in the balance sheet. In the year ending 31st of December, 1961, it is asserted that a loss of 26 lacs has been incurred. This argument, in my opinion, cannot be used in favour of the petitioner as it had itself on 3rd March, 1962, after the loss was incurred confirmed the agreement of 23rd of September, 1959.

7. Mr. Hardy farther submits that the agreement of 23rd of September, 1959, has become incapable of enforcement because of its subsequent frustration on account of the company''s financial position. When the original agreement was

made it was envisaged according to the counsel that the company would continue in a state of prosperity and profits, while losses had not been contemplated. Looking back at the terms of the agreement, it would be seen that bonus for the next five years had been fixed and it was specifically said that the workmen would have no right to ask for anything more. There is also an implied term that the employer would not go back on this agreement. The respondents were never given an opportunity to rebut the assertion that the company had been suffering losses and this in fact been denied on behalf of the workers I do not think that this Court would be justified in asking the Labour Court to re-determine the question after investigating the question whether the company had in fact incurred losses. I would be content to accept the observations of Lord Simonds in Davis Contractors Ltd. v. Fareham Urban District Council 1956 A.C 696, at page 715, that disappointed expectations do not lead to frustrated contracts. The company perhaps has been disappointed in its expectations but it cannot be said that the contract had become impossible of performance on that score. The doctrine of frustration cannot be pressed into the service in a case of this nature.

8. In my opinion, there is no force in this petition which fails and is dismissed. I would, however, make an order that the payment of bonus may be made in two installments, half of it should be paid on 1st of October, 1964 and the remaining half on or before 1st April, 1965. In case of default, the entire sum due would become payable forthwith. The parties would be left to bear their own costs.