(2013) 03 CHH CK 0004

In the Chhattisgarh High Court

Case No : Writ Petition No. 602 of 1998

Mohan Jute Mills Ltd. and Another APPELLANT

Vs

Deputy Labour Commissioner and Others RESPONDENT

Date of Decision : 14-03-2013

Acts Referred:

Citation : (2013) 2 CGBCLJ 188 : (2013) 2 CGLJ 1 : (2013) 137 FLR 1086 : (2013) 3 LLN 166 : (2013) LLR 826

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Single Bench

Judgement

Satish K. Agnihotri, J.—Challenge in this petition is to the order dated 05.07.1997 (Annexure P-1), passed by the Deputy Labour Commissioner, Chhattisgarh Region, Raipur, whereby, the petitioner is directed to pay a sum of Rs. 2,28,937.50 as a difference of pay to 535 workers on the ground that the lay off declared by the petitioner Mill between 10.06.1995 to 25.06.1995 was illegal. The Labour Court was informed that in the petitioner Mill without information for want of non-complying of raw material (Jute) workers, there was lay off from 10.06.1995 to 25.06.1995 and, as such, the workers have suffered 50% loss of payment of wages and, as such, it amounts to violation of 25M of the Industrial Disputes Act, 1947 (for short "the ID Act") and punishable u/s 25Q of the ID Act.

2. The Labour Officer by communication dated 09.01.1997 (Annexure P-6) sent a communication with request to the Deputy Labour Commissioner, Chhattisgarh Region, Raipur, informing that the lay off period 10.06.1995 to 25.06.1995 declared by the petitioner Jute Mill was not legal and, as such, necessary steps be taken to ensure proper payment to the workers. Pursuant thereto, a show cause notice was issued on 27.01.1997 (Annexure P-7) to the Director (petitioner No. 2) and General Manger of the petitioner Mill, as to why recovery to the tune of Rs. 2,28,937.59 towards loss of payment of 535 workers be not made from the petitioner Mill on the basis of decision taken by the Labour Court on 04.06.1996.

3. The Labour Court, after examining all the matters, by order dated 04.06.1996 (Annexure P-5), it was found that the proper information was sent to the Government for lay off, however, the ground for lay off i.e. lack of supply of raw material was not found correct. Accordingly, it was held that legal permission was not taken for lay off during the relevant period. The petitioner No. 2 (Director) and one Narendra Singh Chauhan (General Manager) were found guilty and were imposed a fine of Rs. 100/- each, in default, it was directed to undergo simple imprisonment for seven days.

4. The petitioner Mill submitted detailed reply on 28.03.1997 informing that there was an agreement between the Manager and representative workers'' union and thus, there should not be a recovery as laying off was done on account of non-supply of raw materials. The petitioner relied on the agreement dated 02.06.1997 (Annexure P-9) between the parties. The Deputy Labour Commissioner issued a revenue recovery certificate dated 05.07.1997, which was sought to be impugned herein for recovery of Rs. 2,28,937.59.

5. Learned counsel for the petitioner submits that recovery has been made under provisions of Section 33C(1) of the ID Act, which is not the proper forum for the purpose of recovery. There should be determination of the liability and the amount. Under agreement, nothing was due and payable.

6. On the other hand, learned State counsel submits that the recovery has been ordered, strictly in accordance with law, u/s 33C(1) as provided under the ID Act.

7. There is no irregularity or illegality in directing recovery of the said amount u/s 33C(1) of the ID Act, which reads as under:

33C. Recovery of money due from an employer.--(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of [Chapter VA or Chapter VB] the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it 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:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

8. The contention of Shri Shrivastava that the recovery cannot be made under the provisions of Section 33C(1) is misplaced. Section 33C-(1), ibid, provides

that where any money is due to a workman from an employer under, inter alia, the provisions of Chapter VA and VB xxx xxx and if the Government is satisfied that any amount is so due, it shall issue a certificate for that amount in the manner as an arrear of land revenue.

9. Chapter VA and Chapter VB of the ID Act deals with lay off and retrenchment and, as such, any recovery for illegal lay off comes within the provisions of Chapter VA and Chapter VB. In the instant Industrial establishment, lay off was declared without permission of the Government and the grounds for this was found by the Labour Officer as not correct. In such a situation, invoking jurisdiction u/s 33C(1) of the ID Act was just and proper. In view of foregoing, the petition is devoid of merit and is accordingly, dismissed. No order as to costs.

