

(2018) 03 RAJ CK 0110
In the Rajasthan High Court
Case No : Civil Writ No. 6107, 6106 of 2018

Mulchand And Ors. @APPELLANT@Hash Managing Director, Oriental Power Cables Ltd.

Date of Decision : 22-03-2018

Acts Referred:

Industrial Disputes Act, 1947 — Section 18, 33(C)(2)
Payment of Wages Act, 1936 — Section 15, 23

Citation : (2018) 03 RAJ CK 0110

Hon'ble Judges : ASHOK KUMAR GAUR, J

Bench : Single Bench

Advocate : Suresh Kashyap

Final Decision : Dismissed

Judgement

The present writ petition has been filed by the petitioner challenging the order dated 21.07.2017 passed by the Labour Court, Kota wherein application of the petitioner-workman under Section 33(C)(2) of the Industrial Disputes Act has been dismissed.

The brief facts of the case are that the petitioner filed an application under Section 33(C)(2) of the Industrial Disputes Act before the Labour Court,

Kota. It was pleaded in the application that he was employed with Oriental Power Cables Ltd. (employer) and all of a sudden, the factory was closed

in the year 1986. The petitioner pleaded that after closure of the factory, the matter was referred to Board for Industrial & Financial Reconstruction

(BIFR), New Delhi. As per the pleadings of the petitioner, he is entitled for his salary as the same was not paid to him and accordingly, he

calculated amount of Rs.39,45,919/- The claim of the petitioner was based on fact that respondent-employer had not closed the factory as per law and

after 1986, the petitioner was going to the factory gate and marked his

attendance and as such, prayer was made in the application for claiming the amount along with interest at the rate of 18% per annum.

The employer filed reply to the application filed by the petitioner and he pleaded that the factory was closed in the month of February, 1986 and the

relationship of employee and employer came to be end on 30.04.1986. The employer pleaded that since factory was closed after 30.04.1986, there

was no question of attendance being marked by the petitioner and statement of the petitioner that he was marking his attendance, was absolutely

incorrect. The employer further pleaded in reply to his application that the petitioner was a member of Oriental Power Cables Ltd. Union affiliated to

CITU with Registration No.78/64. The employer pleaded that there was already a settlement, which had taken place between the members of the

Union and Management and as such, on 28.02.2008, a settlement was arrived as per Section 18 of the Industrial Disputes Act. The employer pleaded

that in the year 1986 at the time of closure of the factory, there were total 505 workmen, 175 clerks and supervisory staff, and total payment of

Rs.412 lacs was made in respect of claims of the employees. The employer further pleaded that the different workmen, including the petitioner had

accepted full and final payment, and they had submitted receipt to that effect also. The Management further pleaded that the settlement dated

28.02.2008 was binding on the employee-petitioner and as such, after receiving the amount of compensation, the claim under Section 33(C)(2) of the

Industrial Disputes Act was not maintainable. It was further pleaded that the scope of 33(c)(2) did not cover the cases where already settlement had

taken place and the scope of Section 33(c) (2) was like an executing court.

The Labour Court vide order dated 21.07.2017 has dismissed the application filed by the petitioner. The Labour Court has given the following reasons

for not entertaining the claim of the petitioner:

(i) There are disputed questions, which require adjudication and employee himself admits that after leading evidence he will be able to prove his case

and entitlement, under Section 33(c)(2) of Industrial Disputes Act.

(ii) There has been no determination of right of the workmanemployee and without determination, no claim can be entertained under Section 33(c)(2)

of the ID Act.

(iii) The proceedings under Section 33(c)(2) are like execution proceedings and the claim of a workman, which is not independently examined resulting into crystallized right, no proceedings can be maintained under Section 33(c)(2) of the Industrial Disputes Act.

The Labour Court has given reference of judgments of the Supreme Court and different High Courts to reach to the conclusion that the entitlement of the petitioner for wages and other claims cannot be decided in the proceedings initiated under Section 33(c)(2) of the Industrial Disputes Act.Â

Mr.Suresh Kashyap, learned counsel for the petitioner has submitted that the Labour Court has committed grave illegality in not entertaining the application of the petitioner-workman. Mr. Kashyap has submitted that since money was due to the petitioner against his wages after 1986, the Labour Court ought to have exercised its jurisdiction. Mr. Kashyap submitted that since petitioner had marked his attendance as per the instructions of the employer, he is required to be treated on duty and his claim of salary etc. cannot be denied. Mr. Kashyap has submitted that entitlement of the petitioner was already there and as such, no execution proceedings were to be taken-up as has been alleged by the Labour Court.

Mr. Kashyap has further submitted that as per Section 23 of the Payment of Wages Act, even if there was some agreement between employer and employee relinquishing his rights, the same will be null and void, and workman cannot be deprived from such right. Mr. Kashyap has further submitted that though the workman had remedy under Section 15 of the Payment of Wages Act to claim his wages but since there is a limitation of one year to claim wages, the workman had an option to go under Section 33(C)(2) of the Industrial Disputes Act to claim his wages.

Mr. Kashyap has submitted that the scope of Section 33(c) (2) of the Industrial Disputes Act definitely covers the case of the petitioner as the workman was entitled to receive his wages and if the question was with respect to the amount of money, the Labour Court has ample power under Section 33(c)(2) to decide the computation as well.

I have heard the learned counsel for the petitioner and perused the record.

The Labour Court has recorded a finding on admission of the petitioner-workman himself that by adducing evidence, he will be able to prove his case and entitlement, in respect of wages. This Court finds that once the workman

himself admits that some dispute is to be determined and claim is to be ascertained, the proceedings under Section 33(c)(2) of the Industrial Disputes Act are not held to be maintainable.

The submission of Mr. Kashyap that entitlement of the petitioner has already taken place as workman was marking his attendance as per instructions

of the employer, this Court finds that employer had specifically pleaded in his reply that the factory had come to be shut down in the month of April

1986 and after that the case was referred to BIFR and finally, the settlement took place there. This court finds that the entitlement of the petitioner

was not decided by any competent court/forum and as such, it cannot be said that the entitlement which was already decided, was required to be dealt

with under Section 33(c)(2) of the Industrial Disputes Act.

The submission of the learned counsel that the petitioner had option to claim his wages under the provisions of the Payment of Wages Act, 1936, this

Court finds that the claim in respect of wages if it is not already decided, may not be entertained by the Labour Court under Section 33(c)(2) of the

Industrial Disputes Act.

This Court further finds that the petitioner in this case has entered into settlement through the Union and received the amount by giving the receipt to

the employer by terming it as a full and final settlement. The petitioner after settling his claim, cannot be given a liberty to agitate the matter again in

the garb of power given to the labour Court under Section 33(c)(2) of the Industrial Disputes Act. This Court finds that the petitioner at one point of

time had agreed to settle his issues with the employer by accepting the amount and after receiving the amount, he takes a U-turn and files his

claims. This Court finds that once the employee has entered into settlement and he has received the money, it cannot be said that such employee will

again re-agitate the claim by using the form which is meant for resolving the real dispute between the employer and the employee.

This Court further finds that the Labour Court has clearly recorded the finding that the issue which has been raised by the workman under Section

33(c)(2) of the Industrial Disputes Act, cannot be entertained as the Labour Court cannot first determine the claim and then execute it by making an

order of payment.

The submission of learned counsel for the petitioner that petitioner was illiterate

and he did not know the contents of receipt, which was signed by him, is also without any substance. The learned counsel for the petitioner has submitted that petitioner was not a member of the Union, who had entered into settlement with the Management and as such, he is not bound by the said settlement, this Court finds that once the petitioner has accepted the claim and gave the receipt, no claim can further be laid in the judicial form by claiming the benefit of his ignorance or not understanding, the implications of settlement.

The Court does not find any error in the impugned order passed by the Labour Court and accordingly, the writ petition is dismissed.Â Â Â Â