
(2011) 04 P&H CK 0352
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9541 of 1990

Municipality Baretta

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 25(F), 33C(2), 9A

Citation : (2011) 129 FLR 993 : (2011) 4 LLJ 202 : (2011) LLR 818

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—The writ petition has been filed by the Municipal Administration seeking for quashing of an order passed by the Labour Court directing wages to be paid u/s 33-C(2) of the Industrial Disputes Act. The basis of the claim was that the Petitioner was being paid Rs. 483/- per month in the scale of 300-430, but it was subsequently reduced to Rs. 358/- after November, 1983. Such reduction of wages constituted a change in the terms of service that violated Section 9-A of the Industrial Disputes Act. The contention that there had been a reduction without following mandate of Section 9-A was itself not in dispute, but what was contended by the Management was that the application could not have been filed u/s 33-C(2) for the noncompliance of the procedure laid down u/s 9-A of the Industrial Disputes Act. This objection of the Management was rejected by the Labour Court and it was found that the amount which had been reduced was liable to be paid and the workman entitled to make a claim of difference in wages through an application u/s 33-C(2) of the Act. While calculating the amount payable, the Labour Court also took note of the fact that a workman was entitled to claim wages in lieu of rest days and holidays by making reference to Rule 23(4) under the Minimum Wages Act that prescribed that the wages were liable to be paid to a workman, who is called upon to work on national and festival holidays were also entitled to double the ordinary rate of wages. The Labour

Court, therefore, found that the workman was entitled to the difference what was payable and the amount that was reduced at Rs. 20,000/-, for Rs. 5,000/- as overtime wages and Rs. 50/- deducted from his salary and in all, Rs. 25,050/-.

The contention on behalf of the Petitioner was that he had been employed as a Chowkidar for 89 days on 4.8.1983 and he was re-employed for two months on 30.10.1983 and he was again appointed for 60 days on daily wages basis at Rs. 13.50 per day. The appointment seemed to have been extended from time to time till when a resolution was passed on 13.12.1984 deciding to appoint the Petitioner on regular basis for 6 months on probation. This resolution was rescinded on 31.12.1984 by the Director, Local Bodies and the workman was terminated from service on 19.4.1985. This termination was challenged before the Labour Court, Bhatinda, on the ground that the provisions of Section 25-F of the Act had not been followed. The Labour Court found the termination to be bad and directed reinstatement with continuity of service and back wages. He rejoined the duty pursuant to the award of the Labour in the month of February, 1988.

2. The challenge to the order passed by the Labour Court was on the basis that Section 33-C(2) is attracted to a pre-existing right of the workman which could be calculated in terms of the money and that the workman had no preexisting right since his right to entitlement to wages was not decided. As regards the applicability of Section 9-A, the contention was that there had been no change in condition of service and that he was estopped from making such a plea in view of his conduct in accepting the back wages as given vide award dated 18.5.1987. In support of his arguments, the learned Counsel for the Municipal Committee relies on a judgment of the Hon'ble Supreme Court in *Municipal Corporation of Delhi Vs. Ganesh Razak and Another*, . that held that a Labour Court cannot adjudicate dispute of entitlement or basis of claim of workmen u/s 33-C(2) and it can only interpret the award or settlement on which the claim is based. Its jurisdiction was like that of executing Court. The Hon'ble Supreme Court held that without a prior adjudication or recognition of the disputed claim of the workmen to be paid at the same rate as the regular employees, proceedings for computation of the arrears of wages claiming parity in employment was not possible u/s 33-C(2).

3. I do not think that the judgment relied by the learned Counsel is applicable; to the facts of the case. In the said case, the Hon'ble Supreme Court was considering a situation where the workman was making a claim for parity in wages which he did not already get. It was required to be adjudicated whether the workman was entitled to parity in wages with other workmen, who he claimed was engaged in similar type of activity. In this case, there is no denying the fact that the workman was already being paid a particular rate of wages. This was sought to be reduced without in any way following the procedure laid down u/s 9-A. The contention in the writ petition that a reduction in wage does not amount to alteration in terms of service is meaningless. Wage is invariably the most important component of terms of service. If that came to be reduced

without undergoing the procedure u/s 9-A, the workman is entitled to ignore the same as illegal and 14 demand the wages at the previous rate at which he was being paid. In a somewhat had been reduced without following the procedure u/s 9-A, a petition had been filed in The General Manager, E.I.D. Parry (India) Ltd. Vs. The Presiding Officer, 2nd Addl. Labour Court, Madras and others, . The order of the High Court upholding the workmen's claim was upheld by the Supreme Court as well. The workman had given the memo of calculation along with the claim petition and the order had been passed by the Labour Court on a due computation of the amount payable to the workman. The order is perfectly justified and the intervention sought through the writ petition is untenable. In a still early decision on the interplay of Section 9-A and the powers of adjudication u/s 33 C(2), the Supreme Court held in The Board of Directors of the South Arcot Electricity Distribution Co., Ltd. Vs. N.K. Mohammed Khan etc., :

The right, which has been claimed by the various workmen in their applications u/s 33-C(2) of the Act, is a right which accrued to them u/s 25-FF of the Act and was an existing right at the time when these applications were made. The Labour Court clearly had jurisdiction to decide whether such a right did or did not exist when dealing with the application under that provision. The mere denial of that right by the company could not take away its jurisdiction, so that the order made by the Labour Court was competent.

4. The order of the Labour Court is confirmed and the writ petition is dismissed.