

(2001) 07 MAD CK 0028

In the Madras High Court

Case No : Writ Petition No. 3692 of 1995

Murugesan K.

APPELLANT

Vs

Management of Baragath Industries and Another

RESPONDENT

Date of Decision : 24-07-2001

Acts Referred:

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

Citation : (2002) 1 LLJ 259

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

Advocate : S.M. Loganathan, for the Appellant; R. Parthiban, for the Respondent

Final Decision : Allowed

Judgement

S. Jagadeesan, J.—The petitioner has filed this writ petition challenging the Award of the Labour Court, Trichy dated April 25, 1994 in I.D.

No. 64 of 1993 whereunder the claim of the petitioner for the back wages had been totally rejected.

2. The petitioner herein raised an industrial dispute in I.D. No. 69 of 1986 on the file of the Additional Labour Court, Madurai challenging the

termination of his service. The Additional Labour Court, Madurai, under the Award dated May 6, 1991, had set aside the order of termination and

directed the reinstatement of the petitioner with back wages. Though the petitioner was reinstated by the first respondent, the back wages of the

petitioner were not settled. Hence, the petitioner raised the present industrial dispute by filing a petition u/s 33-C(2) of the Industrial Disputes Act

for the computation of the back wages. Under the impugned Award, the Labour Court, Trichy found that the petitioner is not entitled for the back

wages, since the petitioner earned his livelihood by self-employment. The

present Award is being challenged before this Court.

3. It is the contention of the learned counsel for the petitioner that when once the petitioner had been directed to be reinstated with back wages, it

is not open to the Labour Court in a petition u/s 33-C(2) of the said Act to go into the entitlement of the petitioner with regard to the back wages.

While dealing with the application u/s 33-C(2) of the said Act, the Labour Court is discharging only the execution power and it should not consider

the validity of the earlier Award. When the first respondent had not disputed the entitlement of the petitioner with regard to the back wages, it is

not open to them to raise such a plea in a petition u/s 33-C(2) of the said Act. Hence, the present Award of the Labour Court is totally without

jurisdiction.

4. Per contra, the learned counsel for the first respondent contended that when the entitlement of the petitioner with regard to the back wages is

disputed, even at the stage of execution, it is for the Labour Court to decide the question. On the facts available on record, the Labour Court has

given a finding that the petitioner was self-employed and as such, he is not entitled for the back wages. This finding being based on evidence, it is

not open to this Court to interfere with the same.

5. I have carefully considered the contentions of the learned counsel on either side. It is unnecessary to go into the question elaborately, since the

dispute falls in a narrow compass. The question for consideration is as to whether the Labour Court can go into the question of entitlement of back

wages of the employee in an application u/s 33-C(2) of the said Act filed by the employee.

6. There is no dispute that by the Award in I.D. No. 69 of 1986, the first respondent had been directed to reinstate the petitioner with back wages

and the petitioner was accordingly reinstated.

7. The present dispute has been raised by the petitioner only for the computation of the back wages. In this proceedings, the Labour Court has

gone into the question of entitlement of the petitioner with regard to the back wages. This is contrary to the principles laid down by this Court in the

case of S. Sundaresan and Anr. v. Presiding Officer, First Additional Labour Court, Madras and Anr. 1988 LIC 172 wherein it has been held as

follows:

The proposition is well settled that the Labour Court, computing in terms of money the benefits of an award in favour of the workman has got only

the role of an executing Court and it cannot reopen questions which must be deemed to have been concluded by the Award passed earlier in

favour of the workman. The question as to whether the workman was employed elsewhere, earning wages and hence he is not entitled to back

wages and other attendant benefits ought to have been put in issue during the course of the adjudication of the industrial dispute, and when such an

issue was not raised at all by the employer in the instant case, the second respondent covering adjudication over the same by the Labour Court it

must be held that no such issue appropriately and genuinely arose requiring adjudication of the same by the Labour Court and the award passed by

the Labour Court must be taken to be the final adjudication of the entire controversy over the non-employment and the reliefs to be accorded to

the workman. As already pointed out, the specific case of the second respondent was not that the petitioners secured employment elsewhere, after

the award. This is also not a case of the Labour Court interpreting an award, which suffers any ambiguity. The Labour Court, as the executing

Court, cannot go behind the award nor can it subtract from it. It is not certainly open to the Labour Court, exercising powers u/s 33-C(2) of the

Act to go into this question and practically negate what has been given by the award to the workmen earlier in the industrial dispute. That is exactly

what has happened in the instant case and that is not permissible.

8. In view of the pronouncement of this Court extracted above, it is not necessary for me to add anything except to follow the above judgment.

9. Even apart from this, it is not the case of the first respondent that the petitioner had been employed somewhere else. The self-employment to

earn his livelihood for himself and his family members cannot be construed as an employment depriving the petitioner of the back wages. Definitely,

the petitioner and his family members cannot be asked to starve during the non-employment period. It is for the petitioner to maintain the family by

doing some hard work and earn his bread. When it is not the case of the first respondent that the petitioner himself had employed under some

other employer, the contention of the learned counsel for the first respondent cannot be countenanced. The self-employment cannot be considered

to be a permanent employment. As and when there is any need, one can do the odd job and earn something for the family. This being not a regular

income, the finding of the Labour Court that the petitioner had earned his livelihood from out of the self-employment and as such, he is not entitled

for the back wages cannot be sustained.

10. Accordingly, the writ petition is allowed and the impugned Award of the Labour Court is set aside. I.D. No. 64 of 1993 is remitted back to

the Labour Court, Trichy for fresh disposal. No costs.