
(2017) 02 JH CK 0189
In the Jharkhand High Court
Case No : 1025 of 2008

Narayan Das

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 05-02-2017

Acts Referred:

[Uttar Pradesh Industrial Dispute Act, 1950](#), Section 10, Section 33-C

Citation : (2017) 02 JH CK 0189

Hon'ble Judges : Aparesh Kumar Singh

Bench : SINGLE BENCH

Advocate : Anoop Kr. Mehta, Amit Kr. Sinha, Ajit Kumar, Kumar Sundaram

Judgement

1. Heard learned counsel for the petitioner and the Respondent- Workman.
2. In a proceedings under Section 33-C (2) of the Industrial Dispute Act, Learned Presiding Officer, Labour Court, Hazaribag in M.J. Case No. 5/02 has by the impugned order dated 27.1.2005 (Annexure -4) proceeded to hold that the applicant- workman is entitled to leave encashment amount of 180 days in view of the Implementation Instruction No. 23 dated 30.8.1990 at Annexure-3, which reads as under :- " It was decided that the workmen governed by the service conditions and privileges as per NCDC Rule will continue to accumulate and encash leave up to 180 (one hundred eighty) days in the event of retirement, death, resignation and medical unfitness. This applies to the workmen who were appointed or came over to monthly cadre between 1.10.1956 and 14.8.1967. Managements have been requested to take necessary action to implement the above decision".
3. There was a dispute as to whether the instant Implementation Instruction No.23 applies to the present workman/ respondent or not. According to the Management, the benefit of accumulation and encashment of leave up to 180 days in the event of retirement, death, resignation and medical unfitness applies to the workmen who were appointed or came over to monthly cadre between

1.10.1956 and 14.8.1967. The undisputed fact of the present case show that the applicant workman was appointed on the post of Helper Category-II on 18.1.1959 as daily rated worker. He was promoted as Operator Grade-I w.e.f. 19.12.1959 and thereafter to the post of Charge-man in the Wage Board Scale of Rs. 245-440 w.e.f 1.3.1973 by office order dated 20.3.1973. The Management took a categorical plea that applicant workman had come into monthly scale of pay on 1.3.1973 by way of promotion as Charge-man. Learned Labour Court however held that the applicant workman appointed on 18.1.1959 and promoted as Operator on 19.12.1959 would be treated to be entitled to the benefits of leave encashment as per the Implementation Instruction No.23. There was a clear legal issue to be adjudicated upon whether the Implementation Instruction No. 23 dated 30.8.1990 applies to the case of the present applicant on the interpretation of the expression used therein. Learned Labour Court however opined in favour of the workman that since the applicant was appointed in the year 1959, he is entitled to leave encashment of 180 days.

4. Under the provisions of Section 33-C(2) of the Industrial Dispute Act, the workman can proceed only after the Tribunal has adjudicated the complaint under Section 33 A or on a reference under Section 10 of the Industrial Dispute Act. Section 33-C(2) is in the nature of execution proceedings in which Labour Court calculates the amount of money due to the workman from the employer or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. Hon''ble Supreme Court in the case of State of U.P. and another Vrs. Brijpal Singh reported in (2005) 8 SCC 58 has opined in the following manner:- Para 10:-" It is well settled that the workman can proceed under Section 33C(2) only after the Tribunal has adjudicated on a complaint under Section 33A or on a reference under Section 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. This Court in the case of Punjab Beverages(P) Ltd. v. Suresh Chand held that a proceeding under Section 33- C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to workman from the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. Proceeding further, this Court held that the right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman, and his employer. This Court further held as follows: (SCC p. 150, para 4)

" It is not competent to the Labour Court exercising jurisdiction under Section 33C(2) to arrogate to itself the functions of an Industrial Tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute in a reference under Section 10 of the Act."

5. The Apex Court has held that right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman and his employer. The Hon"ble Court has further held that it is not competent to the Labour Court exercising jurisdiction under Section 33-C(2) to arrogate to itself the functions of an Industrial Tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute in a reference under Section 10 of the Act.

6. Learned counsel for the petitioner has contended that adjudication of such legal contentious issue as to the entitlement of the applicant to leave encashment under Implementation Instruction No.23 is not confined to a solitary case and will have a repercussion to a large number of employees and entail substantial financial burden upon the Management.

7. In such circumstances, without any pre-adjudication of the right of the workman concerned, the order of the Labour Court allowing the claim of leave encashment of 180 days treating him to have been appointed or to have come within the monthly cadre between 1.10.1956 to 14.8.1967 amounts to transgressing the jurisdiction conferred under Section 33-C(2) of the Act upon the concerned Labour Court. Therefore, this Court is of the view that the impugned order cannot be sustained in the eye of law. Reference may also be made to the judgment rendered by this Court in the case of Sri C.H.Bapa Rao @ C.H. Bappa Rai & others Vrs. Indian Steel & Wire Product Ltd. passed in W.P. (L) No. 1092 of 2014 dated 26.7.2016. Accordingly, the impugned order dated 27.1.2005, so far as it relates to adjudication on the instant issue relating to entitlement of the workman to 180 days of leave encashment, cannot be sustained in the eye of law and it is accordingly quashed.

7. The writ petition is allowed in the manner and to the extent indicated herein above.