
(2002) 12 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 3110 of 1982

National Textile Corporation Ltd.

APPELLANT

Vs

Hansa Singh and Others

RESPONDENT

Date of Decision : 03-12-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)
Sick Textile Undertakings (Nationalisation) Act, 1974 — Section 5(2)

Citation : (2003) 3 LLJ 369 : (2003) 3 RCR(Civil) 90

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : Ramesh Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution of India challenges order dated April 5, 1982 passed by the Labour Court, Patiala allowing the application filed by workman- respondent No. 1 u/s 33C(2) of the Industrial Disputes Act, 1947 (for brevity, "the Act"). The Labour Court in its order has held that the petitioner being the successor employer of the Kharar Textile Mills, Kharar was under an obligation to pay the workman-respondent No. 1 back wages in accordance with the award dated March 18, 1974 published in the Punjab Government Gazette dated May 3, 1974. In the award, the workman-respondent No. 1 was ordered to be reinstated in service with full back wages.

2. Brief facts of the case which have led to the filing of the present petition may first be noticed. The workman-respondent No. 1 was initially an employee of Kharar Textile Mills, Kharar which was taken over by the Indian Finance Corporation as the Indian Finance Corporation was the mortgagee of the Kharar Textile Mills, Kharar. Later on, the erstwhile Kharar Textile Mills, Kharar with the permission of the High Court accorded u/s 391 of the Companies Act, 1956 was leased out to Padma Shree Textile Industries w.e.f. June 25, 1972 which is a private limited company. The service of workman-respondent No. 1 were

terminated in 1968. The workman-respondent No. 1 sought a reference u/s 10 of the Act to the Labour Court and he was ordered to be reinstated in service with effect from December 17, 1968 with full back wages by the award dated March 18, 1974 as published in the Official Gazette on May 3, 1974. Alleging that the workman-respondent No. 1 was not provided duty, he again approached the Labour Court by filing an application u/s 33-C(2) of the Act seeking the relief of payment of wages. The Labour Court framed the two issues which read as under:

1. Whether the application is maintainable?

2. To what amount, is the workman entitled to and from when?

3. On issue No. 1, the Labour Court reached the conclusion that the application of the workman-respondent No. 1 was maintainable against the petitioner. On the other issue, the finding recorded by the Labour Court is that the workman-respondent No. 1 is entitled to the amount of wages for the period from November, 1966 to July, 1977 at the average flat rate of Rs. 50/- p.m. The Labour Court further held that the workman-respondent No. 1 was also entitled to claim the amount in lieu of leave and 7 days festival holidays as the claim was based on the award passed by the Labour Court.

4. Feeling aggrieved by the order dated April 5, 1982, the petitioner has approached this Court with a prayer that the order passed by the Labour Court be set aside and it may be held that the workman-respondent No. 1 was not entitled to any claim.

5. The stand taken by workman-respondent No. 1 in the written statement is that in another petition, namely, Civil Writ Petition No. 3106 of 1982 involving similar points, a Division Bench of this Court has upheld the order similar to the one impugned in the present petition. It has further been pointed out that the award dated March 18, 1974 was challenged by the petitioner before this Court by filing a writ petition and the same was upheld. The application u/s 33-C(2) of the Act has been filed to execute the award which has been upheld by this Court. It has also been pleaded that the petitioner being the successor is under an obligation to accept the liabilities of the former employer.

6. Mr. Ramesh Kumar, learned counsel for the petitioner has argued that the order dated April 5, 1982 passed by the Labour Court is beyond its Jurisdiction as the provisions of the Act cannot be invoked for the purposes of giving effect to the award dated March 18, 1974 because the provisions of Section 5(2)(c) of the Sick Textile Undertakings (Nationalisation) Act, 1974 (for brevity, "1974 Act") would apply to workman-respondent No. 1. According to the learned counsel, 1974 Act is a special legislation which would exclude the applicability of the "Act". Learned counsel has further submitted that after the date of enforcement of 1974 Act i.e. April 1, 1974, the award dated March 18, 1974 could not be enforced by invoking the provisions of the Act. Another argument raised by the learned counsel is that the Labour Court committed a grave error in law by allowing the application of the workman-respondent No. 1 because the petitioner

being not a party to the award dated March 18, 1974 was not even heard or afforded an opportunity at any stage, Learned counsel has further pointed out that after the Kharar Textile Mills, Kharar was declared as a sick Industrial unit u/s 4(1) of the Sick Textile Undertakings (Taking Over of Management) Act, 1972 (for brevity, "1972 Act"), the management of the industry had vested in Government of India and even the lease executed in favour of Padma Shree Textile Industries has come to an end. Therefore, the petitioner cannot be held liable to make the payment on account of the award dated March 18, 1974 made by the Labour Court in favour of workman- respondent No. 1.

7. I have thoughtfully considered the submissions made by learned counsel for the Petitioner and am of the view that the writ petition lacks merit and is liable to be dismissed. Section 5 of 1974 Act reads as under:

"5. Owner to be liable for certain prior liabilities. - (1) Every liability, other than the liability specified in Sub-section (2) of the owner of a sick textile undertaking, in respect of any period prior to the appointed day, shall be the liability of such owner and shall be enforceable against him and not against the Central Government or the National Textile Corporation.

(2) Any liability arising in respect of-

(a) loans advanced by the Central Government, or a State Government, or both to a sick textile undertaking (together with interest due thereon) after the management of such undertaking had been taken over by the Central Government.

(b) amounts advanced to a sick textile undertaking (after the management of such undertaking had been taken over by the Central Government), by the National Textile Corporation or by a State Textile Corporation or by both, together with interest due thereon.

(c) wages, salaries and other dues of employees of the sick textile undertaking, in respect of any period after the management of such undertaking had been taken over by the Central Government shall, on and from the appointed day, be the liabilities of the Central Government and shall be discharged, for, and on behalf of that Government by the National Textile Corporation as and when repayment of such loans or amounts become due or as and when such wages, salaries or other dues become due and payable.

(3) For the removal of doubts, it is hereby declared that,

(a) save as otherwise expressly provided in this Section or in any other Section of this Act, no liability, other than the liability specified in Sub-section (2) in relation to a sick textile undertaking in respect of any period prior to the appointed day, shall be enforceable against the Central Government or the National Textile Corporation:

(b) no award, decree or order of any Courts, Tribunal other authority in relation

to any sick textile undertaking passed after the appointed day in respect of any matter, claim or dispute. In relation to any matter not referred to in Sub-section (2), which arose before that day, shall be enforceable against the Central Government or the National Textile Corporation:

(c) no liability of any sick textile undertaking or any owner thereof for the contravention, before the appointed day, of any provision of law for the time being in force, shall be enforceable against the Central Government or the National Textile Corporation."

8. A perusal of Clause (c) of Sub-section (2) of Section 5 of 1974 Act makes it evident that after the management of any undertaking had been taken over by the Central Government, the wages, salary and other dues of employees from the appointed day i. e. April 1, 1974 would be the liability of the Central Government/National Textile Corporation i. e. the petitioner. It is obvious that after the appointed day, the wages and salary etc. has to be paid by the petitioner. In respect of execution of award passed before the appointed day, Clause (b) of Sub-section (3) of Section 5 of 1974 Act has provided that such award would be enforceable against the petitioner because it expressly excludes the execution of the award passed after the appointed day. The dispute raised in the present petition has arisen in respect of the award passed on March 18, 1974 which obviously has been passed before the appointed day i.e. April 1, 1974. Therefore, the first argument of the learned counsel that 1974 Act would govern the execution of the award is liable to be rejected.

9. The other argument that the petitioner was required to be heard does not need to be dilated upon as a successor employer would stand in the shoes of his predecessor-in-interest who has been given adequate hearing by the Labour Court which passed the award as well as the impugned order. Therefore, even this argument of the learned counsel is liable to be rejected.

10. The last argument of the learned counsel has also not impressed me because after the taking over of the textile undertaking, it has vested in the petitioner i.e. the National Textile Corporation. Its further leasing to Padma Shree Textile Industries would not mean that the unit had ceased to vest in the petitioner. There is no material effect of either leasing having come to an end because in both the cases, the unit continued to vest in the petitioner. Therefore, this argument also lacks merit and deserves to be rejected.

11. No other argument has been raised.

12. I am further of the view that once it is recognised by virtue of the award dated March 18, 1974 that termination of services of workman-respondent No. 1 was illegal, then u/s 14(1) of the 1974 Act, he becomes entitled to reinstatement and the related question of payment of wages from the date of termination till the date of award would be a continuing right which cannot, in any case, be adversely affected by the provisions of Section 5 of 1974 Act. For this view, I draw support from the judgment of Allahabad High Court rendered in the case of

Bijli Cotton Mitts, Hathras v. Labour Court, Agra 1988 Lab IC 659.

13. For the reasons stated above, this petition fails and the same is dismissed.