
(2000) 10 RAJ CK 0007
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4423 of 1998

Prem Roop Kalla

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-10-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 25I, 33C, 36A

Citation : (2000) 4 RLW 461 : (2001) 1 WLC 636 : (2001) 1 WLN 635

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajesh Balia, J.—This is a case which brings to the fore apathy of the petitioner driven from pillar to post by two authorities who have been statutorily entrusted with the task of discharging the obligations for execution of awards granting monetary reliefs under the Industrial Disputes Act and the employer, the University of Jodhpur (Now JNV University), another instrumentality of the State is making merry by not implementing the Award for making of payment even after expiry of a decade from the date of the award as the facts to be stated hereinafter shall presently reveal.

2. The petitioner an employee of the respondent employer, the Jodhpur University, raised the dispute about termination of his services with effect from 1.6.1986. The said dispute was made subject matter of a reference made to the Labour Court, Jodhpur u/s 10 of the Industrial Disputes Act, 1947. In the said reference, Labour Dispute No. 59 of 1988, an Award was made on 12th December, 1990 declaring the retrenchment of the petitioner to be invalid and directing the employer University to reinstate the petitioner with immediate effect and the University was further directed to make payment of arrears of wages w.e.f. the date of termination of the service to the date of retrenchment. The petitioner was reinstated by the respondent University on 4.6.1992 and all wages due w.e.f. the date of reinstatement have been paid to the petitioner.

However, according to the claim of the petitioner no arrears were paid in terms of the Award from the date of termination dated 1.6.1986 to the date of reinstatement 4.6.1992. This fact is not in dispute. The petitioner, in the first instance, moved an application u/s 33C(2) for determination of the money due under the Award to which he was entitled before the Labour Court, Jodhpur. The Labour Court by its order dated 26th December, 1991 held that since there is no dispute about quantification of the benefits, and finding the money due under the award is merely a matter of computation, application was not maintainable u/s 33C(2) and the workman has his only remedy to move the State Govt. u/s 33C(1). Advised by the Labour Court, the petitioner moved the State Govt. for issuing certificate for recovering due from the employer under the Award. That application was rejected by a cryptic order dated 7.8.1996 (Annx. P./10). Though the order states that the detailed order is available on the file, neither the same has been served on the petitioner nor a copy of that has been given to him nor in reply to the writ petition any such order has been placed on record. The petitioner again moved an application for recovering the sum due under the Award which too was dismissed on 10.12.1997 by referring to the earlier order dated 7.8.1996 that the application is not maintainable. This denial of lending assistance in executing the Award by the State as well as the Labour Court had led the petitioner to file this petition. He has challenged the orders Annx. P/10 and P/11 dated 7.8.1996 and 10.12.1997 respectively made by the State Govt. rejecting his application u/s 33C(1) of the Industrial Disputes Act, 1947 and Annx. P/3 the rejection of his application u/s 33C(2) for determining the amount due under the Award for the purposes of its recovery vide its order dated 10.12.1990. The stand taken by the University employer is that since the petitioner has been reinstated and he has been paid all his due w.e.f. the date of reinstatement and he has joined without protest they have thought it not necessary to make payment of the arrears by assuming that the petitioner has no grievance in respect thereof. Mr. Bhandari, learned Counsel for the respondent University, requests the Court to deem it a case of waiver of claim to arrears by the petitioner.

3. Mr. Sajjan Singh, learned Counsel, appearing for the State has supplied reason for the two cryptic orders that since the claim to the amount payable under the Award was disputed by the University, there is no procedure prescribed u/s 33C(1) for determination of such dispute and the remedy of the petitioner was to have raised another industrial dispute for determining that sum due under the award and therefore, the application has rightly been dismissed. This reason, at least is not disclosed on the face of the order communicated to the petitioner.

4. Both the contentions to throw out this petition by the respondents appears to be incomprehensible. So far as the University is concerned, the binding Award has already come into existence reinstating the petitioner with full back wages with effect from the date of his termination. There was no need for the petitioner to raise a protest before being taken on duty to reserve his right to recover the arrears of emoluments which had been awarded to him under due adjudication.

The fact that the petitioner was not willing to forgo his backwages prior to reinstatement is apparent from the fact that soon after the award was made he made an application u/s 33C(2) for determination of the amount payable to him under the Award which unfortunately was rejected by the labour Court even before he was reinstated by holding it to be not maintainable. Thus, it is as it will be presently seen was an order not warranted under law.

5. The plea of the State Govt. that since the amount is disputed and there is no determination of sum payable under the Award, the determination of amount under the Award could not have been made u/s 33C, which was beyond its scope and therefore, the applications have been rightly rejected, is devoid of any force and contrary to law laid down by the Supreme Court. Considering the scheme of Section 33C of the Industrial Disputes Act, 1947 as it stood at the relevant time and Section 6-H of the U.P. Industrial Disputes Act, the provisions of which were para materia with the unamended provisions of Section 33C of the Act of 1947. Even otherwise Section 33C (1) & (2) leaves no room of doubt that the contention is without any substance. Section 33C as it exists, and is applicable to the present facts and circumstances, reads as under:

33C. Recovery of money due from an employer.-(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money, due to him and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period."

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months:

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such

period by such further period as he may think fit.

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in Sub-section (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Explanation.-In this section "Labour Court" includes any court constituted under any law relating to investigation and settlement of industrial disputes in force in any State.

6. The legislative history of the enactment of Section 33C would throw light that this provision in the present form has come to be enacted for the purpose of providing speedy remedy to individual employees to enable them to enforce their rights about the recovery of money. The Industrial Disputes Act, 1947 as originally enacted did not provide for remedy to individual employees to enforce their existing rights i.e. to say where there was no provision about their entitlement of right to recover money due from the employer, Industrial Disputes Act did not provide any remedy for their determination of sum disputes and recovery thereof. The lacuna was to some extent remedied by the enacting Section 20 in the Industrial Disputes (Appellate Tribunal) Act, 1950 (since repealed) which provided for the recovery of the amount due under an Award or decision. This was a forerunner of Section 33C of the Act of 1947. Section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950 provided that the money due under the Award of the Tribunal may be recovered as arrears of land revenue on application being made by the employee entitled to the said money. Sub-section (2) of Section 20 of the Industrial Disputes Act provided that where any workman was entitled to receive from the employer under an award or decision of an Industrial Tribunal which could be computed in terms of money, the said money value of such benefit could be computed and the amount be determined payable in lieu thereof by the Industrial Tribunal and the amount so determined could be recovered as provided under Sub-section (1). Thus, money claim directly flowing from the award could be recovered under Sub-section (1) of Section 20 and the monetary value of any benefit flowing from the Award could be determined under Sub-section (2) and then it could be recovered in accordance with Sub-section (1) thereof. In 1953 Section 25-I was inserted in

Chapter V-A of the Industrial Disputes Act which provided that any money due from employer under the provisions of this Chapter, whether by way of compensation or by way of wages, without prejudice to any other mode of recovery may be recovered as arrears of land revenue or as the public demand on application being made by the person entitled to the money. This provision was laconic in the sense that it did not provide for recovery of any money due to a workman from employer other than under Chapter V-A. The provision did not apply to moneys or benefits due under awards or settlement. This led to the enactment of Industrial Disputes (Amendment & Misc. Provisions) Act, 1956 through which Industrial Disputes (Appellate Tribunal) Act, 1950 was repealed and so also Section 25-I in Chapter V-A of the Industrial Disputes Act, 1947 and instead thereof Sections 33C and 36-A were inserted in the Act of 1947.

7. The provisions so included in 1956 still did not include under Sub-section (2) the quantification of money to which a workman is entitled but was confined to the computation in terms of money the value of benefit to which a workman is entitled and prior to the provision in the present form came into existence, Section 33C as it existed and considered by the Supreme Court on two occasions, read as under:

Section. 33C. Recovery of money due from an employer.-(1) Where any money is due to a workman from an employer under a settlement or an award or, under the provisions of Chapter V-A, the workman may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as arrear of land revenue."

(2) Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under this Act, be determined by such Labour Court as may be specified in this behalf by the appropriate Government and the amount so determined may be recovered as provided for in Sub-section (1).

(3) For the purpose of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

8. Before referring to the Supreme Court decision, it may be noticed that prior to the provisions came into present form, the determination of sum receivable in the form of money from the employer other than under any settlement or an award or under the provisions of Chapter 5-A or Chapter 5-B was not subject matter of either Section 33C(1) or 33C(2). It was only after the provision came

in the present form, any workman entitled to receive from the employer any money but the quantum was in dispute came to be within the jurisdiction to be determined by the Labour Court u/s 33C(2).

9. a perusal of the aforesaid provision would go to show, that while Sub-section(I) of Section 33C provides an additional mode of recovery of any money due to a workman under any award, settlement or under the provisions of Chapter V-A or Chapter 5-B, he is entitled to make application before the appropriate Govt. without prejudice to any other mode of recovery available to him. It is on making of such application that the appropriate Govt. on being satisfied that any money is so due, is required to issue a certificate for that money about the claim recovery of which it is satisfied to the Collector who shall then proceed to recover the sum so certified as an arrears of land revenue. Thus, a duty is cast on the Govt. on an application being made in this behalf by the workman that any money is due under any Award or settlement to satisfy itself about the fact whether any sum is due under settlement or Award or under provisions of Chapter V-A or 5-B as the case may be. This satisfaction necessarily means adoption of a fair procedure by the Govt. or through any of its delegates to satisfy about the existence of right of the applicant to receive any amount due under the settlement or Award or under Chapter 5-A or 5-B as the case may be and the sum that is due thereunder. This necessarily requires the procedure of computation and determination of amount due before certifying specific sum due under an award. Because unless the State Govt. is satisfied about the quantum of sum due to the workman it cannot issue certificate for the recovery of the specified sum. It is for the State Govt. to issue a certificate of the specific sum for the purpose of the Collector to take proceedings of recovering the sum by invoking the provisions of the Land Revenue Act as are invoked in recovery of the arrears of land revenue. It is not at all necessary that exact specified sum directly computed must have been awarded by the Court.

10. In this connection reference may be made to S.R. Mills Co. v. Baliram AIR 1966 SC 617. The Supreme Court considering the unamended provisions of Section 33C referred to above held:

It is not essential that the claim which can be brought before the Government or its delegate u/s 33-C(1) must always be for a predetermined sum. The Government or the Labour Court may satisfy itself about the exact amount and then take action under that section. In the present case the dates of lay off are known and each workman will show to the Second Labour Court that he is qualified to receive compensation for layoff. That will be shown from the muster roll which the employer is required to maintain and it will then be a simple arithmetical calculation which in our judgment, Section 33C permits to be made. If there is any question whether there was lay off or not the Labour Court will decide it. This argument, therefore, has no force.

11. These observations were made while rejecting the contention of the petitioner employer that the claim for money was not claim due but computation

of such sum is to be made before the money due can be found, a contention very much similar to that has been raised before this Court on behalf of the State by the learned Counsel.

12. A like contention has been rejected by the Supreme Court in *Kays Constructions Co. v. State of U.P.* 1965 SC 1488 while considering the provisions of Section 6-H of the UP Industrial Disputes Act which was para materia with the provisions of Section 33C as unamended and referred to above. That was a case in which an Award has been made for grant of backwages for the period of unemployment caused due to invalid retrenchment as a result of reinstatement of the workman. An application has been made for recovery of the sum due under the Award by way of arrears of backwages until reinstatement. An objection has been raised amongst others on behalf of the employer that the exact number of days for which different workmen had been forcibly kept out of employment was not determined, an order u/s 6-H(I) could not be passed, which was again a like contention as has been raised on behalf of the State in the case at hand that since a determined sum has not been awarded under the Award, and there was no quantification of the same, the application u/s 6H (1) was not maintainable. The Court rejected the contention, and said:

It is contended before us that the judgment of the Divisional Bench is erroneous in its interpretation of Section 6-H (1) and (2). The question thus is how are the two sub-sections to be read? This Section is analogous to Section 33C of the Industrial Disputes Act, 1947 and Section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950, It is significant that in all the three

statutes the cognate section is divided into two parts and the first part deals with recovery of "money due" to a workman under an award and the second deals with a "benefit" computable in terms of money. Under the first sub-section the State Government (or its delegate), if satisfied that any money is due, is enable to issue a certificate to the collector who then proceeds to recover the amount as an arrear of land revenue. The second part then speaks of a benefit computable in terms of money which benefit, after it is so computed by a Tribunal, is again recoverable in the same way as money due under the first part. This scheme runs through Section 6-H Sub-sections (1) and (2).

That there is some difference between the two sub-sections is obvious enough...In our judgment, a case such as the present, where the money due in back wages for the period of unemployment, is covered by the first sub-section and not the second. No doubt some calculation enters the determination of the amount for which the certificate will eventually issue but this calculation is not of the type mentioned in the second sub-section and cannot be made to fit in the elaborate phrase "benefit which is capable of being computed in terms of money"...But the antithesis between "money due" and a "benefit which must be computed in terms of money" still remains, for the inquiry being made is not of the kind contemplated by the second sub-section but is one for the satisfaction of the State Government under the first sub-section. It is verification of the claim to

money within the first sub-section and not determination in terms of money of the value of a benefit.

13. By observing this, the decision of the Allahabad High Court had been affirmed by the Supreme Court. The aforesaid judgment was referred to and relied on by the Supreme Court in S.R. Mills case (supra).

14. These two decisions, in my opinion furnish a complete answer to the contentions raised on behalf of the State that since the amount payable to the workman under the Award was yet to be determined, the powers could not be invoked u/s 33C(1) and the contention must fail.

15. It may be pointed out here that the change in law has occurred since the amendment was effected in Industrial Disputes Act, 1947 by amending Sub-section (2) of Section 33C as noticed above, the unamended Section 33C did not provide under Sub-section (2) of Section 33C that "where any workman is entitled to receive from employer any money" but it was confined to quantification of money value of the benefit other than money where the workman was entitled to receive from employer any benefit which was computable in terms of money. By making the provisions of Section 33C(2) applicable to the computation of money due to the workman under an entitlement already determined also now falls within the domain of the Labour Court u/s 33C(2), if the jurisdiction of it is invoked for determining the amount so that the recovery proceedings In respect thereof can easily be proceeded with u/s 33C(1).

16. The Labour Court in my opinion was not right in rejecting the application of the petitioner in the first instance refusing to determine the amount payable under award by way of arrears of back wages with effect from the date of termination of service to the date of reinstatement viz, 1.6.1986 to 4.6.1992 only on the ground that since there is no dispute about the payability of arrears of back wages which only refers to arithmetic calculation it has no jurisdiction to decide it. When determination of the amount payable under the Award has to be made either by the State Govt. for the purpose of satisfying itself as how much amount is due under the award under Sub-section (1) or by the Labour Court, if there is any dispute about the quantification of the amount. I am therefore, of the opinion that the Labour Court in the first instance as well as the State Govt. later on has failed to discharge their statutory obligation in determining the amount payable under the Award by refusing to make any effort to undertake such exercise particularly when there is no dispute before this Court either that no amount by way of backwages as arrears has been paid to the petitioner prior to the date of reinstatement which it was bound to do under the award and cannot take the shelter of jejune ground that the petitioner has joined the duty without protest. It hardly behoves the employer an instrumentality of the State to deny, implementation of the award against it.

17. As a result this In the facts and circumstances of the case, I direct that in the

first instance the respondent University, who does not dispute the non-payment of any arrears of wages for the period prior to reinstatement to quantify on its own the amount payable, to the petitioner as a result of the award dated 10.12.1990 w.e.f. 1.6.1986 to 4.6.1992 as per the terms and conditions of the employment under it within a period of 8 weeks and make the payment according to it. If there is any dispute as to the correctness of such quantification by the respondent University, the petitioner shall be free to make a separate application before the Labour Court u/s 33C(2) for determining the amount payable under the Award and on such determination if the University still fails to make payment thereof within a period of four weeks of such determination, the petitioner shall be free to make appropriate application before the State Govt. u/s 33C(1) for the recovery of the same. The fact that the petitioner disputes the quantification of sum payable by the University, and take recourse to further remedies will not absolve the respondent University from making payment of undisputed amount at least as quantified by it in pursuance of this order. The arrears so payable, of which the petitioner has been deprived without any fault on his part, shall carry interest @ 12% per annum with effect from the date of the award.

18. The State Govt. as well as the University both shall pay costs of this petition which is quantified as Rs. 2500/- each.