
(2014) 01 DEL CK 0054

In the Delhi High Court

Case No : Writ Petition (C) 5307 of 2008

Rajender Prasad Sharma

APPELLANT

Vs

National Hydroelectric Power Corporation Ltd.

RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:

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

Citation : (2014) 2 AD 229 : (2014) 2 LLN 657

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Sanjeev Kumar, for the Appellant; Mithilesh Mishra and Mr. Narender Pal Singh, for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—The challenge in this writ petition is to the order dated May 01, 2008 passed by the Presiding Officer, Fast Track Court-XXI, Karkardooma in LCA No. 11/06/005, whereby the application of the claimant u/s 33C(2) of the Industrial Disputes Act has been rejected. The brief facts are that the petitioner herein is Mr. Rajender Prasad Sharma is the father of late Vinay Prakash, who was employed with the respondent as a regular employee. Vinay Prakash expired on September 21, 1989 leaving behind his wife, his father, mother and brother. The petitioner herein vide his letter dated September 24, 1989 informed the respondent about the demise of his son. He had also requested that all the payments of the deceased employee may be deposited to Handicap Trust as a donation. It appears that there was a claim by the wife of late Vinay Prakash with regard to the dues payable to her husband. The respondent directed the petitioner and his family members to obtain a Succession Certificate in his favour. The steps were taken by the petitioner and his family members to seek a Succession Certificate. Learned Civil Judge who decided the issue of Succession Certificate called for the details of pending dues of deceased employee late Vinay Prakash. The respondent filed a certificate in the Court to the effect that a sum of

Rs. 75,597/- was due. Learned Civil Judge granted the Succession Certificate on January 29, 1996 for an amount of Rs. 75,597/- with interest in favour of the petitioner, his wife and his son.

2. Out of the amount of Rs. 75,597/- the gratuity accounted for Rs. 5,442.

3. It was the stand of the claimants that they were entitled to an amount of Rs. 18,865/-. Be that as it may, the petitioner got issued a legal notice, which remained unanswered. A claim was filed by the father of the deceased employee and his brother before the Labour Court u/s 33C(2) of the Industrial Disputes Act praying for the following amounts:

(i) Balance amount of dues less paid

: Rs. 8,757/-

(ii) Interest @ 18% per annum from 21.9.89 to Jan. 2005 amount of Rs. 75,597/-:

: Rs. 88,800/-

(iii) Legal expenses and cost of notices etc.

: Rs. 11,000/-

Total

Rs. 1,08,557/-

4. The respondent opposed the claim and has taken a stand that the complete payment has been made to the legal representatives of the deceased employee. According to them, a suit No. 478/2002 titled "Bimla Devi through LRs Sh. Rajender Prasad Sharma & Sh. Sudhir Prakash vs. NHPC" was dismissed by the Court of Ms. Anu Grover Baliga, Civil Judge, Delhi on January 18, 2003. Therefore, the claim u/s 33C(2) is barred by principles of res-judicata.

5. It was also their stand that the amount of gratuity informed to the Court i.e. Rs. 18,865/- was wrongly calculated inasmuch as the deceased employee, was drawing pay less than Rs. 2,500/- and he was not covered under the NHPC Gratuity Fund Rules. According to the respondent, he was covered under the Payment of Gratuity Act under which he was entitled to Rs. 5,442/- only.

6. The Tribunal framed four issues, the first one being on territorial jurisdiction which was decided in favour of the claimants. The second one was about the maintainability of the claim petition on the ground of res-judicata. Insofar as this issue is concerned, The Tribunal was of the view that the claimants had earlier filed a civil suit No. 478/2002 on the same cause of action which was dismissed on January 18, 2003. The decision of the learned Civil Judge had attained finality as the plaintiff had not filed appeal against the same. The relevant portion of the judgment of the learned Civil Judge has been reproduced in the impugned order. Suffice would it be to say that learned Civil Judge has concluded that the salary

of the deceased employee was less than Rs. 2,500/-. Learned Civil Judge had also concluded that the plaintiff had not come forward to dispute the amount shown in Exh. DW1/5. In any case, the learned Civil Judge has come to a conclusion that the plaintiff was not entitled to amount of Rs. 8,757/- on account of gratuity.

7. In the impugned order, the Tribunal also concludes that the claimants before it i.e. the petitioner herein and his son have not been able to prove that they are entitled to the amount of Rs. 1,08,557/- with interest @ 18% per annum.

8. Learned counsel for the petitioner would argue that the deceased employee was governed by the NHPC Gratuity Fund Rules and not under the Payment of Gratuity Act.

9. On the other hand, learned counsel for the respondent would reiterate the submission that the deceased employee being governed by the Payment of Gratuity Act, the dues having been paid to the legal representatives (including the petitioner) of the deceased employee the claim before the Tribunal was untenable. He also states that the claim before the Tribunal was also not maintainable in view of the adjudication of the issue with regard to gratuity under the NHPC Gratuity Rules by the Civil Court. He would state that the civil court had also observed that the legal representatives/plaintiffs had not produced any documentary evidence to show that the salary of the deceased employee was Rs. 3,000/-, more than Rs. 2,500/-. Having heard the counsel for the parties, it is noted that the controversy regarding the difference of gratuity has been settled by the civil court in its order dated January 18, 2003, with a categorical finding that the plaintiff was not entitled to the amount of Rs. 8,757/- on account of gratuity. I also note that during the proceedings before the Tribunal, the petitioner herein has stated that he does not know whether the salary of his son was less than Rs. 2,500/-. Even Mr. Sudhir Prakash, the brother of the deceased employee who was claimant No. 2 could not say that the salary of his deceased brother was Rs. 2,500/- or not. It has come on record that the salary of the deceased employee at the relevant time was Rs. 1,572/- which is less than Rs. 2,500/- and as such he was governed by the Payment of Gratuity Rules. The Tribunal has held that the claim was not maintainable due to res-judicata. Having decided the issue No. 2 in favour of the respondent and also adjudicated the claim of gratuity on merit that the deceased employee being governed by the Payment of Gratuity Act, the Tribunal dismissed the claim petition. The conclusion is of a finding of fact (reference being made to the judgment reported as Divisional Controller, N.E.K.R.T.C. Vs. H. Amaresh, and on the basis of the evidence adduced by the parties before it, which included the earlier adjudication by the Civil Court, I do not find any merit in the writ petition and the same is accordingly dismissed with no order as to costs.