
(2019) 01 JH CK 0132

In the Jharkhand High Court

Case No : Writ Petition (L) No. 2291 Of 2018

Rajiv Ranjan Choubey

APPELLANT

Vs

General Manager, Lodna Area

RESPONDENT

Date of Decision : 10-01-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12(3), 33C(2)
Constitution Of India, 1950 — Article 226

Citation : (2019) 01 JH CK 0132

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Ratnesh Kumar, Anoop Kr. Mehta

Final Decision : Dismissed

Judgement

1. This writ petition has been preferred under Article 226 of Constitution of India assailing the order passed by the Labour Court no.2, Dhanbad under Article 33-C(2) of the Industrial Disputes Act, 1947 (for short hereinafter referred to as "of the I.D. Act, 1947") wherein the claim raised by the petitioner has been held to be not maintainable.

2. Brief facts of the case of the petitioner, as per the pleadings made in the writ petition, is that he was appointed to the post of General Mazdoor Category-I under the Bharat Coking Coal Ltd. (for short hereinafter referred to as "BCCL") on 13th April, 1995 and joined on 26th April, 1995 in the Lodna area. In the year 1998 he was transferred from North Tisra Colliery to Bagdigi Colliery in the same capacity i.e. General Mazdoor Category-I. He was being paid the wages of the said post but the BCCL from the time of appointment was taking the work of Loading Clerk in the North Tisra Colliery from the petitioner. The grievance of the petitioner is that although he is under category-I working as General Mazdoor but the work of Loading Clerk, which happens to be of higher grade i.e. Clerk Grade-II, has been taken but without any wages to the post of Clerk Grade-II. This fact has been brought to the notice of the competent authority but have no

effect, therefore the same has been brought for conciliation through the Rashtriya Colliery Mazdoor Sangh and the Management has agreed to resolve the dispute by virtue of memorandum of settlement arrived on 18.09.2003 as envisaged under the provision of Section 12(3) of the I.D. Act, 1947.

3. It is the case of the petitioner that in view of aforesaid settlement the Management has agreed to depute him as General Mazdoor working as Loading Clerk in the existing capacity with immediate effect and also decided to initiate a process for regularisation in due course as Weigh Bridge Clerk. The petitioner, in terms of the aforesaid memorandum of settlement has assumed the charge of the post but even thereafter the wages has not been paid on the basis thereof. The petitioner, thereafter, has been regularised from the post of General Mazdoor Category-I to the post of Clerical Grade-III vide letter No.45 dated 19.01.2009 and as such the petitioner being entitled to get wages of the higher grade but having no benefit, as such he has filed an application under the provision of Section 33-C(2) of the I.D. Act, 1947 which has been rejected by the Labour Court being held to be not maintainable and hence, instant writ petition.

4. The ground for assailing the aforesaid order is that the Labour Court has held the application as not maintainable presuming the fact that it is a case of promotion but actually it is not a case of promotion rather it is a case of computation of the wages as per the entitlement in pursuance to the memorandum of settlement dated 18.09.2003 hence the order passed by the Labour Court is not sustainable in the eye of law.

5. Mr. Anoop Kumar Mehta, learned counsel appearing for the BCCL has objected such ground raised by the petitioner and defended the order passed by the Labour Court by submitting that the scope of Labour Court under the provision of Section 33-C(2) of the I.D. Act, 1947 is very limited since the Labour Court under the aforesaid provision is required to compute the claim, if there is any dispute, as per the entitlement, but here there is no entitlement of the petitioner since the petitioner has never been regularised to the post for which he is claiming the wages. He submits that it is admitted case of the petitioner that although he has joined in the year 1995 but as per the memorandum of settlement dated 18.09.2003 he has been asked to discharge duty in the existing capacity which does suggest that the petitioner has not been regularised either in the year 2003 or in the year 1995 rather he has been regularised only with effect from 19.01.2009 and hence the Labour Court has declined to exercise its jurisdiction conferred under Section 33-C(2) of the I.D. Act, 1947 treating it a claim of promotion to the higher post, hence, there is no infirmity in the said order.

6. Heard learned counsel appearing for the parties, appreciated their rival submissions and after going across the pleadings made in the affidavit as also the impugned order, this Court thinks it proper to have a glimpse of the provision of Section 33-C(2) of the I.D. Act, 1947 which reads as under:

"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.

7. It is evident from the aforesaid provision that the jurisdiction of the Labour Court after the amendment Act, 1936 and 1964 are in two parts of the sub sections.

The first part is concerned with money claims simpliciter, and

The second part speaks about computation in terms of money and of any benefit.

It would appear that where any workman is entitled to receive money from his employer and if any question arises as to the amount of such money, thus the question may be decided by the Labour Court.

8. The expression "if any question arises" as to the amount due imparts anyone or more of the following kinds of dispute:

(i) Where there is any settlement or award as alleged,

(ii) Where any workman is entitled to receive from the employer, any money either under any settlement or award etc.

(iii) What the right or quantum of such amount will be and whether the amount claimed is due or not.

9. Thus, the dispute which is referable to the question has to the amount of money due. If the right to get the money on the basis of the settlement of the award is not established, more amount of money will be due, if it is established, then it has to be found out that it is a case of mere calculation as to what amount is due. For finding it out, it is necessary that there should be a dispute as to the amount and money due also, reference in this regard is made to the judgment rendered by Hon'ble Apex Court in the case of Hakam Singh Vrs. Gamon India Ltd. reported in 1971 (1) L.L.J. 167.

10. There is a remarkable difference between the specification before and after its amendment by the amendment Act, 1964. This specification before the amendment was confined only to any benefit computable in terms of money to which a workman is entitled from his employer, is in contrary distinction to the words any money due to applicant from employer in sub Section-1 marked as distinction in the scope of jurisdiction under the two specifications the language of any mandate sub section 2 was held as it did not specify under what circumstance the Labour Court would determine the benefit of the computation in terms of money but the provision of this section clearly states as if any question arises as to the amount of money due or as to the amount such benefit should

be computed then the question may be made under this Act be decided by such Labour Court.

11. In the backdrop of these settled positions, the factual aspect of the case of the petitioner needs to be examined in order to assess the legality and propriety of the order passed by the Labour Court.

12. The admitted case of the petitioner is that he has been appointed on 13.04.1995 as General Mazdoor Category-I but he worked in the higher grade was being taken with him. On 18.09.2003 when he raised grievance to regularise him in the higher grade, a memorandum of settlement has been entered into on 18.09.2003 in pursuance to the provision as contained under Section 12(3) of the I.D. Act, 1947. The terms of the settlement as under:-

"1. That the management of Lodhna Area agrees to depute Shri Rajiv Ranjan Choubey, General Mazdoor working as Loading Clerk of Bagdigi Colliery at Lodna Colliery Weigh Bridge in his existing capacity with immediate effect.

2. Management also process his case for regularization in due course as Weigh Bridge Clerk.

3. Both the parties agrees to discuss over item no.1-9 excluding item no.6 bipartitely at Area Level. Management assures that they will resolve the demand of union raised in the charger of demand on merit basis.

4. That this settles the disputes in toto.

5. That both the parties shall submit the implementation report to the ALC (C) Dhanbad-III within 30 day from the date of this settlement."

13. It is evident from the terms of the settlement that the Management has agreed to depute the petitioner from General Mazdoor Category-I to Loading Clerk Grade-II in the existing capacity with immediate effect which suggest that as on 18.09.2003 the grade of the petitioner was not changed rather he has been allowed to work in existing capacity without making any reference of any wages with the agreement that the case for regularisation as Weigh Bridge Clerk would be considered.

14. There is no dispute about the fact that the wages or the salary is attached to the post and when the petitioner has not been regularised by passing an effective order in this regard allowing him to be regularised as Loading Clerk Grade-II, he ipso facto will not be entitled to get the wages of the said category unless and until there is specific order to that effect. It is further evident that the petitioner has been regularised by order passed in this regard on 19.01.2009 in Clerk Grade-III which also suggests that prior to 19.01.2009 his status is not under Clerical Grade-III and therefore the relief which is being sought for by the petitioner for the benefit of the wages of Category-III merely because he was allowed to perform his duty in the higher capacity does not confer any entitlement in pursuance of any specific order in this regard.

15. It is evident from the written statement filed by the Management before the Labour Court that the very basis of entitlement of the petitioner has been disputed by the respondent-Management by saying therein that unless the petitioner would be granted promotion with effect from the date of its claim i.e. from the order 1995, then only he will be held to be entitled for the same.

16. Thus, this Court finds that the stand taken in the written statement by the Management is not improper since the petitioner has accepted the order of regularisation in Grade-III from 19.01.2009 and hence after accepting it by not raising any dispute of regularisation in the higher grade from the date from which he is seeking a direction for disbursement of the higher wages to be computed under the provision of Section 33-C(2) of the I.D. Act, 1947, the entitlement of the same yet to be decided, and therefore it will not come under the purview of provision of Section 33-C(2) of the I.D. Act, 1947.

17. In this respect, the Hon'ble Apex Court in the case of U.P. Electric Supply Co. Ltd. Vrs. R.K. Shukla reported in (1969) 2 SCC 400 which has been delivered by taking aid of the judgment rendered in the case of Chief Mining Engineer, M/s East India Coal Co. Ltd. reported in A.I.R. 1968 SC 218 and in the case of R.B. Bansilal Abirchand Mills Co. Ltd. Vrs. the Labour Court, Nagpur and Others reported in 1972 (1) SCC 154 has been please to hold that jurisdiction of Labour Court under Section 33-C(2) is not to go into the question and determination rather it is only of the computation, if the entitlement has already been declared.

18. In the judgment rendered in the case of State of U.P. Vrs. Brijpal Singh reported in (2005) 8 SCC 58 wherein their Lordships of Hon'ble Apex Court has been pleased to hold that the right to the money or benefit which is sought to be executed under Section 33-C(2) must be an existing one, that is, already adjudicated upon and must arise in course of and in relation to relationship between industrial workman and employer.

19. The difference between a pre-existing right or benefit and one which is considered just and fair is vital. It is not competent for Labour Court exercising jurisdiction under Section 33-C(2) to arrogate to itself functions or 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. Labour Court cannot first decide workman's entitlement and then compute the benefit so adjudicated. It is only when the entitlement has been earlier adjudicated or recognized by the employer, and thereafter for purpose of implementation thereof some ambiguity requires interpretation that power of interpretation is treated as incidental to Labour Court's power under Section 33-C(2), like that of executing court's power to interpret the decree for purposes of its execution. Workman can proceed under Section 33-C(2) only after Tribunal has adjudicated on a complaint under Section 33-A or reference under Section 10 that order of dismissal was not justified.

20. Same view has been expressed by Hon'ble Supreme Court in the case of U.P.

State Road Transport Corporation Vrs. Birendra Bhandari reported in (2006) 10 SCC 211 and in view of settled position of law and considering the factual aspect involved in this case, the existing right of the petitioner cannot be said to be present and therefore, it will not come under the purview of the provision of Section 33-C(2) of the I.D. Act, 1947, hence the Tribunal, by considering the aforesaid position of law and the factual aspect, has rightly not entertained the application, hence, this Court sitting under Article 226 of Constitution of India is not inclined to interfere with the impugned order by issuing a writ of certiorari taking into consideration the limited scope that writ of certiorari can only be exercised in case where there is error apparent on the face of record or the order impugned is without jurisdiction or beyond the statutory provision, but according to conscious view of this Court, no such ground is available and hence this Court declines to interfere with the impugned order.

21. In the result, this writ petition fails and accordingly dismissed.