
(2010) 11 P&H CK 0116
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 12201 of 2004

Rakesh Kumari	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 01-11-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(1), 33C(2)

Citation : (2010) 11 P&H CK 0116

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Judgement

Kanwaljit Singh Ahluwalia, J.—Present writ petition has been filed by Rakesh Kumari. She has assailed the order (Annexure P-5) dated

21st April, 2003 passed by the Labour Commissioner, Haryana, whereby he had refused to come to the rescue of the petitioner on the ground

that calculation of back wages can only be dealt with u/s 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as, "the Act") and not

u/s 33C(1) of the Act.

2. Briefly stated, the petitioner was an employee of respondent No. 3 and she joined as a Helper on 2nd August, 1988. Her services were illegally

terminated by her employer on 16th April, 1990. The dispute raised by the petitioner regarding the illegal termination of her services was referred

by the State Government to the Labour Court, Gurgaon. The Labour Court vide its Award (Annexure P-1) dated 24th January, 2000 held the

petitioner entitled to reinstatement with continuity in service and full back wages.

3. Mr. Ashwani Bakshi, Advocate appearing on behalf of the petitioner, has submitted that in pursuance of the Award (Annexure P-1), the

petitioner-workmen joined service of respondent No. 3 and her services were again terminated, which has been a subject matter of another

reference made by the State Government on a demand notice issued by the petitioner-workmen. Mr. Bakshi has stated that so far as the

calculation of back wages is concerned, it was a mere arithmetic calculation and the same could not be denied by the Labour Commissioner on the

ground that it required computation and the petitioner-workmen should invoke Section 33C(2) of the Act. To controvert the reasoning adopted by

the Labour Commissioner, Haryana in the impugned Order (Annexure P-5), counsel for the petitioner has drawn my attention to the observations

made by a Constitutional Bench of Hon"ble the Apex Court in case of Kays Construction Co. (P) Ltd. Vs. State of Uttar Pradesh and Others, ,

wherein it was observed as under:

That there is some difference between the two Sub-sections is obvious enough. It arises from the fact that the benefit contemplated in Sub-section

(2) is not "money due" but some advantage or perquisite which can be reckoned in terms of money. The Divisional Bench has given apt examples

of benefits which are computable in terms of money, but till so computed are not "money due". For instance, loss of the benefit of free quarters is

not loss of "money due" though such loss can be reckoned in terms of money by inquiry and equation. The contrast between "money due" on the

one hand and a "benefit" which is not "money due" but which can become so after the money equivalent is determined on the other, marks out the

areas of the operation of the two Sub-sections. If the word "benefit" were taken to cover the case of mere arithmetical calculation of wages, Sub-

section (1) would hardly have any play. Every case of calculation, however simple, would have to go first before a tribunal. In our judgment, a case

such as the present, where the money due is 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 Sub-section (2) and cannot be made to fit in the elaborate phrase "benefit which is capable of being computed in terms of money.

The contrast in the two Sub-sections between "money due" under Sub-section (1) and the necessity of reckoning the benefit in terms of money

before the benefit becomes "money due" under Sub-section (2) shows that mere arithmetical calculations of the amount due are not required to be

dealt with under the elaborate procedure of Sub-section (2). The appellant no doubt conjured up a number of obstructions in the way of this

simple calculation. These objections dealt with the "amount due" and they are being investigated because the State Government must first satisfy

itself that the amount claimed is in fact due. But the anti-thesis 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 Sub-section (2) but is one for the satisfaction of the State Government

under Sub-section (1). It is verification of the claim to money within Sub-section (1) and not determination in terms of money of the value of a

benefit. The judgment of the Division Bench was thus right. The appeal fails and will be dismissed with costs. The companion appeal will also be

dismissed but we make no order about costs in that appeal.

4. Computation of back wages is a mere arithmetic calculation.

5. This could easily be undertaken by the Deputy Labour Commissioner for the Labour Commissioner, Haryana in view of the observations made

by Hon''ble the Apex Court.

6. Hence, the impugned order (Annexure P-5) is set aside and the matter is hereby remitted back to the Labour Commissioner, Haryana to decide

the application of the petitioner-workmen afresh in light of the observations made by Hon''ble the Apex Court in Kays Construction Company's

case (supra). The Labour Commissioner, Haryana shall pass a fresh order and decide the application submitted by the petitioner-workmen within

a period of two months from the date of receipt of a certified copy of this order.

7. With the observations made above, present petition is disposed of.