

(2011) 09 MP CK 0051
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5310 of 2011

Ramesh Kumar Jain

APPELLANT

Vs

Jal Sansadhan Vibhag, Bhopal and Another

RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 10, 33A, 33C(2)

Citation : (2011) 09 MP CK 0051

Hon'ble Judges : Tarun Kumar Kaushal, J; Sanjay Yadav, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard.

2. Challenge put forth by petitioner in this petition under Article 227 of the Constitution of India is to an order dated 06-12-2010 passed by the Labour Court No.2, Bhopal; wherein an application preferred by petitioner u/s 33C(2) of the Industrial Disputes Act, 1947, has been rejected.

3. The claim vide said application put forth by petitioner before the Labour Court was to the tune of Rs. 14,92,483.59 with interest @ 18% per annum in respect of medical bills, travelling allowance bills, monthly wages from 01-03-1984 to 31-03-1986, city compensatory allowance, an amount towards xerox copies used during the departmental enquiry and an amount towards typing etc. The petitioner also claimed the amount towards general provident fund from January 1995 to June 1995. The Labour Court rejected the application on the ground that it is beyond its jurisdiction to compute the entitlement of the petitioner and then direct execution thereof.

4. The question is as to whether the Labour Court was justified in rejecting the application filed by petitioner.

5. Section 33C(2) of the Act of 1947 stipulates

33C. Recovery of Money Due from an Employer.

(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.

6. In *Municipal Corporation of Delhi Vs. Ganesh Razak and Another*, ; it has been observed in paragraph 12 :

12-...It is only when the entitlement has been earlier adjudicated or recognized by the employer and there after for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental W.P. No. 5310.11 to the Labour Court's power u/s 33C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.

7. In *State of Uttar Pradesh and Another Vs. Brijpal Singh*, it is observed :

10. It is well settled that the workman can proceed u/s 33C(2) only after the Tribunal has adjudicated on a complaint u/s 33A or on a reference u/s 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. This Court in the case of *Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another*, held that a proceeding u/s 33C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. Proceeding further, this Court held that the right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman, and his employer. This Court further held as follows:

It is not competent to the Labour Court exercising jurisdiction u/s 33C(2) to arrogate to itself the functions of an 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 in a reference u/s 10 of the Act.

8. In *D. Krishnan and Another Vs. Special Officer, Vellore Co-operative Sugar Mill and Another*, ; it is observed :

12....The fact that proceedings u/s 33C(2) are in the nature of execution proceedings is in no doubt, and such proceedings presuppose some adjudication leading to the determination of a right, which has to be enforced. Concededly there has been no such adjudication in the present case. It will be seen that the reliance of the appellant-workmen is exclusively on documentary evidence placed on record which consisted primarily of the punch time cards and the representations that had been filed from time to time before the respondents. It is also true that the claim raised by the appellants had been hotly disputed by the respondents. The question that arises in this situation is whether reliance only on the documentary evidence was sufficient to prove the case.

13. We are of the opinion that the reference to Municipal Corporation's case (supra) is completely misplaced as in that matter, the fact that different categories of workers were doing identical kind of work was virtually admitted but different scales of pay were nevertheless being paid to them. It is also relevant that oral evidence had been adduced by the workmen to supplement the documentary evidence and it was in that situation that the Court felt that an application u/s 33C(2) was maintainable.

9. In the case at hand, admittedly, there is no prior adjudication of the right of the petitioner in respect of the claim he had put forth before the Labour Court. The petitioner in order to maintain an application u/s 33C(2) has to first get his entitlement adjudicated, then only an application u/s 33C(2) of the Industrial Disputes Act, 1947, is tenable.

10. In view of above we are of the considered opinion that the Labour Court was justified in its approach in rejecting the application filed by the petitioner as in absence of any award or settlement ignoring the pre-existing right of the petitioner, the same could not have been allowed.

11. In the result petition fails and is hereby dismissed.