
(2016) 01 JH CK 0202
In the Jharkhand High Court
Case No : W.P. (L) No. 6770 of 2012

R.D. Thakur

APPELLANT

Vs

M/s. Tisco Limited, Now Tata Steel Limited

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 33C(2), 7

Citation : (2016) 4 AIRJharR 239 : (2016) 3 JBCJ 404 : (2016) 2 JLJR 67

Hon'ble Judges : Shree Chandrashekhar, J.

Bench : Single Bench

Advocate : Mr. Manish Kumar, Advocate, for the Appellant; Mr. Shresth Gautam, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Shree Chandrashekhar, J.—Aggrieved by order dated 29.09.2011 in M.J. Case No.73 of 1999 whereby, the claim for payment of allowances except, the leave encashment has been declined, the applicant-workman has preferred W.P. (L) No.6770 of 2012 and, M/s. TISCO Ltd. has challenged the order granting leave encashment to the applicant-workman.

W.P. (L) No. 6770 of 2012

2. The brief facts of the case are that, the applicant-workman namely, R.D. Thakur was employed initially with Indian Tube Limited and he was dismissed from service on 25.01.1979. An industrial dispute was raised which after failure of the conciliation proceeding, was referred for adjudication vide Reference Case No.31 of 1979. The reference was answered vide award dated 30.05.1988 where under, the management of M/s TISCO Ltd. was directed to reinstate the applicant-workman with 75% back wages and other benefits. An application under Section 33(C)(2) of the Industrial Disputes Act was filed for payment of various benefits accruing to the applicant-workman during the period his service remained terminated. The said application was partly allowed vide order dated 29.09.2011,

against which the parties have filed writ petitions.

3. Heard the learned counsel for the parties.

4. The learned counsel for the petitioner submits that under the tripartite agreement and the award dated 30.05.1988, the applicant-workman was entitled for various allowances which were not paid to the applicant-workman and therefore, the application under Section 33(C)(2) of the Industrial Disputes Act was rightly entertained by the labour court. Challenging rejection of the claim for various allowances to the applicant-workman, the learned counsel for the petitioner contends that the labour court ignored the award dated 30.05.1988 where Sunder, the applicant-workman was granted "other benefits" also, and thus committed serious error in law in not awarding "allowances" payable to the employees of M/s. TISCO Ltd. to the applicant-workman also.

5. Opposing the writ petition, Mr. Shresth Gautam, the learned counsel for the respondent referring to Section 7 and Section 33(C)(2) of the Industrial Disputes Act submits that the jurisdiction of the labour court to adjudicate an issue is confined under the Second Schedule to the Act. It is contended that the various allowances claimed by the applicant-workman more particularly, leave encashment are the matters pertaining to the Third Schedule, which only the Industrial Tribunal is competent to adjudicate. Referring to decision in "H.P. State Electricity Board & Anr. v. Ranjeet Singh & Ors.", (2008) 4 SCC 241, the learned counsel for the respondent submits that a disputed claim cannot be adjudicated in a proceeding under Section 33(C)(2) of the Industrial Disputes Act, 1947.

6. I have carefully considered the submissions of the learned counsel for the parties and perused the documents on record.

7. Section 7 of the Industrial Disputes Act, 1947 provides that the Appropriate Government may constitute one or more labour courts for adjudication of the industrial dispute relating to a matter specified in the Second Schedule. In the Second Schedule of the Act, the following matters have been specified:

1. "The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;
3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out; and
6. All matters other than those specified in the Third Schedule".

8. The subject at Sl. No.6 in the Second Schedule namely, "all matters other than those specified in the Third Schedule" restricts the jurisdiction of the labour court to adjudicate the disputes relating to matters specified under the Third Schedule.

The "compensatory and other allowances", "bonus, profit sharing, provident fund and gratuity", and "leave with wages and holidays" are the subjects specified under the Third Schedule. The learned counsel for the management has rightly contended that in application under Section 33(C)(2), the labour court cannot adjudicate a dispute in respect of grant of leave encashment. The applicant-workman has claimed Rs.1,05,374.50 for leave encashment however, the basis for such claim has not been disclosed by the applicant-workman. The award dated 30.05.1988 does not disclose that the claim for leave encashment or other benefits were specifically contested before the labour court. The management has paid Rs.1,52,312.94 to the applicant-workman and the said payment has not been disputed by the applicant-workman by furnishing a calculation. The labour court has noticed that the Company has already paid bonus to the applicant-workman however, merely referring to a decision in "Gammon India Ltd. v. Niranjana Dass", reported in 1983 Lab.I.C. 1865, the labour court awarded Rs.79,031/- as leave encashment to the applicant-workman, for the period during which his service remained terminated.

9. The jurisdiction of labour court under Section 33(C)(2) is well-defined. It is well settled that the labour court can exercise jurisdiction under Section 33(C)(2) where the claim of the employee has been admitted by the employer under a settlement or a benefit has accrued to an employee under an award. In "State Bank of India v. Ram Chandra Dubey and Others" reported in (2001) 1 SCC 73, the Hon'ble Supreme Court has held that the jurisdiction of labour court under Section 33(C)(2) extends to computation of a pre-existing benefit or one flowing from a pre-existing right. In "U.P. State Road Transport Corporation v. Birendra Bhandari" reported in (2006) 10 SCC 211, the Hon'ble Supreme Court has reiterated that the benefit sought to be enforced under Section 33(C)(2) of the Industrial Disputes Act, 1947 is necessarily a pre-existing benefit or one flowing from a pre-existing right. The provision under Section 33(C)(2) of the Industrial Disputes Act, 1947 is thus, in the nature of an execution proceeding. The proceeding before the labour court in M.J. Case No.73 of 1999 discloses that the applicant-workman claimed protection bonus, special allowances, LTA amount, leave encashment, fitment allowance, medical allowance, canteen allowance, dress allowance etc. The order dated 29.09.2011 does not disclose that the applicant-workman produced a copy of a circular/guidelines of the management for claiming benefit of the aforesaid allowances. The management disputed the claim raised by the applicant-workman. It has been specifically averred by the management that in terms of award dated 30.05.1988, the benefits admissible to the applicant-workman were computed and a sum of Rs.2,60,378.94 was found payable to him. It was claimed that the above computation included 75% of the wages, allowances and benefits from 22.01.1979 to 31.05.1988 and for the period between 01.06.1988 to 13.04.1993 the applicant-workman was paid 100% benefit. The claim for benefit of other allowances to the applicant-workman was specifically denied. Application dated 23.09.1999 under Section 33(C)(2) discloses that the applicant-workman claimed benefit under a tripartite

agreement under which an employee is entitled for all benefits during the period of illegal termination. However, the tripartite settlement was not produced before the labour court. The claim under a tripartite settlement has also been disputed by the management. The management asserted that it is maintaining a canteen and therefore, the employee is not entitled for canteen allowance. It is further stated that free medical treatment is given to the employee and therefore, medical allowance was not payable to the applicant-workman. Similarly, other benefits as claimed by the applicant-workman in the application under Section 33(C)(2) have also been disputed by the management. Noticing the objection raised by the management, the labour court declined to grant benefit of various allowances as claimed vide Annexure-A to the application under Section 33(C)(2) however, the labour court erroneously proceeded to grant benefit of leave encashment to the applicant-workman for the period under termination.

10. Considering the aforesaid facts, order dated 29.09.2011 warrants interference and is accordingly, set-aside. W.P.(L) No.6770 of 2012 is dismissed and W.P.(L) No.557 of 2012 is allowed.