

(2015) 04 AHC CK 0175

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 4974 of 2012

R.M., U.P.S.R.T.C.

APPELLANT

Vs

Presiding Officer, Labour Court IV and Others

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Constitution of India, 1950 — Article 32

Industrial Disputes Act, 1947 — Section 10, 33(2), 33(2)(b), 33C(2), 33-C(2)

Citation : (2015) 146 FLR 98

Hon'ble Judges : Surya Prakash Kesarwani, J

Bench : Single Bench

Advocate : Lallan Verma, Samir Sharma and Ajay Kumar Srivastava, for the Appellant; H.K. Mishra, Madhu Tandon and Ranjeet Kumar Mishra, Advocates for the Respondent

Final Decision : Allowed

Judgement

Surya Prakash Kesarwani, J—Heard Sri Ajay Kumar Srivastava holding brief of Sri Samir Sharma, learned Counsel for the petitioner, Ms. Madhu Tandon, learned Standing Counsel for respondent No. 1 and Shri Ranjeet Kumar Mishra, learned Counsel for respondent Nos. 2, 3, 4 and 5. Briefly stated the facts of the present case are that the respondent Nos. 2 to 5 were the employees of the petitioner's Corporation. They retired on 31.5.2010, 20.6.2009, 31.5.2009 and 31.12.2009 respectively. They filed an application under section 33-C(2)(5) of the Industrial Disputes Act, 1947 before the respondent No. 1, claiming difference of salary in terms of VIth Pay Commission recommendations. The respondent No. 1, by the impugned order dated 17.10.2011, allowed the claim of respondent Nos. 2 to 5 and directed the petitioner to pay a sum of Rs. 1,96,601/-, Rs. 1,85,853/-, 1,77,117/- and Rs. 2,00,017/- respectively being difference of salary as per VIth Pay commission.

2. Aggrieved with this order, the petitioner has filed the present writ petition.

3. Learned Counsel for the petitioner submits that the impugned order is wholly

arbitrary and without jurisdiction, inasmuch as the claim of difference of salary as per VIth Pay Commission recommendations cannot be allowed under section 33-C(2) of the Industrial Disputes Act, 1947. He further submits that the VIth Pay Commission recommendations was implemented in the petitioner's Corporation w.e.f. 13.1.2010, while except the respondent No. 2 other contesting respondents retired prior to that.

4. In support of his submission, the learned Counsel for the petitioner has relied upon a judgment of Hon''ble Supreme Court in the case of U.P. State Road Transport Corporation Vs. Shri Birendra Bhandari, AIR 2006 SC 3220 : (2006) 111 FLR 393 : (2006) 3 LLJ 969 : (2006) 9 SCALE 642 : (2006) 10 SCC 211 : (2007) 1 SCC(L&S) 69 : (2006) 7 SCR 690 Supp : (2007) 2 SLJ 239 : (2007) 2 UJ 1324 : (2006) AIRSCW 4901 : (2006) 7 Supreme 397 .

5. Learned Standing Counsel as well as the learned Counsel appearing for respondent Nos. 2 to 5 support the impugned order.

6. I have carefully considered the submissions of the learned Counsel for the parties.

7. Undisputedly, the respondent Nos. 2 to 5 filed an application under section 33(2) of the Act before the respondent No. 1 for payment of the differential amount of salary as per recommendations of the VIth Pay Commission.

8. In the case of UPSRTC v. Birendra Bhandari (supra), Hon''ble Supreme Court has considered a similar case in which the claimants have filed an application under section 33-C(2) of the Act, for payment of arrears relating to difference of salary etc. As per recommendations of the Vth Pay Commission, the claim was accepted by the Labour Court and the payment was directed to be made. The stand of the appellant before the High Court was that the application in terms of section 33-C(2) was misconceived. The High Court took the view that the recommendations of the 5th Pay Commission are binding on the appellant Corporation and, therefore, dues are payable.

9. Against the aforesaid judgment, UPSRTC filed Civil Appeal No. 4292 of 2006 and Hon''ble Supreme Court has set aside the order of the Labour Court as well as of the High Court observing as under:

"8. In State Bank of India v. Ram Chandra Dubey this Court held as under:

"7. When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference.

When a reference is made under section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

"8. The principles enunciated in the decisions referred by either side can be summed up as follows:

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under section 33-C(2) of the Act. The benefit sought to be enforced under section 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under section 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages."

10. Judged in the background of principles set out above, the orders passed by the Labour Court and the High Court are indefensible and are accordingly set aside."

10. In the case of Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another, AIR 1978 SC 995 : (1978) 36 FLR 383 : (1978) LabIC 693 : (1978) 2 LLJ 1 : (1978) 2 SCC 144 : (1978) 3 SCR 370 the Hon"ble Supreme Court held as under:

"4. The principal question which arises for consideration in these appeals is as to what is the effect of contravention of section 33(2)(b) on an order of dismissal passed by an employer in breach of it. Does it render the order of dismissal void

and inoperative so that the aggrieved workman can say that he continues to be in service and is entitled to receive wages from the employer? It is only if an order of dismissal passed in contravention of section 33(2)(b) is null and void that the aggrieved workman would be entitled to maintain an application under section 33C(2) for determination and payment of the amount of wages due to him on the basis that he continues in service despite the order of dismissal. It is now well-settled, as a result of several decisions of this Court, that a proceeding under section 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 his employer, of, 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. But 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 relating to the relationship between the industrial workman and his employer."

11. In the case of *Municipal Corporation of Delhi Vs. Ganesh Razak and Another*, (1994) 7 JT 476 : (1995) 1 LLJ 395 : (1994) 4 SCALE 967 : (1995) 1 SCC 235 : (1994) 4 SCR 617 Supp : (1995) 1 SLJ 168 , the Hon"ble Supreme Court in paragraph-12 and 13 held as under:

"12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under section 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under section 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.

13. In these matters, the claim of the respondent-workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of "equal pay for equal work" being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract section 33-C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ

petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in the writ petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication enduring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made under section 33-C(2) of the Act by these respondents."

12. Thus, the scope of section 33-C(2) of the Act can be summed up as under:

The Proceeding under section 33-C(2) of the Act, is a proceeding in the nature of execution proceeding in which Labour Court calculates the amount of money due to a workman from his employer. If the workman is entitled to receive any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. The right to the money which is sought to be calculated or the benefit which is sought to be computed must be a pre-existing benefit or one flowing from a pre-existing right. A pre-existing right or the benefit falls under the scope of section 33-C(2) of the Act, but the right or benefit which may be considered just and fair does not fall within the scope of section 33-C(2) of the Act. It cannot be presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself confers right to claim of back wages where the very basis of the claim or the entitlement of the workman who was concerned with the benefit is disputed. If there is no earlier adjudication or the recognition thereof by the employer, the dispute relating to entitlement is not incidentally to the benefit claimed and shall therefore, be clearly outside the scope of proceeding under section 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workman's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer, then for the purpose of implementation or enforcement thereof some ambiguity requiring interpretation is treated as incidental to the Labour Court's power under section 33-C(2) of the Act, like that of the Executing Court's power to interpret the decree for the purpose of its execution.

13. From the bare reading of the provisions itself as well as keeping in view the law laid down by Hon'ble Supreme Court in the above noted judgments, it is absolutely clear that the impugned order could not have been passed by the respondent No. 1 in exercise of powers conferred under section 33-C(2) of the Act, and therefore, the impugned order deserves to be set aside. In result, the writ petition succeeds and is hereby allowed. The impugned order dated

17.10.2011 passed by respondent No. 1 in Misc. Case No. 21 of 2010, under section 33-C(2) of the Industrial Disputes Act, 1947, is hereby set aside.