
(2002) 03 BOM CK 0020
In the Bombay High Court
Case No : Writ Petition No. 3063 of 1999

RPG Cables Limited

APPELLANT

Vs

Roshan A. Sujan

RESPONDENT

Date of Decision : 05-03-2002

Acts Referred:

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

Citation : (2002) 3 ALLMR 418 : (2002) 3 BomCR 765 : (2002) 94 FLR 548

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : P.K. Rele, R.P. Rele and Piyush Shah, for the Appellant; J.P. Cama, instructed by R.M.G. Law Associates, for the Respondent

Judgement

R.J. Kochar, J.—The petitioner company is aggrieved by the impugned order passed by the 7th Labour Court on 1st November, 1999 in an application filed by the respondent workman u/s 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), claiming certain money due from the petitioner company.

2. It appears that the respondent workman was terminated from employment with effect from 26th May, 1989. A complaint challenging the aforesaid order of termination as unfair labour practice under Item 9 of Schedule IV of the M.R.T.U. & PULP Act, 1971 is still pending. It appears that the Industrial Court had passed an ad interim order on 4th May 1989 before the termination order could take effect, restraining the petitioner company from terminating the service of the respondent. It appears that the said complaint was dismissed on 29th September 1995 before the Industrial Court. It further appears that the respondent challenged the order of termination before the Labour Court under Item 1 of Schedule IV of the M.R.T.U & PULP Act. It further appears that the ad interim order dated 3rd October, 1989 was modified in terms of the settlement dated 6th October, 1989 filed before the Labour Court in Complaint ULP No. 214 of 1999. The terms of the settlement are reproduced herein below -

"1. By consent the ad interim order dated 3rd October, 1989 be modified on the following lines:--

2. Without prejudice to the company's contention the respondent company agrees to pay to the complainant an amount equivalent to wages for the months for June, July and August, 1989, September 1989 on revised rates.

3. The respondent company further agrees to pay to the complainant 50% of her revised salary/wages for the month of October 1989 and thereafter for month to month on due date until the final disposal of complaint without the complainant's attending duties hereafter.

4. The amounts paid under Clause (2) are subject to adjustment/recovery as per the final order of this Honourable Court in the complaint.

5. The payments under aforesaid Cause (2) shall be made on 11th October 1989 and the further payments under Clause (3) shall be sent to the complainant's address on the last working day."

3. I may mention here that I have doubly ascertained from Shri Cama, the learned Counsel for the respondent as to whether she has received the wages in accordance with the settlement. Shri Rele, the learned Senior Counsel for the petitioner has emphatically stated that the petitioner company has made the payment till date strictly in accordance with the settlement and that nothing is due and payable. According to Shri Rele the following payments have been made in accordance with the settlement:--

Basic Wages (fixed) Rs. 3,050/- Dearness Allowance (fixed) Rs. 450/- House Rent Allowance (20% of the Basic & D.A.) Rs. 610/- Conveyance Allowance (per month) Rs. 250/- Lunch Allowance (Rs. 20/- per working day) Rs. 400/-
----- Total Rs. 4,760/- ----- 50% of the above Rs. 2,380/-.

4. Shri Cama has admitted the fact that his client has received the said amount but according to him the difference arising out of the revision of the wages was not paid and, therefore, the aforesaid application u/s 33-C(2) of the Act was filed. In the said application, the respondent has claimed the following items :--

1. L.T.A for the year 1989:-- Rs. 3550/- + revised amounts.

2. Soft furnishing allowance 1989 Rs. 750/- + revised amount.

3. Medical Allowance Rs. 3050/- + revised amount.

4. Balance bonus for the year 1989 Rs. 3000/-.

5. Arrears of wages revised with effect from April, 1989.

6. Diwali Gift, i.e. Pressure Cooker given by the company to all the employees for the year 1989.

7. House Rent Allowance difference with effect from October 1989 onwards on

revised rates.

8. Difference in conveyance allowance with effect from October, 1989 on the revised rates.

9. Difference in lunch allowance with effect from October, 1989 on the revised rates.

Note : 10% compound interest on all the above monetary claims."

According to the respondent, the above claims arise from the settlement filed before the Labour Court in the complaint ULP No. 214 of 1989. 5. The petitioner company contested the claim by filing its written statement denying their liability to make any payment as due from the company to the respondent arising out of the settlement. Both the parties adduced oral and documentary evidence before the Labour Court in the said application for determination and computation of the monetary claim of the respondent u/s 33-C(2) of the Act. The learned Judge of the Labour Court framed issues and answered the same partly in favour of the respondent and partly against the respondent. It appears that the Labour Court has not allowed the first three claims while the remaining claims of the respondent have been allowed. The respondent has not challenged the denial of her claim.

6. I have heard both the learned Counsel for their respective parties. Shri Rele for the petitioner company has questioned the legality and validity of the impugned order on the basis of the scope and jurisdiction of the Labour Court u/s 33-C(2) of the Act. According to him, the claim of the workman arising under the complaint has been paid and the Labour Court had no jurisdiction to decide the question in respect of the balance bonus, arrears of wages etc. revised with effect from April 1989 and Diwali Gift, HRA difference in conveyance allowance and lunch allowance, all claims from October 1989. Shri Rele has pointed out that in the application, there is no basis or no pleading to show as to on what basis the aforesaid claims were arising which could be determined under the narrow jurisdiction u/s 33-C(2) of the Act. Shri Rele has made a serious grievance that no details or particulars were given in the application in respect of bonus and arrears while he has admittedly paid the entire dues under the settlement dated 6th October, 1989. Shri Rele has further pointed out that the payment was made to the respondent on the revised basis and such revision had taken place in April 1989 and all the dues were computed on the revised basis. According to the learned Counsel the Labour Court could not have determined and decided the question of revision of the wages in exercise of its jurisdiction u/s 33-C(2) of the Act. The said jurisdiction partakes the nature of executing Court under the provisions of the Code of Civil Procedure, 1908. The Court has to be determine and compute the dues on the basis of the existing right of the respondent. The Labour Court cannot adjudicate the question of revision of wages and, thereafter, direct the company to pay the revised wages, or grant other claims on the basis of revision, says the learned Counsel. According to Shri

Rele, the entitlement of the respondent has to be established and, thereafter, the dues are to be determined and computed by the Labour Court under the said provisions. Shri Rele has further pointed out that the application and the evidence of the respondent do not prove the basis of the claim. The application is vague as also the evidence of the respondent. While praying to the Labour Court to determine and compute the money/benefits u/s 33-C(2) of the Act, the applicant must take care to adequately plead the basis of the claim and to set out how he is entitled to get that amount as an existing right. The applicant must clearly plead the source of such right viz., a settlement, appointment order or a statute giving such a right to get the claim. Vagueness in pleading is fatal. The applicant should give reasonably sufficient details of the claim and the source of the right and he must prove the same by evidence. Unfortunately for the workmen their applications do not give any particulars of the claim and the source of their right. By and large the applications are a copy of the format prescribed and nothing more. Even in the accompanying schedule only items are given and no details are mentioned. In such proforma applications the Labour Court cannot determine and compute the money/benefit to which the workman claims to be entitled to receive from the employer. On such pleading the workman should adduce sufficient evidence to prove his entitlement and claim. The industrial jurisprudence has certainly done away with the technicalities obsessing the civil litigation but it has so far not dispensed with the principles of law of pleadings and law of evidence. In the present case there is absence of pleadings and also the evidence in support of her claim. Even in evidence, the respondent does not spell out how she is entitled to get the money claimed by her on the basis of the revision. Shri Rele has, therefore, criticised the impugned order on the basis that the Labour Court has crossed its jurisdiction conferred u/s 33-C(2) of the Act.

7. Shri Cama, the learned Counsel for the respondent has vehemently submitted that this Court under Article 226 of the constitution of India should not interfere with the impugned order passed by the Labour Court in favour of the respondent. He further submitted that in case of doubt on the question of law and the facts, I should tilt in favour of the respondent. He has pointed out that under the settlement filed before the Labour Court, the respondent was deemed to be continued in employment till the final disposal of the case, and, therefore, she was entitled to get all the benefits as if she was in employment. According to him, the respondent was entitled to get revision in the service conditions. He has pointed out that the company had not paid the wages under the settlement in accordance with the revision. Shri Cama has fairly admitted that the petitioner company had paid the actual amounts under the said settlement but had not granted the said amount at the revised rate which was agreed. Shri Cama has crystalised his claim that his client is entitled to get the difference in the wages and the claims. The learned Counsel wants this Court to dismiss the petition by appealing my sentiments that the respondent is a single and poor lady fighting the company for justice. He has further pointed out that the petitioner company

did not produce any documentary evidence to prove that it had made payment to the respondent. This question according to me, does not arise as it is an admitted fact that the petitioner company has paid the amount arising out of the settlement. According to Shri Cama, the amounts paid were not on the basis of the subsequent revisions which had taken place from time to time, while Shri Rele submitted that there was no question of making any payment on the revised basis as under the settlement itself, the payment was made on the basis of the revision which had taken place in April 1989. The bottom of the payment was October 1989 and according to the rates prevailing in the month of October 1989, the company has been making payment, says Shri Rele. There is no dispute about this factual position. To repeat, Shri Cama wants the difference in the amount of claim due to revision.

8. I am afraid, I cannot allow the claim of the respondent that the Labour Court should compute the month to month wages on the basis of the alleged revision in the scale. The petitioner company has denied the allegations of the respondent that there was any revision in the wages and that the respondent company was liable to pay wages to the respondent workman on the basis of any further revision. According to the petitioner company, its liability to pay wages was under the settlement and it has paid and it has been paying the same to the workman in accordance with the settlement. It is clear from the settlement that the company would pay wages for the months of June, July, August and September 1989 as per revised rates. There is no dispute that the amount which is being paid, has been paid as per the revised scale. The revision had taken place in the month of April 1989 and the company had given benefit of such revision while computing the wage rate for the months from June 1989 onwards. Under Clause 3 of the settlement, it was agreed that the company would pay 50% of the revised salary/wages for the month of October 1989 and, thereafter, for month to month on due date until the final disposal of the complaint, without the respondent attending duties, thereafter. It is, therefore, clear that the revision in the wages having taken place in April 1989, the respondent was entitled to get 50% of her wages at the rate for the month of October 1989. There is no dispute on this count also that the petitioner company has paid the agreed amount and has been paying the same i.e. 50% of the revised wages at the rate prevailing in the month of October 1989. It is clear that both the parties had understood that the basis of the computation would be October 1989. We cannot lose sight of the fact that the said settlement was ad hoc arrangement between the parties during the pendency of the complaint. Whatever amounts paid by the company and received by the respondent are subject to the final result of the complaint. It appears that the Labour Court has presumed, while computing and granting the amounts to the respondent, that there were revisions in the wages and that the respondent was entitled to get the benefit of revision automatically. The case of the alleged revision has been stoutly denied and disputed by the petitioner company. The Labour Court could not have presumed that the respondent had an existing right to get the benefit of the

revision of the wages, particularly when in the settlement it was agreed that the October 1989 rate would be the basis for computation of 50% wages for future payment also. There is neither pleading nor any evidence or any other material produced by the respondent in respect of the revision in the emoluments. The fact of revision when disputed has to be proved and substantiated. Whether the respondent is entitled to revision or not is a dispute which cannot be resolved u/s 33-C(2) of the Act. It is a fact that the respondent was not receiving her wages on the basis of any payscale but she was getting a fixed and consolidated amount per month. In these circumstances, therefore, there is no question of revision in the wages having been considered and granted by the Labour Court. From the order of the Labour Court, it appears that the Labour Court has tried to virtually adjudicate the claim of the respondent on the basis of revision in the wages. In para 19 of the order the Labour Court has referred to the corroboration by the witness of the company to the claim of the respondent. After reading the evidence of the respondent as well as the witness of the company, I do not find any such corroboration. The respondent has not given any proper evidence to substantiate her claim. The witness of the company has stated that the workman was entitled to get all the benefits under the settlement. If the Labour Court finds this as corroboration, it is a fact that the company has never denied that it is not liable to make payment under the said settlement. He has on the contrary stated that from April 1989 onwards, there were no revision in the wages. In respect of Diwali gift, the witness had said that the said gift was given to only those employees who were present in the employment. In respect of Items 7 to 9, the witness has clearly stated that 50% of the revised wages were being paid by the company to the respondent. The witness has been truthful and fair. He has stated whatever was within his knowledge and it cannot be said that he has made any incorrect statement. The petitioner company has not denied its liability to make payment under the settlement. This facts, however, has been treated by the Labour Court as the so called corroboration of the claim of the workman. According to the company the respondent is entitled to get claim under the aforesaid settlement and that the company has been making payment in accordance with the said settlement and, therefore, the company is not liable to make any payment beyond the terms of the said settlement. The Labour Court could not have crossed its limit of determining and computing the money due to the respondent on the basis of the existing right in the said settlement. The Labour Court could not have presumed that there was revision in the wages and other emoluments and the Labour Court, therefore, could not have directed the company to make payment of the differential amount on the basis of the alleged revision of wages and other emoluments.

9. There is nothing on record to show that the workman was entitled to get any further revision in the wages and the emoluments except what is stated in the settlement. Under the said settlement, the revision of April 1989 was contemplated and the wages were payable only on that basis till the disposal of

the final complaint. It is needless to mention that if the respondent finally succeeds in the complaint and gets reinstatement with full backwages and continuity of service, in that case she would be restored to her original position of employment as if she were never terminated from employment. In that event, she would be entitled to get all the differential amount arising out of the benefit of the reinstatement and continuity of service. If there were revision in the wages and emoluments from April 1989 onwards, the respondent workman would certainly get the benefit of such revision. At present, however, she is not able to get the benefit of the so called revision in the wages, as under the settlement, the basis of payment of 50% of the wages was October, 1989.

10. The petitioner company has complied with the said settlement and nothing is due and payable to the respondent under the settlement. If the respondent finally succeeds in that complaint, in that case she would certainly be entitled to claim difference in all the payments in accordance with law.

11. In the aforesaid circumstances, the impugned judgement and order of the Labour Court cannot be sustained and the same will have to be quashed and set aside. The same is accordingly quashed and set aside. Rule is made absolute. The petition is disposed of accordingly with no orders as to costs.

12. The complaint filed by the respondent in the year 1989 is still pending, though almost 12 years have passed. The period of 12 years is not a short period to be ignored by this Court. Under the Act, it is mandatory that every such complaint should be disposed of within a period of six months from the date of filing. I, therefore, direct the concerned Labour Court to hear and finally dispose of the complaint within a period of six months from the receipt of writ of this Court. Office is directed to send the writ of this order forthwith.

13. In view of the disposal of this petition, the notice of motion filed by the respondent being Notice of Motion No. 65 of 2000 does not survive and the same is disposed of accordingly.

14. All concerned to act on a copy of this order duly authenticated by the Associate.