
(2000) 07 RAJ CK 0001
In the Rajasthan High Court
Case No : C.W.P. No. 5973 of 1993

R.S.R.T.C.

APPELLANT

Vs

Ghanshyam Singh and Another

RESPONDENT

Date of Decision : 03-07-2000

Acts Referred:

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

Citation : (2002) 4 LLJ 685 : (2001) 1 WLC 199

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—By this writ of certiorari the petitioner seeks to quash the order dated April 26, 1997 of the Labour Court, Jaipur whereby the application submitted by the respondent Corporation u/s 33-C(2) of the Industrial Disputes Act, 1947 (for short "the Act") was allowed.

2. This fact is not in dispute that the respondent workman had filed the application u/s 33-C(2) of the Act as per the directions issued by this Court in the Writ Petition No. 1845 of 1983 decided by this Court on November 23, 1992. In para 4 of the writ petition the petitioner has incorporated operative part of the order thus:

"Consequently the writ petition is allowed. The orders dated June 8, 1980 (Ex. 18) and August 30, 1982 (Ex. 20) are declared illegal and hereby quashed. The petitioner shall be entitled to reinstatement with other consequential benefits except the actual wages for the period between the date of termination of service of the petitioner and the date of this order. He shall be free to avail remedy u/s 33-C(2) of the Industrial Disputes Act, 1947 for back wages. The order passed by this Court shall not prevent the Corporation for taking fresh decision in the matter in accordance with the observations made above. Costs made easy."

The petitioner has not filed the copy of the order dated November 23, 1992 but

stated in para 4 that it will be produced at the time of arguments but it was not produced.

3. Mr. Kewal Ram, learned counsel for the petitioner vociferously canvassed that the order dated November 23, 1992 clearly says that the workman will not be entitled to the back wages and only consequential benefits. Therefore the presumption drawn by the learned Labour Court that the computation of the back wages is left to it is not justified and not in accordance with the scope of Section 33-C(2) of the Act and computation of back wages is without jurisdiction. Reliance was placed on *Municipal Corporation of Delhi Vs. Ganesh Razak and Another*, *Rajasthan State Road Transport Corporation Vs. Ramavtar Sharma*, *State of Punjab and others Vs. Krishan Dayal Sharma*, *Charan Singh Vs. Birla Textiles and Another*, ; *Maneck Gopal Divekar Vs. Phoenix Mills Limited and Others*, *Maneck Gopal Divekar Vs. Phoenix Mills Limited and Others*, *State of Uttar Pradesh and Another Vs. Atal Behari Shastri and Another*, *Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee*, and *Mewad v. State of U.P.*, 2000 Lab IC 395.

4. On the other hand Mr. Mahendra Shah learned counsel for the respondent-workman supported the impugned order.

5. I have reflected over the rival submissions and carefully scanned the record.

6. Before proceeding further I deem it appropriate to examine the scope of writ of certiorari? The writ certiorari is so named because in original Latin form it required that the King should "be certified" of proceedings to be investigated and the object was to secure by the exercise of the authority of the superior Court, that the jurisdiction of the Tribunal should be properly exercised. Proceedings by way of certiorari under Article 226 are not "of course". The High Court has power to refuse writ if it is satisfied that there was no failure of justice. The High Court does not act as Court of appeal while deciding with the writ of certiorari. With regard to the character and scope of the writ of certiorari and the conditions under which it can be issued, the following propositions may be taken as established:

a) Certiorari will be issued for correcting errors of jurisdiction as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it.

(b) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.

The writ of Certiorari is not merely meant for granting the relief claimed by the petitioner but it is also for certification of the record therefore it is necessary for the petitioner to place on record every document which in its opinion is necessary for the disposal of the petition.

7. The relief claimed by the petitioner in the instant writ petition is related to the order dated November 23, 1992 but the petitioner has not filed it and only

incorporated its operative part in the petition. This Court in the order allowed the petitioner to avail remedy u/s 33-C(2) of the Act for back wages and because of this direction the learned Labour Court exercised its jurisdiction. Therefore it cannot be said that the impugned order is without jurisdiction. I am unable to persuade myself to agree with the submission advanced before me by Mr. Kewal Ram learned counsel that this Court did not allow back wages to the respondent workman. Had it been so, this Court would not have permitted the workman to file application u/s 33-C(2) of the Act for the back wages. In *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, their Lordships of the Supreme Court indicated that the power of (sic) Labour Court u/s 33-C(2) extends to interpretation of award or settlement on which the workmen's right rests, like the executing Court's power to interpret the decree for the purpose of execution. The authorities cited by Mr. Kewal Ram, learned counsel are not applicable to the facts and circumstances of this case as the learned Labour Court interpreted the order of this Court like the executing Court. The petitioner did not produce any evidence before the Labour Court that the respondent workman was gainfully employed during the period he was out of employment. Words "actual wages" used in the order dated November 23, 1992 have been interpreted by the Labour Court as the wages earned by the workman when he was out of employment. I do not see any illegality in the interpretation. It appears that the petitioner is aggrieved by the directions issued by this Court in the order dated November 23, 1992 allowing the respondent workman to file application u/s 33-C(2) of the Act for the back wages. But I cannot review the judgment of this Court in this writ of certiorari. I do not see any error apparent on the face of the record in the impugned order.

8. Resultantly the writ petition fails and is hereby dismissed without any order as to costs.