
(1994) 07 RAJ CK 0038
In the Rajasthan High Court
Case No : C.W.P. No. 3501 of 1992

Sayal Mal Bhansali

APPELLANT

Vs

Judge, Labour Courts and Another

RESPONDENT

Date of Decision : 11-07-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (1995) 71 FLR 593 : (1995) 1 LLJ 914 : (1994) 2 RLW 355 : (1994) 2 WLC 735 : (1994) 2 WLN 79 : (1994) 2 WLN 202

Hon'ble Judges : P.K. Palli, J

Bench : Single Bench

Advocate : R.M. Bhansali, for the Appellant; Rajendra Mehta and Arun Bhansali, for the Respondent

Final Decision : Allowed

Judgement

P.K. Palli, J.—Whether the denial of interest by the Labour Court in proceedings u/s 33(c)(2) of the Industrial Disputes Act, 1947 is justified or not is the short question that arises for determination in this petition.

2. The petitioner was an employee of respondent No.2. It is stated by him that on account of ill health he could not attend his duties from July 11, 1984 to October 31, 1984 and on November 1, 1984 when he reported for duty he was not permitted to resume work and he was informed that his name had been struck off with effect from July 1, 1984. The petitioner raised a dispute and moved an application before the Conciliation Officer. No settlement could be arrived at. The Government refused to refer the dispute forcing the petitioner to invoke the jurisdiction of this Court by way of writ petition and vide order dated November 20, 1990 a direction was issued to the Government to refer the disputes to the Tribunal. It is stated that the reference is pending before the Labour Court. A notice dated November 5, 1984 (Annex. 1) is stated to have been served by the petitioner asking the respondent No.2 to clear the amount

due and after the decision of the writ petition a second notice (Annex.2) was sent which is stated to have gone unnoticed. Even the undisputed amount was not remitted. An application u/s 33(c)(2) of the aforesaid Act was moved before the Labour Court for the recovery of the undisputed amount, earned leave, bonus, which is said to have been illegally retained by the respondent No.2, on this amount a further claim of interest was also made. Admittedly the undisputed amount of Rs. 3151.35 was offered and accepted in the Court on March 12, 1992. The learned Labour Court, however, disallowed the interest vide order dated April 9, 1992 (Annex.3) and it is this order dated April 9, 1992 (Annex. 3) which is under challenge.

3. A perusal of the impugned order (Annex.3) reveals that in view of the admitted amount having been paid and accepted in the court, interest on this amount cannot be allowed since there was no provision to that effect under the Act for granting the same. The claim was, thus, declined.

4. No reply has been placed on the record from the side of respondent No.2 in spite of the opportunities having been granted in this respect by this Court. It was on March 21, 1994 when the learned counsel appearing for the respondent sought time to file reply, four weeks' time was allowed for the purpose. On July 7, 1994 the arguments were heard.

5. Learned counsel appearing for the petitioner has forcefully contended that the order passed by the learned Labour Court insofar as it declines to grant interests be struck down as illegal, since under the circumstances the petitioner was entitled for interest as the respondent No.2 illegally withheld even the legitimate due i.e. the undisputed amount, that was payable to the petitioner. In support of his contention the learned counsel relied upon RF (Rasat and Farhat) Charitable Trust, Hyderabad Vs. Special Deputy Collector (General) Land Acquisition, Hyderabad and others, that was a case under the Land Acquisition Act. In Madar Union Sanatorium and Hospital Vs. M.B. Sathe and Others, the interest was awarded in case under the Payment of Gratuity Act, 1972 by holding that since the Act was a beneficial legislation, to pay interest by way of compensation was justified even if there was no provision for that purpose. Learned counsel further cited a judgment of the Allahabad High Court delivered in the case of Union of India and another v. S.B. Agnihotri and another (1991 II LLJ 1991) where under S. 33(e)(2) of Industrial Disputes Act it was held that where the employer withheld the payment payable to the workman unfairly, the workman should have been paid interest on the principle of equity and under Article 226 of the Constitution of India. The learned counsel further relied upon the following decisions:

6. In Renuagar Power Co. Ltd. Vs. General Electric Co., the question related to the enforcement of foreign awards and the question raised was in respect of interest on interest i.e. compound interest being against the public policy of India,

7. In Gopal Ram and Ors. v. Union of India 1922(3) W.L.C. Raj. 595, a judgment

of this Court relied upon by the petitioner, was a case of the employees having been regularly appointed and were deprived of their salary for 15 months and under the circumstances interest at the rate of 15% was allowed. The decision is not relevant to the matter in issue.

8. In yet another case cited by the learned counsel i.e. Keshav Prasad Vs. State of Rajasthan, a decision of this Court, interest was awarded on the basis of implied agreement on equitable considerations even though there was no provision in the Act in regard to payment of interest. That case relates to acquisition of land by the former State of Bikaner and is hardly relevant to the controversy raised in the present case.

9. In Jas Raj and Anr. v. Devi Chand and others I.L.R.(1952) 2 Raj. 459 it was a case of share of money on which the question of payment of interest arose. This too is hardly relevant

10. The other judgment cited is S.K. Sayal Vs. State of Punjab, that case pertains to the payment of salary to which the plaintiff had been illegally deprived of and interest was awarded in the situation on the amount illegally withheld.

11. Learned counsel appearing from the side of respondent No.2 in reply states that Section 33C(2) provides remedy for the enforcement of existing right and in case a workman is entitled to any amount or any other amount which is capable of being computed in terms of money and on dispute being raised the same may be decided by the Labour Court. The proceedings, urges the learned counsel, are analogous to the execution proceedings and the Labour Court has no jurisdiction to award interest in a claim petition u/s 33C(2) of the aforesaid Act. Learned counsel has supported his contention on the case laws reported in (a)) 1984 (2) S L J 576 Delhi ; (b) 1964 (2) L L j 88 Mad and (c) 1988 L I C 700 Mad

12. In 1984 (2) S L J 576 (supra) a judgment of the Delhi High Court in para 21 it was held that u/s 33C(2) the jurisdiction of the Labour Court is to compute the benefit and not to confer any new benefit and the interest was declined.

13. In (1964(2) L L J 88) (supra) a judgment of the Madras High Court and again in 1988 L I.C. 700 judgment from Madras High Court it has been observed in a case u/s 33C(2) that where the workman is reinstated with full back wages and the award did not provide for payment of interest, the Labour Court cannot award interest. It is further observed that the heads of claim could be based only on the award and in the absence of any provision for payment of interest in the award there cannot be any claim for any such interest. The claim for interest could not be said to be incidental to the computation of the benefits given under the award. Therefore, the award of interest by the Labour Court would not be justified.

14. After having carefully gone through the case law cited by the learned counsel appearing for the parties and referred to above, I am of the opinion that in the peculiar facts and circumstances of this case the learned Labour Court should

have awarded the interest to the petitioner. The petitioner has been clamouring for the amount due to him since 1984. A notice (Annex. 1) on the record has not been controverted by the other side. The petitioner thereafter had to file a writ petition in this Court for appropriate direction to the Government to refer the dispute to the Tribunal. The petitioner once again invited the respondent No.2 to make payment of the amount due vide Annex.2 after the decision of the writ petition. The request was not accepted and nothing was paid. This averment also goes unrebutted. The respondent No.2 should have under the circumstances immediately made an offer for the payment of the money, which according to him, was undisputed. For the first time a willingness was exhibited during the proceeding before the Labour Court that the amount covering bonus etc. was offered but was declined by the petitioner. Nothing has been brought to my notice from the side of the respondent No.2 as to when and where the said offer was made. In para 10 of the petition it is stated that Shyam Singh, Manager of respondent No.2 during his cross-examination on the affidavit stated that the respondent, No. 2 was willing to pay the undisputed amount regarding claim of interest, it was left for the court to decide. It was in this situation the amount was paid and received in the court. The withholding of the undisputed amount on the part of the respondent No. 2 was unjustified. The petitioner, thus under these circumstances was entitled to claim interest and the learned Labour Court should have granted the interest to the petitioner.

15. In the peculiar situation, I, therefore, allow this writ petition. The impugned judgment of the learned Labour Court is set aside to the extent it has declined interest to the petitioner. The petitioner would be entitled to interest on the undisputed amount at the rate of 12% per annum from the date the same was due till the amount was paid in the court i.e March 12, 1992. The petitioner shall further be entitled to the cost of this writ petition which is quantified at Rs. 500/-.