
(1992) 06 BOM CK 0028
In the Bombay High Court
Case No : Writ Petition No. 4547 of 1984

Shankar Balu Pishte

APPELLANT

Vs

Arvind Processors and Another

RESPONDENT

Date of Decision : 19-06-1992

Acts Referred:

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

Citation : (1992) 65 FLR 186 : (1994) 3 LLJ 763

Hon'ble Judges : H.H. Kantharia, J

Bench : Single Bench

Advocate : Seema Sarnaik, for P2, for the Appellant; J.M. D'Silva and S.S. Pakale for R1, for the Respondent

Final Decision : Dismissed

Judgement

H. H. Kantharia, J.—This petition under Article 227 of the Constitution arises from the order dated June 27, 1984 passed by the learned Labour Judge, Kolhapur holding camp at Ichalkaranji in I.D.A. Application No. 91 of 1982.

2. The relevant facts giving rise to the petition are as under:

Three employees, including petitioner No. 2 Sukumar Balwant Birnale preferred I.D. A. Application Nos. 90, 91 and 92 of 1982 before the Labour Court at Kolhapur u/s 33-C(2) of the Industrial Disputes Act, 1947 claiming certain amount of wages in accordance with certain settlements arrived at between the union representing the employees and the first respondent partnership firm. Out of those three employees, petitioner Nos. 1 and 3 did not press their petitions and, therefore, we are now concerned only with Petitioner No. 2-Sukumar Balwant Birnale who shall hereinafter be referred to as "the petitioner-employee". It is the case of the petitioner-employee that he was employed by the first respondent on and from 29.7.1979 on payment of Rs. 7/- per day as wages. According to him, there was an agreement arrived at in Reference (IC) No. 9 of 1968 between the employer and Rashtriya Processing Kamgar Union,

Ichalkaranji and he was entitled to wages according to the said settlement. It was also his case in his application u/s 33-C(2) that the first respondent-employer was also duty bound to give him the benefits flowing from : settlements arrived at after the Award made in Reference (IC) No. 9 of 1968. His claim was resisted by the first respondent-employer on the ground that Award made in Reference (IC) No. 9 of 1968 was in terms, of settlement dated 30th April, 1971 and 29th July, 1971 when the petitioner-employee was not even their employee and he was not even governed by the subsequent settlements. The employer further contended that by the Award in reference (IC) No. 9 of 1968, the basic wage or wage scales or consolidated wages were fixed differently for various categories of employees and by subsequent Awards passed in terms of settlement dated 17.6.1971 some specific employees were covered who had put in more than one years continuous service and had been made permanent but the name of the petitioner-employee did not appear in the subsequent settlements.

The application was also resisted on the ground that the same was vague. The parties did not adduce oral evidence before the Labour Court but relied upon documents and arguments advanced in support of their respective contentions.

3. On perusal of the relevant documents and on consideration of the arguments advanced before him, the learned Labour Judge came to the conclusion by his impugned order that the petitioner-employee was not covered by any of the settlements referred to and relied upon by him and, therefore, his application u/s 33-C(2) of the Industrial Disputes Act must fail. He accordingly rejected the petitioner-employee's application by the impugned order. Hence the petitioner-employee invoked the supervisory writ jurisdiction of this Court under Article 227 of the Constitution.

4. Now, at the hearing, Miss Sarnaik appearing on behalf of the petitioner-employee, urged that the petitioner-employee, would not be covered by the Award made in Reference (IC) No. 9 of 1968 in terms of the settlement dated 30.4.1971 because at that time the petitioner-employee was not even in the employment of the first respondent-employer. However, in the submission of the learned Counsel, the petitioner would be covered by the subsequent settlement dated 2.12.1977 in terms of which an Award was made in Reference (IC) No. 37 of 1977 on 31st December, 1977 which was in force upto the year 1981 when the next settlement was arrived at between the parties. A perusal of the said settlement shows that according to it all the time rated employees except cashier, accountant and shift-in-charge were to be paid dearness allowance for the period mentioned therein at the rates mentioned in the settlement. It is pertinent and important to note that admittedly the petitioner-employee was not a time-rated employee as he was a daily rated employee. Therefore, his case would not be covered by the settlement in question. Miss Sarnaik vehemently urged that although the petitioner-employee was a daily rated employee he should be considered as time rated employee but I find no force in the argument

of Miss. Sarnaik. It is also important to note that according to Clause 2 of the said settlement 11 employees were mentioned therein who had completed more than one year of service with 240 days of continuous employment and they were to be given pay scales and dearness allowance as shown against their respective names effective from 1.11.1977. However, the petitioner-employee's name does not appear in that list. Therefore, there is no substance in the argument of Miss Sarnaik that the petitioner-employee would be governed by the settlement arrived at in Reference (IC) No. 37 of 1977. I may mention here that the relevant documents from the original record and proceedings and the impugned Award were gone through by me carefully with the assistance of learned Counsel appearing on both sides and I find no infirmity in the impugned order. At any rate, it cannot be said that impugned order passed by the learned Labour Judge is in any way perverse or there is any error apparent on the face of the record which needs correction while exercising supervisory writ Jurisdiction of this Court under Article 227 of the Constitution.

5. In the result, the Writ Petition fails and the same stands rejected. Rule is accordingly discharged but with no order as to costs.