
(2012) 10 AHC CK 0254

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 26745 of 1999

Sharda Prasad Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-10-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 33C, 33C(1), 33C(2)
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6H(1), 6H(2)

Citation : (2013) 1 ADJ 134 : (2013) 136 FLR 347 : (2013) 2 LLN 53

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : B.N. Singh and R.N. Singh, for the Appellant; J.A. Khan, for the Respondent

Final Decision : Allowed

Judgement

B. Amit Sthalekar, J.—By means of this writ petition, the petitioner is challenging the order dated 18.3.1999, passed by, the Labour Court in Adjudication Case No. 29 of 1998. The facts of the case, according to the petitioner, are that he was employed as a Tanker Driver under the respondent No. 3, M/s. Balkrishna Lal Poddar Limited. On 31.5.1999 when he came to the office he was informed that his services had been dispensed with w.e.f. 5.6.1982. Accordingly, he raised an industrial dispute, which was referred by the State Government to the Labour Court and registered as Adjudication Case No. 21 of 1993. The Labour Court rejected the claim of the petitioner by its award dated 17.5.1988. Aggrieved, the petitioner filed Civil Misc. Writ Petition No. 19536 of 1985. The said writ petition was allowed by the High Court by its judgment dated 30.10.1992 and the award dated 17.5.1985 was quashed. The High Court further directed that the petitioner shall be deemed to be continuing in the employment of the respondent No. 2 and also entitled to all benefits of employment.

2. According to the petitioner, when he was still not reinstated in service in compliance of the orders of the High Court, he filed a misc. case No. 54 of 1993

u/s 6-H (2) before the Labour Court, Allahabad, claiming computation of salary and bonus which had not been paid to him. The Labour Court rejected his claim by the order dated 19.12.1997 on the ground that the benefits which the petitioner have been held by the High Court to be entitled to, could not be computed in terms of money in the absence of any effective adjudication to that effect. The Labour Court also held that the petitioner was not able to establish whether after the judgment dated 30.10.1992 passed by the High Court, he had reported for duty and had actually worked as such or not.

3. Thereupon, the petitioner filed another Adjudication Case No. 29 of 1998, which was rejected by the Labour Court by the impugned order dated 18.3.1999, holding that the petitioner had failed to establish as to what amounts were due to him in terms of benefits.

4. I have heard Sri B.N. Singh, learned counsel for the petitioner, Sri J.A. Khan, learned counsel appearing for the respondent No. 3 and the learned Additional Chief Standing Counsel appearing for the respondents 1 and 2. No one has appeared for respondent Nos. 4 and 5. List has been revised.

5. The submission of Sri B.N. Singh is that after the judgment of the High Court dated 30.10.1992, he had filed a Misc. Case No. 54 of 1993 for computation of the benefits to which he was entitled, but his claim was illegally rejected by the Labour Court by order dated 19.12.1997 on the ground that the said benefits could not be computed in the absence of any evidence furnished by the petitioner. Therefore, he filed an Adjudication Case u/s 6-H (1) for determining the money/ amounts due to him but this application was also rejected by the impugned order dated 18.3.1999.

6. I have gone through the impugned order dated 18.3.1999. The fact that the petitioner was working as Tanker driver under the respondent No. 3 and his services were terminated on 5.6.1982, is no longer res integra between the parties, in view of judgment of this Court passed in writ petition No. 19536 of 1985 dated 30.10.1992. The High Court while allowing the writ petition, quashed the order of the Labour Court dated 17.5.1985 and held that the petitioner shall be deemed to continue in the employment of the respondent No. 2 and will also be entitled to all the benefits of employment.

7. So far as, the period after 30.6.1992 is concerned, the Labour Court while determining the Misc. Case No. 54 of 1993, by its order dated 19.12.1997 has held that the petitioner has failed to show whether after the judgment of the High Court, he had reported for duty and whether he had worked thereafter or not and therefore, in the circumstances since this aspect of the matter was also before the Labour Court in the impugned order dated 18.3.1999, I am of the view that on the findings of fact recorded by the Labour Court in the order dated 19.12.1997 that the petitioner had failed to prove this fact, the petitioner would not be entitled to any amount on this account.

8. The petitioner armed with the judgment of the High Court filed a misc. case

No. 54 of 1993, u/s 6-H (2) of the U.P. Industrial Disputes Act, 1947 but the same has been rejected by the Labour Court by its order dated 19.12.1997. From a perusal of the said order, it will be seen that the Labour Court has noted the averments of the petitioner that his claim was that at the time his services were terminated on 5.6.1982, his salary was Rs. 1150/- per month and at the present time i.e. at the time of decision of the application u/s 6-H (2), the salary of a driver is claimed to be Rs. 1800/- per month.

9. Based on this claim the petitioner has claimed a sum of Rs. 1,92,550/- from June 1982 till 30.6.1993 as arrears of salary and a further amount of Rs. 17,425/- from 1992 till 1984. Before the Labour Court the respondent No. 3 had produced the original records of the salary bill of the employees and after perusal of the same the Labour Court has recorded a finding that at that time when the petitioner's services were terminated on 5.6.1982, his salary could not have been Rs. 1150/- per month. Inasmuch as that at the time of his termination the salary of a driver was Rs. 350/- per month. A finding has also been recorded that one Sri Nanku, driver, was being paid Rs. 395/- as salary during 1984-85, one Shyam Lal, driver, was being paid Rs. 360/-. In 1990-91 the salary of driver was Rs. 705/-. In 1993-94, one Ami Chand, driver, was being paid Rs. 1507/- per month. At the same time when the salary of driver was Rs. 705, the bonus paid in 1990-91 was Rs. 590/-, therefore the Labour Court has concluded that at no point of time was the salary of the petitioner Rs. 1150/- in June 1982, when his services were terminated nor could they have been Rs. 1800/- in June 1993, after the judgment of the High Court on 30.10.1992.

10. Since, the Labour Court has expressed its inability to pay the benefits of the petitioner in terms of money, the petitioner filed another application u/s 6-H (1) of the U.P. Industrial Disputes Act, 1947 being R.D. Case No. 29 of 1998, wherein, the Labour Court has held that the chart of the alleged benefit submitted by the petitioner claiming a sum of Rs. 1,96,059.05 cannot be accepted as the petitioner has not been able to establish what actual salary was being paid to him.

11. However, the question still remains that if the petitioner's services had been terminated on 5.6.1982, it would have been well within the knowledge of the respondent No. 3 employer as to what was the last pay drawn by the petitioner when his services were terminated. Also, it would have been well within the knowledge of the respondent No. 3 employer as to what was the salary paid to drivers between the June, 1982 to 30th June, 1992 i.e. till the date of judgment of the High Court and therefore, the Labour Court while passing the order dated 18.3.1999 has fallen into a grave error in rejecting the claim of the petitioner on the ground that it had no jurisdiction and that the benefits could not be computed.

12. Sri B.N. Singh, in support of his contention has relied upon a Supreme Court decision in *Fabril Gasosa Vs. Labour Commissioner and Others*, wherein the Supreme Court has explained the nature of the jurisdiction exercisable by the

Court under Sections 33-C(1) and 33-C(2) to the Industrial Disputes Act, 1947, corresponding to Section 6-H (1) and Section 6-H (2) of the U.P. Industrial Disputes Act, 1947 and has held as follows.

17. Section 33C is in the nature of execution proceedings designed to recover the dues to the workmen, vide Sections 33C (1) and (2), the legislature has provided a speedy remedy to the workmen to have the benefits of a settlement of award which are due to them and are capable of being computed in terms of money, be recovered through the proceedings under those sub-sections. The distinction between sub-section (1) and sub-section (2) of Section 33C lies mainly in the procedural aspect and not with any substantive rights of workmen as conferred by these two sub-sections. Sub-section (1) comes into play when on the application of a workman himself or any other person assigned by him in writing in this behalf of his assignee or heirs in case of his death, the appropriate Government is satisfied that the amounts so claimed are due and payable to that workman. On that satisfaction being arrived at the Government can initiate action under this sub-section for recovery of the amount provided the amount is a determined one and requires no "adjudication. The appropriate Government does not have the power to determine the amount due to any workman under sub-section (1) and that determination can only be done by the Labour Court under subsection (2) or in a reference u/s 10(1) of the Act. Even after the determination is made by the Labour Court under sub-section (2) the amount so determined by the Labour Court, can be recovered through the summary and speedy procedure provided by sub-section (1), Sub-section (1) does not control or affect the ambit and operation of sub-section (2) which is wider in scope than sub-section (1). Besides the rights conferred u/s 33C(2) exist in addition to any other mode of recovery which the workman has under the law. An analysis of the scheme of Sections 33C (1) and 33C(2) shows that the difference between the two sub-sections is quite obvious. While the former sub-section deals with cases where money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or V-B, sub-section (2) deals with cases where a workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money. Thus, where the amount due to the workmen, flowing from the obligations under a settlement, is predetermined and ascertained or can be arrived at by any arithmetical calculation or simpliciter verification and the only inquiry that is required to be made is whether it is due to the workman or not, recourse to the summary proceedings u/s 33C (1) of the Act is not only appropriate but also desirable to prevent harassment to the workmen. Sub-section (1) of Section 33C entitles the workmen to apply to the appropriate Government for issuance of a certificate of recovery for any money due to them under an award of a settlement or under the provisions of Chapter V A and the Government, if satisfied, that a specific sum is due to the workmen, is obliged to issue a certificate for the recovery of the amount due. After the requisite certificate is issued by the Government to the Collector, the Collector is under a statutory duty

to recover the amounts due under the certificate issued to him. The procedure is aimed at providing a speedy, cheap and summary manner of recovery of the amount due, which the employer has wrongfully withheld. It, therefore, follows that where money due is on the basis of some amount predetermined like the VDA, the rate of which stands determined in terms of the settlement an award or under Chapter V-A or V-B, and the period for which the arrears are claimed is also known, the case would be covered by sub-section (1) as only a calculation of the amount is required to be made.

13. While interpreting the jurisdiction exercisable by the Labour Court u/s 33-C(1) corresponding to Section 6-H (1) the Supreme Court has held that where the amount due to the workmen flowing from the obligations under a settlement is predetermined and ascertained or can be arrived at by arithmetical calculations or simplicitor verification and the only enquiry that is required to be made is whether the said amount is due to the workmen or not in such cases recourse to summary proceedings under Sections 33-C(1) and [(6-H (1))] is not only appropriate but also desirable to prevent harassment to the workmen.

14. Therefore, the petitioner's claim for arrears of salary as already discussed hereinabove could have been arithmetically determined by the Labour Court in the proceedings u/s 6-H (1) of the U.P. Industrial Disputes Act, 1947 and the Labour Court having failed to do so and rejected the claim of the petitioner arbitrarily the impugned order dated 18.3.1999 is not sustainable in law and is therefore quashed.

15. The writ petition is allowed. The matter is remitted back to the appropriate Labour Court for redetermination of the salary due to the petitioner in the light of the observations made herein above for a period from June, 1982 till the order of the High Court 1992.