
(2002) 02 DEL CK 0022
In the Delhi High Court
Case No : CW No. 6683 of 2001

Shri Naresh Pal

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 05-02-2002

Acts Referred:

Citation : (2002) 6 AD 742 : (2002) 97 DLT 534 : (2002) 64 DRJ 61 : (2002) 94 FLR 208

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Sanjay Ghosh, for the Appellant; D.P. Bhatia, for the Respondent

Judgement

Manmohan Sarin, J.—Rule.

With the consent of the parties, writ petition is taken up for disposal.

2. Counsel for both the parties have been heard. Petitioner seeks a writ of certiorari, for quashing the letter dated 12.7.2001, whereby in response to petitioners application u/s 33(c)(1) implementation of the a ward and issuance of recovery certificate, he was advised to have the amount computed u/s 33(C)(2) of the I.D. Act. petitioner also seeks a writ of mandamus directing the respondents to issue a recovery certificate for back wages for the period 9.5.1995 to 31.5.2001 as per the calculation chart filed by the petitioner.

3. Facts of the case may be briefly noted. Petitioner claims to have worked as a driver for a short period of February to May 1995, with the respondent/FCI. Petitioner claims that his services were wrongly terminated by the respondents. Reference u/s 10 of the I.D. Act was made to the presiding officer of the Central Government Industrial Tribunal. Respondents filed their response to the statement of claim, but however failed to lead any evidence and respondents were proceeded ex parte. Award dated 20.2.2001, was passed in favor of the petitioner holding the termination to be illegal and directing reinstatement with back wages.

4. The question that arises for consideration is whether the Central Government was duly bound to issue recovery certificate u/s Section 33(C)(1) of the Industrial Disputes Act. petitioner claims that the Central Government was duty bound under the statute to grant the certificate but did not do so, instead it directed the petitioner to approach the Tribunal u/s 33(c)(2) for computation of the amount. In this connection, it would be relevant to reproduce Section 33(c)(1) and 33(c)(2):-

Section 33c

(1). Where any money is due to a workman from an employer under a settlement or an award or under the provisions of the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided - that every such application shall be made within one year from the date on which the money became due to the workman from the employer.

Provided further that nay such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2). Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government (within a period not exceeding three months)

(provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit)"

5. u/s 33(c)(1) if the appropriate Government is satisfied about the money being due, can issue the recovery certificate for the money so due to the collector and the workmen can proceeding thereafter to recover the same. Where questions with regard to either the computation of the amount or benefits that may be available, have been left, not fully determined in the award, jurisdiction u/s 33(C)(2) is to be exercised.

6. Counsel for the petitioner is correct in as much as the present case may not be a case, where recourse to Section 33(c)(2) was warranted at the present

juncture, in as much as the petitioner claims that there is no dispute with regard to the rate of wages or the period for which the wages are to be paid left undetermined. Hence there was no occasion for referring the matter u/s 33(c)(2) as no dispute or question with regard to computation remained to be determined.

7. In these circumstances, the letter dated 12.7.2001 directing the petitioner to approach the Central Government Industrial Tribunal deserves to be quashed and is quashed.

8. Coming to the prayer of the petitioner u/s 33(C) for issuance of a recovery certificate, here one of the essential ingredients which remains unfulfilled is the satisfaction that money is due. There is an award made. However, it cannot be overlooked that the award was an ex parte one. The respondents applications for setting aside the award is pending before the Tribunal.

9. In these circumstances, if the Central Government exercises its discretion in non-issuance of the recovery certificate on account of its non-satisfaction about money being due, being an ex parte award, I do not think it can be called arbitrary or capricious exercise of discretion.

10. I do not think it a fit case which calls for interference and issuance of mandamus. Course of action which commends to the court in these circumstances is to direct the Central Government Industrial Tribunal, where the matter is pending, to expedite the disposal of the application under Order 9 Rule 13 CPC for setting aside of the award. The Central Government Industrial Tribunal is directed to decide the application on or before 30.4.2002.

11. Nothing Stated herein would be construed as an expression of any opinion on merits of the award.

12. Writ petition stands disposed of in the above terms.