

(2012) 02 DEL CK 0485

In the Delhi High Court

Case No : LPA 603 of 2009

Shri Vishnu Kumar Mangla

APPELLANT

Vs

Dhaneshwar Gupta and Sons

RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33, 33C(2)

Citation : (2012) 134 FLR 455 : (2012) LLR 575

Hon'ble Judges : A.K. Sikri, Acting C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Ashok Kumar Aggarwal with Mr. Anuj Aggarwal, for the Appellant;
Saurabh Tiwari, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, Acting Chief Justice

1. In this appeal short question arises about the maintainability of an application preferred by the appellant before the Labour Court u/s 33-C(2) of the Industrial Disputes Act. This application was rejected by the Labour Court vide orders dated 17th April, 2008 on the ground that it was not in the nature of execution petition passed on existing rights but involved dispute which could be adjudicated only by means of industrial dispute u/s 10 of the Industrial Disputes Act. The Learned Single Judge has upheld the order of the Labour Court vide impugned judgment dated 18th September, 2009. Before taking note of the provisions u/s 33 of the Act and its scope, we will have to first find out the claims which were made by the appellant/workmen in his application u/s 33C(2) of the Act before the Labour Court.

2. As per the averments made in the said application, the appellant joined the respondent management as a part-time Accountant on 10th April, 1986. In April, 1998 he was made full time Accountant. His last drawn salary was Rs. 12,000/- which consists of Rs. 8000/- as wages and Rs. 4000/- as conveyance allowance

for discharging out-door duties and functions. According to him, he was also looking after the work of two other sisters concern. On 8.9.2006 he sent a representation to the respondent management for the release of due salary unpaid since November,2005 which was followed by a legal notice dated 26th September, 2006. Instead of paying the salary, his services were terminated on 30th September, 2006. Thereafter on 27th July, 2007 he filed an application u/s 33-C(2) of the Act asking for the following reliefs:

- (i) His due salary/wages for the period 01.11.2005 to 30.09.2006,
- (ii) Due gratuity amount and due bonus amount.

3. In the reply submitted by the respondent, it took the decision that the provisions of Payment of Gratuity Act, 1972 and Payment of Bonus Act, 1965 were not applicable as the total number of employee employed by the management were three. The respondent also took the decision that appellant did not work from November, 2005 till September, 2006 and, therefore, no such salary or wages were payable. On this basis, it was also submitted that this application for disputed claim was not maintainable and reliance was placed on the judgment of Supreme Court in the case of Municipal Corporation of Delhi Vs. Ganesh Razak and Another, wherein the Supreme Court has held that the claim which is not based on existing right is not maintainable, the proceedings u/s 33C(2) are in the nature of execution proceedings and the Labour Court has no jurisdiction to first decide the entitlement of the workmen and on that basis to pay the benefits.

4. As pointed out above, the aforesaid contention of the respondent was accepted by the Labour Court as well as the learned Single Judge. The learned Single Judge has summed up the position in para 4 of the impugned judgment which reads as under;

4. There is a dispute between the parties on both these counts regarding right of the petitioner for earned wages and also for payment of gratuity and bonus to him. The petitioner says that he had worked with the respondent establishment for the period from 01.11.2005 to 30.09.2006 and, therefore, he is entitled to wages for the said period earned by him. The management denies the said fact and claims that the petitioner had abandoned the service of the respondent management w.e.f. 01.11.2005. This certainly gives rise to a dispute as to whether the services of the petitioner were terminated by the respondent management as alleged by him or whether he had abandoned the service of his own. This dispute by no means could have been entertained in a claim application u/s 33C(2) of the Industrial Disputes Act, 1947. This dispute could have been decided only by way of an independent industrial dispute u/s 10 of the Industrial Disputes Act, 1947. In the same way, since the management disputes the applicability of the Payment of Gratuity Act and the Payment of Bonus Act to its establishment, the question whether the petitioner is entitled for payment of gratuity and bonus also gives rise to a dispute which can be decided only by way

of an industrial dispute u/s 10 of the Industrial Disputes Act, 1947. The provisions of Section 33C(2) are in the nature of execution and presupposes an existing right in favour of the workman which can be passed on (i) adjudication, (ii) settlement and (iii) service conditions. Since in this case, there was no adjudication or settlement and as no service conditions were either pleaded or proved by the petitioner before the Court below, his alleged claim u/s 33C(2) could not have been granted unless the dispute with regard to the above adjudicated.

5. The provisions of Section 33C(2) of the Act have come up for discussion in number of judgments and it is not necessary to refer to all those judgments. The principles which can be culled out in those judgments particularly from the reading of Ganesh (supra) which is the law of the land laid down by the Apex Court wherein it is said that to invoke the jurisdiction of the Labour Court under the present S. 33C(2) either of the two ingredients must be present. The first is that a workman must be entitled to receive from the employer any money or benefit which is capable of being computed in terms of money and the second one is that a question must have arisen as to the amount of money due, or as to the amount at which such benefit should be computed. A plain reading of the section shows that the Labour Court has jurisdiction to decide both these ingredients. Thus in a case where both these ingredients are satisfied or either of these ingredients is satisfied, the Labour Court will have jurisdiction to determine the question. The Legislature has empowered the Labour Court to decide a dispute as to the right of workman to receive from the employer any money or any benefit which is capable of being computed in terms of money and also has authorised it to decide the question as to the amount of money due or as to the amount at which such benefit should be computed. (See Ambica Mills Ltd., No. 2, Ahmedabad Vs. Second Labour Court [Master (D.L.), Presiding Officer], Ahmedabad and Others,).

6. We may also quote the following extracts from Ganesh (supra) which delineates the power of the Labour Court u/s 33C(2) of the Act:-

The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workman to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to the entitlement is not incidental to the benefit claim and is, Therefore, clearly outside the scope of a proceeding under S. 33C(2) of the Act. The Labour Court has no jurisdiction to first decide the Workman's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under S. 33C(2) of the Act. It is only when the entitlement, has been earlier adjudicated or recognised by the employer and there after for the purpose or implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under S. 33-C(2) like that of the executing Court's power to interpret the decree for the purpose of its execution.

7. In this case, the daily rated/casual workers of the Delhi Municipal Corporation had claimed the same pay as paid to the regular employees on the principle of "equal pay for equal work" because they were doing the same kind of work as the regular employees. The very basis of the claim was disputed by the Corporation as there was no earlier adjudication or recognition of the claim. As the dispute relating to entitlement is not incidental to the benefit claimed, it is outside the scope of the proceedings under S. 33-C(2). The Court has no jurisdiction first to decide the workman's entitlement and then to proceed to compute the benefits so adjudicated on the basis of its power under S. 33-C(2). The Court observed:

It is only when the entitlement has been earlier adjudicated or recognised by the employer or thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation, that the interpretation is treated as incidental to the Labour Court's power under S. 33-C(2) like that of the executing court's power to interpret the decree for the purpose of its execution.

8. Therefore, for maintainability of such an application, it is a pre-condition that the workman is "entitled to receive" money claimed by him. This entitlement is referable to "pre existing right" and those pre existing rights would be established if it has earlier been adjudicated upon and provided for i.e. entitlement is recognized by the employer. This recognition can be either in the form of settlement or as per the service conditions.

9. When we examine the matter from the aforesaid angle, we find ourselves in agreement with the approach of the learned single Judge insofar as gratuity and bonus is concerned. It has been contested by the respondent that these acts are not applicable to the respondent. There are authorities provided under both these judgments where claim can be raised in these proceedings and the authorities can determine the applicability of the Act. Unless there is termination, there cannot be in "pre-existing right".

10. However, we are of the opinion that same treatment cannot be given to the claim for salary. The rate on which the salary was claimed as unpaid is not in dispute. It is not in dispute that the appellant was employed with the respondent and was drawing the salary of Rs.12,000/-. The only denial is for the period in question the appellant did not work. Whether on mere denial the application u/s 33C(2) can be thrown-out? The answer has to be in negative. If there was a dispute about the employment itself or the respondent had said that the services of the appellant had been terminated before 1.11.2005 and question of payment of salary thereafter did not arise or if there was a dispute, possibly such a claim could have gone beyond the scope of Section 33C(2) of the Act. However, plea of the respondent in disputing the salary for the period in question is that the appellant did not work for this period. This aspect would be of incidental and can be examined in proceedings u/s 33C(2) of the Act.

11. We reiterate the position in law as held in Jeet Lal Sharma Vs. Presiding

Officer, Labour Court - IV and Another, which reads as under:-

13. When the claim is based on adjudication or settlement it poses no difficulty. However there may be cases where the workman would be held entitled to receive the money as pre-existing right on the basis of the agreement between the employer and employee or as per established service conditions which have culminated into right in favor of the workman. Take for example, when a workman is not paid his wages for a particular period, he shall be entitled to file application u/s. 33-C(2) of the Act claiming wages for that period as he is entitled to receive the same at the rate agreed upon and at which the employer has been paying to him in the past. There is no adjudication or settlement but he is entitled to receive the wages of the period in dispute. This is as per the terms of the employment. Likewise, in a case where the workman is getting the wages in a graded pay scale, he has a right to receive increment every year. But if for a particular year increment is not released by the employer, workman shall be entitled to file application u/s. 33-C(2) claiming the said increment as he has pre-existing right and he is entitled to receive such increment which can be stopped only by way of punishment as a result of departmental enquiry or when the workman is not allowed to cross the Efficiency Bar. Same may be the position in respect of the payment of minimum bonus. Or, where the workman claims overtime wages and the employer does not deny the right to it but only denies the claim on the ground that workman had not worked overtime. In such cases the Labour Court will have the jurisdiction to decide the claim (Chandra Extrusion Products, Lucknow Vs. Kamal Kishore Tripathy reported in 1986 Lab. I.C. 1478.

15. The point which is emphasised is that entitlement to receive money i.e. pre-existing right can be based on (1) adjudication (2) settlement (3) service conditions. If the right to get a particular benefit is there, the application u/s. 33-C(2) would be maintainable and jurisdiction of Labour Court will not be barred merely because employer has denied the same.

What is the meaning of the expression "entitlement to receive". No doubt it is referable to pre-existing right. However where the workman claims a benefit flowing from a pre-existing right and approaches the Labour Court u/s. 33-C(2) for computation of the right in term of money and the employer disputes the existences of the right, the Labour Court will have the jurisdiction to determine the question, whether the right exists and if the existence of right is established than to proceed to compute the benefit flowing there from in terms of money or on its decisions recovery proceedings can start (New Taj Mahal Cafe Private Limited versus Labour Court reported in 1970 (2) LLN 51 and East India Coal Company Limited (supra). In deciding the maintainability of the application u/s. 33-C(2) what is to be looked at is the claims set up in the application and not what the other side contends in its reply. The fact that the employer by his plea raises some dispute, does not mean that jurisdiction of Labour Court to deal with the question is taken away.

12. Once it is accepted that the relationship between the employee and the

employer is accepted, and the rate of wages is also accepted, the claim of the applicant has to be examined on the basis of which this claim was made. It is specifically stated that he had worked during this period. The reply filed by the Management was not looked into while determining the issue of maintainability and the Court could go into the question as to whether the appellant had in fact worked or not.

13. As a result, this appeal is partly allowed while holding that application u/s 33C(2) would be maintainable qua the claim of wages preferred by the appellant. The claim of gratuity and bonus is held to be outside the scope of said application. The matter is remitted back to the Labour Court to decide the claim of the appellant for wages in accordance with law.