(2016) 02 P&H CK 0106

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 12361 of 1994 (O&M)

S.K. Jain — APPELLANT

Vs

The Punjab Agro Industries Corporation Ltd. — RESPONDENT

Date of Decision : 01-02-2016

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

Citation : (2016) 2 PLR 289

Hon'ble Judges : Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : Anupam Singla, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J.- In the first round of litigation against the termination order on a reference made to the Labour Court, the petitioner-workman was awarded reinstatement by setting aside the illegal termination. However, back wages were not awarded to him.

2. Feeling aggrieved by the denial of consequential benefits upon reinstatement the petitioner approached this Court in CWP No.7154 of 1987 which was partially allowed on April 07, 1989 and the petitioner-workman was granted liberty to approach the Labour Court under section 33-C(2) of the Industrial Disputes Act, 1947 to claim back wages. This Court in its order dated April 07, 1989 in the above cited petition left it open to the Labour Court to adjudicate the dispute as to whether the petitioner had or had not resumed duty for him to claim back wages. If such a dispute was raised by the workman it was open to be decided in proceedings under section 33 of the ID Act. That is how the workman approached the Labour Court once again to compute money due in an application presented under section 33-C (2) of the ID Act claiming back wages for the disputed period. The claim application succeeded before the Labour Court.

3. Aggrieved by the order of the Labour Court, the management preferred CWP No.4906 of 1991 which was dismissed on January 30, 2003.

4. Mr. Anupam Singla, learned counsel appearing for the Corporation states that during the pendency of the writ petition, a stay order was in operation till it was finally dismissed by the learned Single Judge. The order of the court a quo was upheld. However, still dissatisfied with the order of the learned Single Judge, the Corporation filed intra-court appeal bearing LPA No.100 of 2003 which remained unsuccessful when it was dismissed on July 03, 2006. Earlier at the stage of dismissal of the writ petition, the management calculated back wages for the period 1984 to 1987 and paid the workman accordingly. However, the interest element was paid limited from March 30, 2003 till realization. The only question which remains to be considered in this case is whether the workman would be entitled to interest for the period when the stay operated against the workman.

5. To substantiate his contention against award of interest for the period of the stay Mr. Anupam Singla, learned counsel relies on the judgment of the Supreme Court in Kashyap Zip Ind v. Union of India, 1993 (Supp) 3 SCC 493, together with a decision of the Division Bench of the Delhi High Court rendered in M/s. Mascot Enterprises Wholesale Wine Merchants and others v. Lt. Governor of Delhi and others, 1980 (2) ILR (Delhi) 1225 and the decision of the Division Bench of the Allahabad High Court in Smt. Vrinda Gujarati and others v. Bareilly Development Authority and others, 1996 (2) A.R.C. 383 to submit that interest is not payable for the period when the stay operated. In none of these cases, the Court considered the question of interest payable on back wages in a labour law matter. In any case, the effect of the stay order is that it keeps execution of an order in abeyance and unless the final order denies a right by way of a Court direction on the dismissal of the writ petition the interim order would merge with final order. When interest does not form part of the decree of the writ court then the past period would be reactivated for purposes of grant of interest accruing by virtue of an award operating from the past awarding 12% interest. When an order is quashed by court it results in restoration of the position as it stood on the date of the impugned order but a stay order does not lead to such results, see Shree Chamundi Mopeds Ltd. v. Church of South India, JT 1992 (3) SC 98, para. 15 : (1992) 3 SCC 1. An interim stay order does not create new obligations or liabilities on parties it would make interest only unrecoverable unless it is made absolute while passing a final order. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. On deemed vacation with the passing of the final decree it immediately revives earlier obligations fastened by court in the order brought under judicial review to test its correctness, which action in the present case failed to pass muster. Refer also to Nava Bharat Ferro Alloys Ltd. v. Transmission Corpn. of A.P. Ltd., (2011) 1 SCC 216 on the distinction between the two concepts.

6. It follows that the argument raised by Mr. Singla is not sustainable and is, therefore, noticed, dealt with and rejected. The only further question which remains to be decided is the second contention urged that the present writ petition is itself not maintainable since the workman could have had resort to section 11 (9) of the ID Act which makes orders and awards of Labour Courts open to execution under Order 21 CPC in a separate proceeding.

7. What Mr. Anupam Singla, learned counsel submits is that the present writ petition is in the nature of execution proceedings itself and there being an alternative remedy available the petitioner should be relegated to it. Though the argument appears attractive at first flush and without flaw, but the fact remains that this Court entertained the petition twenty two years ago and admitted it on October 25, 1994 for regular hearing within one year. The court being crowded with a heavy docket the matter could not be heard within the period of pious hope expressed by this Court and that is how this matter has come up for final disposal today.

8. Since the petition was entertained and admitted 22 years ago it would be neither fair nor equitable to relegate the petitioner to remedy before the Civil Court for executing what ex facie appears to be his right. The slim and specious argument raised by Mr. Anupam Singla, learned counsel to deny relief to the petitioner is neither found just and appropriate nor a fair deal. If the prayer is accepted it would only further protract litigation to carry out execution proceedings which may take years and stress the workman and the already much belaboured executing court with one more case to decide needlessly when quick relief is at hand. I do not think such an unjust consequence can be countenanced by the courts to leave the workman to fend for himself trying to recover his right to money. In any case, the existence of an alternative remedy is not an absolute bar on exercise of jurisdiction under Article 226 of the Constitution of India when justice demands.

9. I would, therefore, for the reasons recorded above, allow the petition and hold that the petitioner is entitled to interest for the disputed period i.e. from June 26, 1984 to September 15, 1987 at the rate of 12% awarded by the labour court which award has attained finality. The interest now be calculated and paid to the workman after the period of limitation for calling this question in appeal has expired with grace period of another 30 days thereafter. As a necessary consequence of the reasoning adopted, the award dated February 05, 1991 is ordered to stand modified accordingly, in order to serve the ends of justice, and in terms of this order in the compelling facts and circumstances of the case narrated above.