
(2010) 03 BOM CK 0083
In the Bombay High Court
Case No : Writ Petition No. 750 of 1998

Smt. Neeta S. Pathak

APPELLANT

Vs

Bombay Port Trust and Shri S.D. Panse

RESPONDENT

Date of Decision : 17-03-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33(C2)

Citation : (2010) 125 FLR 940 : (2010) 3 LLJ 751 : (2010) 5 SLR 518

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Kiran S. Bapat, for the Appellant; C.J. Shah, for the Respondent

Final Decision : Dismissed

Judgement

Anoop V. Mohta, J.—The matter is called out from final hearing board.

2. The Petitioner, who has been reinstated with backwages by order dated 10th April, 1991, filed an application u/s 33(C)(2) of the Industrial Disputes Act, 1947, (for short, the Act), for determining the money payable to the Petitioner by way of leave wages, bonus, exgratia wages and leave travel allowance for the period from 13/02/1978 to 27/05/1992. By the impugned order dated 16th October, 1996, the Presiding Officer of the Labour Court directed the Respondent to pay minimum bonus for the period 13/02/1978 to 28/05/1992, with 12% interest per annum, from the date of the publication of the award till its payment. There is no challenge to this part of the order by the Respondents. The back wages does not include bonus but as there is no challenge, I am not interfering with the same. Hamdard (Wakf) Laboratories Vs. Deputy Labour Commr. and Others, .

3. The Tribunal, after considering the material placed on record, granted the reinstatement with back wages. Therefore, once the court has passed the order of reinstatement with back wages only, the submission and the application as filed u/s 33(C)(2) without challenging the award in question and as the same has attained finality, in my view, there is no question of reagitating the new claim/

benefit by filing application u/s 33(C)(2) of the Act for reliefs other than awarded. Even otherwise, the reasoning given in paragraph Nos. 12 and 14 with regard to leave wages and leave travel concessions, need no interference, as it is well within the framework of rule and record.

4. In Supreme Court, in State of Uttar Pradesh and Another Vs. Brijpal Singh, , referring to Section 33(C)(2) of the Industrial Disputes Act, 1947, it is held that right to money or benefit which is sought to be executed under the Section, must be existed one i.e. already adjudicated upon and must arise in course of and in relationship between the industrial workman and employee.

5. It is not for the Labour Court exercising jurisdiction u/s 33(C)(2) to detail functions of Industrial Tribunal and any claim which is not based on existing right which may appropriately be made the subject matter of an "industrial dispute". The Labour Court cannot decide workman's new entitlement for the first time in such application. For the purpose of implementation thereof some ambiguity requires interpretation that power of interpretation is quite incidental to Labour Court power like that of executing Court power to interpret the decree for the purpose of its execution.

6. The aspect of reinstatement of back wages, arrears are proceedings before forum to whom a Reference u/s 10 of the Industrial Disputes Act, is made and not proceeding u/s 33(C)(2) thereof.

7. u/s 33(C)(2) of the Act, the Court cannot go beyond the award. The Tribunal cannot grant any new claims or benefits as prayed in the Application for the first time, unless it is connected and interlinked.

8. In view of above, no interference. The Petition is dismissed. No order as to costs.