

(2013) 09 DEL CK 0205

In the Delhi High Court

Case No : Writ Petition (C) 1526 of 2000

Standard Chartered Bank Ltd.

APPELLANT

Vs

Kewal Krishan Mutneja and Another

RESPONDENT

Date of Decision : 16-09-2013

Acts Referred:

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

Citation : (2013) 09 DEL CK 0205

Hon'ble Judges : A.K. Pathak, J

Bench : Single Bench

Advocate : Sumit Bansal, Mr. Ateev K. Mathur, Ms. Sumi Anand and Mr. Devmani Bansal, for the Appellant;

Final Decision : Allowed

Judgement

A.K. Pathak, J.—By the order dated 15th February, 2000 Central Government Industrial Tribunal, New Delhi (CGIT) has decided the application u/s 33C(2) of the Industrial Disputes Act, 1947 (for short, hereinafter referred to as "the Act") of respondent whereby petitioner has been directed to make payment of early retirement benefit to the respondent. As regards claim of respondent in respect of payment of subsistence allowance during the suspension period the same has been rejected. Factual matrix as unfolded is that respondent was working with the petitioner as Special Assistant. He was placed under suspension on 25th August, 1990. A departmental enquiry was held against him and he was found guilty of misconduct. He was awarded punishment of "warning" on 7th December, 1990. Thereafter, respondent vide letter dated 9th December, 1991 requested the petitioner to grant him pre-mature retirement from the service. This request was accepted by the petitioner vide letter dated 11th December, 1991. All the retrial dues were paid to respondent. However, respondent remained unsatisfied. He alleged that retirement dues in toto were not paid to him. He approached Assistant Labour Commissioner (Central), New Delhi, who advised the petitioner to examine all the grievances of respondent as

enumerated in order dated 27th April, 1994.

2. In the month of February, 1996 respondent filed an application u/s 33C(2) of the Act before the CGIT alleging therein that he was not paid "subsistence allowance" during the suspension period as well as "early retirement benefit" of remaining 9 years of services to which he was entitled to. Early retirement benefit was given by the petitioner to some other workmen, thus, he was discriminated on this count viz-a-viz other workmen. He claimed Rs. 66,425/- towards the wages during the suspension period from 28th August, 1990 to 10th December, 1991 and Rs. 8,20,800/- towards his remaining 9 years of service.

3. In written statement, petitioner disputed the entitlement of the respondent to the aforesaid amounts. It was alleged that petitioner had already paid all the legitimate claims of the respondent to which he was entitled to in terms of the Bank's rules, regulations and policies. Respondent was not entitled to "subsistence allowance" in terms of Bipartite Settlement. It was further alleged that respondent was not entitled to "early retirement benefits" as claimed by him as there was no such policy in vogue. Respondent had raked up the claims on the above counts as an afterthought, inasmuch as, had raised a boggy of discrimination just to gain undue advantage. It was further alleged that above issues were not raised during the conciliation proceedings before the Assistant Labour Commissioner. Respondent had resigned from service because of his ill-health and family circumstances and had opted for pre-mature retirement benefits with immediate effect, thus, was not entitled to salary of his remaining service. Even in his letter of resignation he had not indicated about the benefits of remaining nine years of service which was now raised by him.

4. In rejoinder, respondent reiterated the averments made in his application and detailed the names of co-workers who were allegedly granted "early retirement benefit".

5. From the facts narrated hereinafter it is clear that disputed question of facts were raised. Petitioner had disputed the entitlement of the respondent regarding "subsistence allowance" during the suspension period as also alleged "early retirement benefit". There is no gainsaying that power u/s 33C(2) of the Act is simply of computation of the amount to which a workman is entitled to pursuant to an award or settlement or for that matter admitted entitlement to which a workman is entitled to. The power u/s 33(c)(2) of the Act is like that of an executing court to interpret the decree for the purpose of execution, where the basis of the claim is referable to the Award or settlement, but it does not extend to the determination of the dispute of entitlement or the basis of the claim, if there is no prior adjudication or recognition of the same by the employer.

6. In Tilak Raj Sachdeva vs. PO, CGIT cum Labour Court & Ors., decided on 24th October, 2008, a Single Judge of this Court has held thus:

That the power u/s 33C(2) of the ID Act is like that of an Executing Court to interpret the decree for the purpose of execution, where the basis of the claim is

referable to the Award or settlement, but it does not extend to the determination of the dispute of entitlement or the basis of the claim, if there is no prior adjudication or recognition of the same by the employer. In other words, if the dispute relating to entitlement is not incidental to the benefit claimed it is, therefore, clearly outside the scope of a proceeding u/s 33C(2) of the Act. The Industrial Adjudicator has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power u/s 33C(2) of the ID Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation, that the interpretation is treated as incidental to the Industrial Adjudicator's power u/s 33C(2) of the ID Act, like that of the Executing Court's power to interpret the decree for the purpose of its execution.

7. In *Municipal Corporation of Delhi Vs. Ganesh Razak and Another*, , Supreme Court held thus "the ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement for the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding u/s 33C(2) of the Act, The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power u/s 33C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and 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 u/s 33C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution."

8. Similar is the view expressed by a Single Judge of this Court in the order dated 1st February, 2013 passed in W.P. (C) 5832/2012 titled *The Hong Kong & Shanghai Banking Corporation Ltd. vs. Anju Bala Gupta*. Supreme Court in *State Bank of Bikaner and Jaipur Vs. R.L. Khandelwal*, , held "that a workman cannot put forward a claim in an application u/s 33C(2) in respect of a matter which is not based on existing right and which can be appropriately the subject matter of Industrial Dispute Act which requires a reference u/s 10 of the Act. In *Central Inland Water Transport Corporation Limited Vs. The Workmen and Another*, , Supreme Court held thus "therefore, when a claim is made before the Labour Court u/s 33C(2) that Court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions say of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as "Incidental" to its main business of computation. In such cases determinations (i) and (ii) are not "Incidental" to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the

Industrial Tribunal."

9. Reverting back to the facts of this case, entitlement of the respondent to the "subsistence allowance" as well as "early retirement benefit" were disputed by the petitioner before the Industrial Adjudicator. Since the entitlement was disputed, it required adjudication and the same could have been done u/s 10 of the Act alone and not u/s 33C(2) of the Act. Thus, impugned order is liable to be set aside since the reliefs claimed were beyond the scope of 33C(2) of the Act. In view of above discussions, writ petition is allowed and impugned award is set aside.