
(2014) 05 CAL CK 0036
In the Calcutta High Court
Case No : W.P. No. 10749(W) of 2014

Standard Pharmaceuticals Ltd.

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 15-05-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1)(d), 17, 17A, 33C(1)

Citation : (2014) 4 CALLT 370 : (2014) 143 FLR 835 : (2014) 143 FLR 253 :
(2014) LabIC 3673 : (2014) 3 LLJ 295 : (2014) 3 LLN 652 : (2014) 4 WBLR 146

Hon'ble Judges : Soumen Sen, J

Bench : Single Bench

Advocate : Rananeesh Guha Thakurta and Sakya Sen, Advocate for the Appellant; Amrita Lal Chatterjee and Rathindra Nath Paul, Advocate for the Respondent

Judgement

Soumen Sen, J.—In this writ application, the petitioner has challenged the order passed by the Presiding Judge, Second Labour Court on October 5, 2014 in a computation proceeding u/s 33C(2) of the Industrial Disputes Act, 1947. The Labour Court has computed the back-wages and other consequential benefits on and from September, 2002 till December, 2006 and, thereafter, awarded interest @ 10% for the aforesaid period till its actual realization. The partition of the award allowing interest is the subject matter of challenge in this proceeding.

2. The award was passed ex parte since it appears from the record that the writ petitioner chose not to appear in the said proceeding. The record of the proceedings reveal that the writ petitioner initially entered appearance and contested the application filed u/s 10(1)(d) of the Industrial Disputes Act, 1947 by filing their written statement, but subsequently did not turn up to adduce any evidence after completion of the cross-examination of PW-1. The Presiding Judge, Second Labour Court, accordingly, had no other option, but to proceed with the application and in an elaborate and well considered judgment awarded various reliefs, which, inter alia, include payment of back-wages with other

consequential benefits on and from September, 2002 till December, 2006.

3. The award was passed on July 22, 2010 and under the award the writ petitioner was directed to calculate the back-wages and other arrears in terms of the last drawn salary of the applicant. The prayer for re-instatement of service became infructuous since the writ petitioner had retired from service in the year 2006. The said award was published and notified immediately thereafter. The writ petitioner thereafter made a demand for payment in terms of the said award. The writ petitioner Company ignored such demand resulting in a proceeding initiated u/s 33C(2) of the Act. Like the previous proceeding, this time also the Company allowed the proceeding to continue ex parte and on the basis of the materials on record, the Presiding Judge, Second Labour Court passed the impugned order dated October 15, 2002. The learned Counsel appearing on behalf of the writ petitioner submits that the Company had no knowledge of the award and as soon as they became aware of the award, the writ petitioner paid a sum of Rs. 103,253.88. The said amount has been duly paid to the private respondent on July 25, 2013. The learned Counsel for the writ petitioner submits that the direction with regard to the payment of interest in a computation proceeding is without jurisdiction. The award is silent with regard to the payment of interest and the Labour Court, which basically acts as an executing court cannot go beyond the award and direct payment of interest for the aforesaid period. There is a clear distinction between a pre-existing right or benefit on the one hand and the right or benefit, which is considered just and fair on the other hand. While the Labour Court would have the jurisdiction to decide any pre-existing right or benefit, the Labour Court is denuded of any jurisdiction to decide the right or benefit, which the Labour Court might find just and fair. It is submitted that awarding of interest although could have been a natural consequence for non-payment under the award in time the Labour Court, however, does not have any such jurisdiction to grant interest in absence of any specific direction mentioned in the said award.

4. The aforesaid argument is based upon the decisions which the learned Counsel have relied, namely:

(i) Krishnamurthi (A.) and Others v. Mall, 1964-II-LLJ-88

(ii) Management of Nathan's Press, Madras v. K. Krishnan and Others, 1988 (57) FLR 873

(iii) State Bank of India Vs. Ram Chandra Dubey and Others,

(iv) A.P.S.R.T.C. and Another Vs. B.S. David Paul,

If the contention of the writ petitioner is to be accepted then the law would be a lame duck and the purpose and object of such beneficial industrial legislation could never be achieved. The provision of Section 33C(2) would then become redundant and render otiose. The Labour Court should not allow its power and jurisdiction to be fettered on a perception that it has no power to grant interest

when ex facie the Court is faced with a situation like the present one when by reason of failure on the part of the management to pay the amount under the award, the workman has denied the monetary benefits accruing therefrom.

5. The fallacy of this argument steins out from a myopic interpretation of Section 33C(2) of the Act and disregarding the other provisions of the Act. In *Krishnamurthi (A.) and Others v. Mall* (supra), the Madras High Court held that the Labour Court is certainly not a Civil Court and does not possess the same powers as a Civil Court. It appears from the said decision that the management was not responsible for the protracted proceedings. The original claim petition filed u/s 33C(2) does not refer to any claim of interest. It was held that in the first place, no interest was ever claimed by working journalist before they sought belatedly to amend their claim when the petitions were under consideration for fresh disposal. The writ petitioners were all retrenched in 1956, but they filed the petitions u/s 33C(2) only in November, 1959. The petitioners were all dismissed in July, 1960. The earlier order of the Labour Court dismissing the application u/s 33C(2) of the Industrial Disputes Act for computation of retrenchment compensation, notice-pay, leave salary, balance of gratuity and pension were all dismissed in July, 1960. This order of the Labour Court was quashed by the High Court in June, 1961 and it was only in September, 1961 for the first time the working journalists came forward with a claim for interest. It was, thus, held all analysis of the aforesaid facts that the delay in submission of the claim was not due to the management. It was entirely on account of the pendency of these proceedings. The protract litigation, per se, would not have a ground to hold that it would be fair to grant interest. It was, thus, held that in view of the aforesaid it would be unnecessary to consider the technical aspect based on the jurisdiction of the Labour Court itself u/s 33C(2).

6. In *Management of Nathan's Press, Madras v. K. Krishnan and Others* (supra) the petitioner filed a claim petition for reinstatement with full back-wages and continuity of service. The petitioner was reinstated on 2nd May, 1979 but he was not paid the back-wages and other attended benefits. By reason of such non-payment, the workman filed a claim petition claiming amounts which, inter alia, include interest. The learned single Judge after noticing a judgment in *Krishnamurthi (A.) and Others v. Mall* (supra), held that the Labour Court, while making the computation is the role of an executing court, and it cannot go beyond the award unless the question is incidental to working the reliefs on the basis of the award. The heads of claims could be based only on the award, and in the absence of any provision for payment of interest in the award, there could not be any claim for such interest. The claim for interest could not be stated to be incident to computation of the benefits given under the award.

7. In *State Bank of India v. Ram Chandra Dubey and Others* (supra), the Hon''ble Supreme Court noticed that the award was silent in regard to payment of back wages for a period between the date of termination of the workman and their reinstatement. The issue arose if the payment of back wages is implicit in an

award for reinstatement. In paragraph 8 of the judgment, the Hon^{ble} Supreme Court held that the difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers u/s 33C(2) of the Act while the latter does not. It cannot be spelt out from the award that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Therefore, the appropriate forum wherein such question of back wages could be decided is only that to whom a reference u/s 10 of the Act is made. Therefore, the High Court ought not to have presumed that the award of the Labour Court for grant of back wages was implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages. In *A.P. SRTC and Another v. B.S. David Paul* (supra), it was held that the entitlement of back wages is not automatic on reinstatement. The Labour Court exercising its jurisdiction u/s 33C(2) of the Industrial Disputes Act could not have awarded back wages merely on the basis of an award for reinstatement. In the instant case, the award requires the management to compute the back wages. The relief for reinstatement was not allowed since by the time the award was passed, the private respondent has retired from service. The management is required to compute the same within a reasonable time and in any event within a period of 30 days from the date of publication of the award in terms of Section 17A of the Industrial Disputes Act, 1947 as the award becomes enforceable beyond the aforesaid period after publication. The management has consciously avoided to participate in the main proceeding. The award was not under challenge. The award requires the management to compute the back wages and tender the amount, which as I have said earlier cannot travel beyond the period of 30 days from the date of publication of the award. An award u/s 17A would become ordinarily enforceable on the expiry of the 30 days from the date of its publication u/s 17 of the Industrial Disputes Act, 1947. The question would arise what would happen if the management does not act in terms of the award and the workman is forced to approach the Labour Court for enforcement of the said award. If the argument of the petitioner is accepted then it would mean that the management could disregard the award notwithstanding that such award is enforceable after a period of 30 days from the date of its publication, waited until a claim petition is filed by the workman and an adjudication is made by such Labour Court. The management would be in a happy situation not to compensate the workman for all these periods simply on a specious plea that the award is silent on interest. This situation cannot be equated with the cases where the Labour Court has overreached its jurisdiction in allowing payment of back wages where the award is only for reinstatement. There are various factors for which the industrial tribunal may not allow payment of back wages. However, the situation in the instant case is entirely different. Actually, the workman was denied the benefit of the money that was awarded to

him by the industrial court due to failure and the refusal on the part of the management to pay such amount. The question of awarding interest in the instant case is not what is being argued as "just and fair" but having its foundation to Section 33C(2) itself where advisably and purposely the word "benefit" has been used. Section 33C(2) contemplates that the Labour Court would be competent to decide the said question if the workman would be entitled to interest on the awarded sum. This power to grant interest is inbuilt in the expression "any benefit which is capable of being computed in terms of money". There cannot be any doubt that such claim for interest is, in fact, a benefit which the workman is entitled to claim by reason of failure on the part of the management to tender the amount under the award on expiry of 30 days period from the date of publication of the award. In my view, the word "benefit" appearing in Section 33C(2) is of wide import and it embraces payment of interest in a situation like this and the Labour Court, in fact, was justified in awarding such interest. The Dictionary meaning of the word "benefit" includes advantage or profit which naturally includes a monetary advantage or monetary profit. The word benefit comprehends all kinds of benefits whether monetary or not monetary, which a workman is entitled to in accordance with law. The word "benefit" would include a benefit expressed or otherwise in terms of money which require computation.

8. In U.P. Electric Supply Co. Ltd. Vs. R.K. Shukla and Another, etc., the Hon"ble Supreme Court noticed the distinction between Sections 33C(1) and 33C(2) and held:

"The legislative intention disclosed by Ss 33C(1) and 33C(2) is fairly clear. Under S. 33C(1), where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter 5A, the workman himself, or any other person authorized by him in writing in that behalf, may make an application to the appropriate Government to recover the money due to him. Whether the workman, who is entitled to receive from the employer, any money or any benefits which is capable of being computed in terms of money applies in that behalf, the Labour Court may, under S. 33C(2), decide the questions arising as to the amount of money due or as to the amount had which such benefit shall be computed. Section 33C(2) is wider than Section 33C(1). Matters which do not fall within the terms of Section 33C(1) may, if the workman is shown to be entitled to receive the benefits, fall within the terms of Section 33C(2)."

9. Section 33C(2) is more wide and comprehensive than Section 33C(1). When money due is not specific or the benefit is capable of being computed in terms of money has not been determined u/s 33C(2) would be attracted inasmuch as the Labour Court by a process of computation can determine the amount of money due. In fact, in the instant case, the calculation on account of back wages which the management was required to do under the award has been done by the Labour Court in the proceeding u/s 33C(2) of the Industrial Disputes Act, 1947.

Once the workman has won the battle, he would be entitled to claim such interest if the management does not tender the amount within a period of 30 days from the date of publication of the award. The reading of three sections, namely, Section 17, Section 17A and Section 33C(2), in my view, undoubtedly empowers the Labour Court in a proceeding u/s 33C(2) to award interest depending upon the facts situation as I repeat and reiterate that interest is "benefit" which the Labour Court is entitled to compute u/s 33C(2) of the Industrial Disputes Act, 1947.

10. With due respect to the judgments delivered by the Madras High Court I feel that this aspect of the matter has not been argued and, accordingly, not considered. Any other narrow interpretation of the word "benefit" in the facts of the case would render Section 33C(2) otiose and a dead letter. Interest is a benefit, which is capable of being computed in terms of money if the management fails to act in terms of the award and awarded sum is not paid in accordance with Section 17A of the Industrial Disputes Act. If the workman is required to enforce the award, his right to claim interest as a benefit cannot be denied. The Labour Court has already adjudicated the main reference and has passed an award in favour of the petitioner. The failure on the part of the management to calculate the back wages and left it to the Labour Court to calculate the same in a proceeding initiated by the workman and thereafter to come with a plea that the Labour Court cannot grant interest on such awarded sum, in my view, is clearly unsustainable. Any other interpretation denying the right to claim interest for belated payment of the awarded sum would only result in manifest justice. The Court exists to do justice between the parties. Injustice would be caused to the petitioner in the event such interest is not allowed in favour of the petitioner which, in my view, is in consonance with the provisions of the Industrial Disputes Act, 1947.

11. However, the only modification I make to the impugned order is that the interest at the rate of 10 per cent per annum shall be made on an from August, 2010 until realization. The Tribunal, in my view, has correctly interpreted Section 33C(2) of the Industrial Disputes Act and the exercise of the jurisdiction by the Labour Court does not suffer from any infirmity. Moreover, in exercising high prerogative suit jurisdiction, the Court would be reluctant to interfere with an order passed by such Labour Court unless it is manifestly illegal.

12. The writ application is allowed in part. The impugned order is modified to the aforesaid extent.