

(2021) 02 RAJ CK 0138
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1593 Of 2021

State Of Rajasthan And Ors

APPELLANT

Vs

Ram Kishore

RESPONDENT

Date of Decision : 24-02-2021

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)
Constitution of India, 1950 — Article 227

Citation : (2021) 02 RAJ CK 0138

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : Deepak Chandak, Pankaj Sharma

Final Decision : Dismissed

Judgement

1. The present writ petition is directed against the order dated 06.12.2019, passed by the learned Judge, Industrial Tribunal- cum-Labour Court,

Bhilwara (hereinafter referred to as ""the Labour Court"") in an application filed by the respondent-employee under Section 33C(2) of the Industrial

Disputes Act, 1947 (hereinafter referred to as ""the Act of 1947"").

2. The precise facts germane for the present purposes are that pursuant to respondent's request, a reference came to be made to the Labour Court

and a case - Labour Dispute Case No.10/2020 was registered. Vide award dated 28.11.2016 the Labour Court allowed the application and ordered

reinstatement of the respondent from the date of his termination (17.08.2011) alongwith 50% back wages.

3. State's writ petition against the judgment and award dated 28.11.2016 has been dismissed by this Court vide judgment dated 08.12.2017 and intra-

Court appeal filed thereagainst too has been dismissed by the Division Bench on

28.02.2019.

4. Meanwhile, as the State did not comply with the award aforesaid, the respondent filed an application under Section 33C(2) of the Act of 1947 and claimed a sum of Rs.2,00,538/- as his due wages.

5. A reply to the claim petition was filed by the present petitioner-State. It would not be out of place to reproduce the reply herein extenso; hence the same is being done.

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6. The learned Labour Court passed the order dated 06.12.2019 and directed the State to pay a sum of Rs.2,00,538/- along with interest @ 6% per

annum, while also imposing a cost of Rs.5,000/- upon the concerned Executive Engineer.

7. On 05.02.2021, a coordinate Bench of this Court directed the State to file a copy of the sanction given by the State for filing the writ petition so also

an additional affidavit, as to whether compliance of the order impugned has been made by the State.

8. Mr. Deepak Chandak, associate to Mr. Pankaj Sharma, learned Additional Advocate General, appearing for the State invited Court's attention

towards sanction dated 06.03.2020, issued by the State for filing the writ petition

and informed that the State is under process of complying with the order dated 06.12.2019.

9. Be that as it may.

10. Learned counsel for the petitioner-State was asked to advance his arguments on merit of the case.

11. Mr. Chandak, learned counsel for the petitioner-State argued that the Labour Court has committed an error in accepting the claim/application filed by the respondent-employee as it is.

12. According to him, it was incumbent upon the Labour Court to determine the amount payable instead of accepting the claim as a gospel truth. He

emphasised that the respondent has claimed wages/salary equal to what is payable to a skilled worker, whereas the respondent was an unskilled

workman. He submitted that as per notification issued by the State Government, the respondent was not entitled for the wages as claimed.

13. In support of his argument, learned counsel relied upon the judgment of Hon'ble the Supreme Court, passed in the case of Municipal Corporation

of Delhi Vs. Ganesh Razak & Ors. reported in 1995 1 SCC 235 and submitted that proceedings under Section 33C(2) of the Act of 1947 are like execution proceedings.

14. Heard.

15. A perusal of the facts and the material available on record shows that in response to the claim filed by the respondent- labourer, the State has filed

a cursory, rather shoddy reply; so much so, even the fact that the claimant was an unskilled workman has not been indicated, much less disputing

quantum of claim.

16. Such being the position, the Labour Court had no other option but to accept the application filed by the respondent- claimant.

17. The petitioner-State filed an additional affidavit and submitted that they have calculated a sum of Rs.1,76,193.50/- payable to the respondent-

claimant being 50% of Rs.3,52,337/-.

18. In considered opinion of this Court, since the State has not objected the claim made by the respondent and has not even brought it as a fact that

the respondent was an unskilled workman, their stand challenging the quantum of amount is untenable.

19. In a writ of certiorari filed under Article 227 of the Constitution of India, this Court cannot take cognizance of the fact, which was not even

pleaded before the Labour Court.

20. That apart, it is surprising to note that the sanction was issued by the State Government way back on 06.03.2020 and the present writ petition has

been filed by the State on 22.01.2021, which shows lack-lusture attitude of the officer(s) concerned, who have not only ignored the rights of the

respondent but have also ignored their own responsibility of taking up legal recourse with requisite promptitude.

21. Cost of Rs.5000/- has already been imposed by the Court below upon the concerned Executive Engineer, hence, this Court does not wish to

penalise him anymore.

22. The writ petition is dismissed.

23. Stay petition also stands dismissed accordingly.