
(2003) 05 RAJ CK 0091
In the Rajasthan High Court
Case No : Civil Writ Petition No. 349 of 2003

State of Rajasthan

APPELLANT

Vs

Prabhas Choudhary and Another

RESPONDENT

Date of Decision : 08-05-2003

Acts Referred:

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

Citation : (2003) 3 RLW 1837 : (2003) 3 WLC 679

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : G.K. Vyas, for the Appellant; R.S. Saluja, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Garg, J.—This writ petition under Articles 226 and 227 of the Constitution of India has been filed by the petitioner on 3.1.2003 against the respondents with the prayer that by an appropriate writ, order or direction, the impugned order dated 19.12.2002 (Annex. 1) passed by the learned Labour Court, Bhilwara (respondent No. 2) by which the learned Labour Court on an application filed by the respondent No. 1 Prabhas Choudhary u/s 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act of 1947") awarded Rs. 44,552/- to the respondent No. 1 as salary for the period from March, 2001 to June, 2001 at the rate of Rs. 11,138/- per month, be quashed and set aside.

2. The case of the petitioner as put forward in this writ petition is as follows :-

The employees, who were found excessive, were ordered to be transferred by the Chief Engineer, Irrigation Department, Jaipur and various orders were issued in this regard and at last on 3.3.2001, an order was issued by the Chief Engineer, Irrigation Department, Jaipur by which as many as 83 employees were ordered to be transferred from Udaipur Zone to the office of the Chief Engineer, Irrigation, Hahumangarh. A copy of the said order dated 3.3.2001 is marked as

Annex. 2.

Against the said order of transfer Annex. 2, employees of Irrigation Department filed a writ petition before this Court being *Sinchai Vibhag Karmachari Sangh v. State and Ors.* (S.B. Civil Writ Petition No. 949/2001).

The further case of the petitioner is that in pursuance of the order of transfer dated 3.3.2001 (Annex. 2), the petitioner Executive Engineer passed an order of relieving the employee, who were working under his control and the respondent No. 1 Prabhas Choudhary was also ordered to be relieved on 8.3.2001 and the relieving order was received by the respondent No. 1 on the same day i.e. on 8.3.2001.

The further case of the petitioner is that no doubt the order of transfer dated 3.3.2001 (Annex. 2) was stayed by this Court in the above writ petition being No. 949/2001 vide order dated 21.3.2001 and that stay order dated 21.3.2001 was extended on 7.8.2001 for one week and thereafter, it was not extended and on 26.3.2002, the second stay petition was dismissed meaning thereby after extending the stay on 7.8.2001 for one week, there was no stay and the main writ petition is still pending before this Court for final adjudication.

The further case of the petitioner is that thereafter the respondent No. 1 filed an application (Annex. 4) u/s 33-C(2) of the Act of 1947 before the respondent No. 2 Labour Court. Bhilwara claiming salary for the period from March, 2001 to June 2001 to the tune of Rs. 44,552/- on the ground that he was in the service of the petitioner at Udaipur.

The said application of the respondent No. 1 filed u/s 33-C(2) of the Act of 1947 was entertained by the respondent No. 2 Labour Court and the petitioner was not given any opportunity to file reply and the reply of the petitioner was closed by the respondent No. 2 Labour Court on 23.11.2001.

Thereafter, on 19.12.2002, after hearing both the parties, the learned Labour Court (respondent No. 2) passed the impugned order Annex. 1 and awarded salary of Rs. 44,552A to the respondent No. 1 for the period from March, 2001 to June, 2001 at the rate of Rs. 11,138/- per month, repelling all the contentions raised by the petitioner.

In this writ petition, the impugned order Annex. 1 dated 19.12.2002 passed by the respondent No. 2 Labour Court, Bhilwara has been challenged by the petitioner on various grounds and some of them are as, follows :-

(i) That u/s 33-C(2) of the Act of 1947, no entitlement in respect of salary can be determined and adjudicated by the Labour Court and only due amount on account of the "entitlement" already adjudicated, could be ordered to be paid, but in the present case, through impugned order Annex. 1, the learned Labour Court treated the respondent No. 1 on duties for the period From March, 2001 to June, 2001, which was beyond the scope of provisions of Section 33-C(2) of the Act of 1947 and thus, the impugned order Annex. 1 is without jurisdiction and

cannot be sustained.

(ii) That since the respondent No. 1 was relieved on 8.3.2001 and that fact has been admitted by the respondent No. 1 himself in his cross-examination (Annex. 6) and when the validity of the order Annex. 2 dated 3.3.2001 was under challenge before this Court, therefore, the respondent No. 2 Labour Court should have not entertained the application of the respondent No. 1 filed u/s 33-C(2) of the Act of 1947 and from this point of view also, the impugned order Annex. 1 should be quashed and set aside.

A reply to the writ petition was filed by the respondent No. 1 and it has been submitted by the respondent No. 1 that operation of the order of transfer Annex. 2 dated 3.3.2001 was stayed by the respondent No. 2 learned Labour Court through order Annex. R/1 dated 8.3.2001 till further orders. Not only this, operation of the transfer order Annex. 2 dated 3.3.2001 was further stayed by this Court on 21.3.2001 and as per the averments made in the writ petition by the petitioner, that stay order dated 21.3.2001 was extended on 7.8.2001 for one week. Thus, the amount of salary which was ordered to be paid to the respondent No. 1 was for the period, for which there was stay by this Court. Hence, the application of the respondent No. 1 was rightly considered and decided by the learned Labour Court through order Annex. 1. Hence, no case for interference is made out and the writ petition filed by the petitioner by dismissed.

3. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent No. 1 and gone through the materials available on record.

4. Before proceeding further, admitted position may be summarized in the following manner :-

(i) That the respondent No. 1 was employee of the petitioner and through transfer order Annex. 2 dated 3.3.2001, he was transferred from Udaipur to Hanumangarh as surplus employee.

(ii) That the order of transfer dated 3.3.2001 (Annex. 2) was stayed by this Court in S.B. Civil Writ Petition No. 949/2001 vide order dated 21.3.2001 and that stay order dated 21.3.2001 was extended on 7.8.2001 for one week and thereafter, it was not extended and on 26.3.2002, the second stay petition was dismissed meaning thereby after extending the stay on 7.8.2001 for one week, there was no stay and the main writ petition is still pending before this Court for final adjudication.

(iii) That from perusing order Annex. R/1 dated 8.3.2001 passed by the learned Labour Court, Bhilwara (respondent No. 2, it is also clear that operation of the order of transfer dated 3.3.2001 was stayed.

(iv) That through order Annex. R1/1A dated "8.3.2001 passed by the petitioner, the respondent No. 1 was relieved on 8.3.2001 and the respondent No. 1 received the copy of that relieving order on 8.3.2001 at 4.55 PM.

5. The question for consideration in the facts and circumstances just stated above is whether the application filed by the respondent No. 1 u/s 33-C(2) of the Act of 1947 was rightly entertained by the respondent No. 2 Labour Court, Bhilwara or not.

6. For convenience, Section 33-C(2) of the Act of 1947 is quoted here :-

"33. Recovery of money due from an employer:-

(1).....

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

7. The Labour Court can entertain an application u/s 33-C(2) of the Act of 1947 only when the applicant fulfils the following two conditions :-

(i) That his claim should be undisputed one, and

(ii) That the benefit claimed should be capable to be computed in terms of money.

8. In *Municipal Corporation of Delhi v. Ganesh Razak and Anr.* (1), the Hon''ble Supreme Court held that the Labour Court has no jurisdiction to first decide the workman's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power u/s 33-C(2) of the Act of 1947. 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 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution. The power of the Labour Court u/s 33-C(2) extends to interpretation of the award or settlement on which the workman's right rests.

9. The above view was again reiterated by the Hon''ble Supreme Court in *State Bank of India v. Ram Chandra Dubey and Ors.* (3).

10. In view of the law laid down by the Hon''ble Supreme Court in the above cases and keeping in mind the above two conditions, if the facts of the present case are discussed and examined, it clearly appears that the application filed by the respondent No. 1 Prabhas Choudhary u/s 33-C(2) of the Act of 1947 before the respondent No. 2 Labour Court, Bhilwara was not maintainable and

therefore, the impugned order Annex. 1 dated 19.12.2002 passed on it by the respondent No. 2 Labour Court, Bhilwara is wholly illegal and without jurisdiction and thus, cannot be sustained because of the following reasons :-

(i) That the questions whether the respondent No. 1 was properly relieved on 8.3.2001 or not and whether after relieving, he worked in the employment of the petitioner for the period from March, 2001 to June, 2001 or not are disputed questions of facts and were to be determined and decided finally. Such disputed questions of facts could not be adjudicated upon and decided in a proceeding u/s 33-C(2) of the Act of 1947.

(ii) That through order Annex. 2 dated 3.3.2001, the respondent No. 1 was transferred from Udaipur to Hanumangarh and in pursuance of that transfer order Annex. 2, he was relieved on 8.3.2001 and the stay was granted by this Court on 21.3.2001 meaning thereby the order Annex. 2 which was going to be stayed had already been executed earlier in the case of the respondent No. 1 and whether by High Court stay, operation of transfer order Annex. 2 was rightly stayed or not is yet another question to be determined and decided and the main writ petition in which the transfer order Annex. 2 is under challenge is pending before this Court and furthermore, the period for which salary was claimed by the respondent No. 1 i.e. from March, 2001 to June, 2001 was in dispute, therefore, in these circumstances, the Labour Court was not justified in entertaining and deciding the entitlement or claim of the respondent No. 1 for the salary for the aforesaid period in a proceeding u/s 33-C(2) of the Act of 1947 as it cannot adjudicate upon and decide dispute of entitlement u/s 33-C(2).

(iii) That remedy provided u/s 33-C(2) of the Act of 1947 is available only when there is no dispute about entitlement of the "benefit due" to the workman. Remedy cannot be invoked under Sub-section (2) of Section 33-C of the Act of 1947 in a case where the entitlement of the "benefit due" itself is disputed.

In the present case, since the entitlement of salary for the period from March, 2001 to June, 2001 was in dispute, therefore, the Labour Court was not justified in adjudicating upon a disputed question of entitlement of salary of the respondent No. 1 for the aforesaid period in a proceeding u/s 33-C(2) of the Act of 1947.

(iv) That the abovementioned two conditions for entertaining an application u/s 33-C(2) of the Act of 1947 were not fulfilled by the respondent No. 1 as his entitlement for salary of the aforesaid period was in dispute and thus, the application filed by the respondent No. 1 u/s 33-C(2) of the Act of 1947 was not maintainable.

(v) That apart from this, from perusing the impugned order Annex. 1 dated 19.12.2002 passed by the Labour Court, it appears that the Labour Court has decided the application filed by the respondent No. 1 u/s 33-C(2) of the Act of 1947 in the manner as if it was deciding a dispute referred to it u/s 33-C(2) of the Act of 1947. The approach of the Labour Court was wholly erroneous one as

power of the Labour Court u/s 33-C(2) is altogether different one from the power which it exercises while deciding a dispute referred to it u/s 10(1) of the Act of 1947.

11. Thus, for the reasons stated above, it is held that the application filed by the respondent No. 1 u/s 33-C(2)-of the Act of 1947 before the Labour Court, Bhilwara (respondent No. 2) was not maintainable and, therefore, the impugned order Annex. 1 dated 19.12.2002 passed on it by the respondent No. 2 Labour Court, Bhilwara is illegal and without jurisdiction and thus, cannot be sustained and this writ petition deserves to be allowed.

12. The learned counsel for the respondent No. 1 has placed reliance on the decision of the Hon"ble Supreme Court in Kays Construction Co. (Private) Ltd. v. The State of Uttar Pradesh and Ors. (4). In my considered opinion, that ruling would not be helpful to the respondent No. 1 in view of the discussion made above.

Accordingly, this writ petition filed by the petitioner is allowed and the impugned order dated 19.12,2002 (Annex. 1) passed by the respondent No. 2 Labour Court, Bhilwara is quashed and set aside.

No order as to costs.