
(2013) 11 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 690 of 1994

Suraj Bhan Kaur Singh

APPELLANT

Vs

Presiding Officer, Labour Court, Bathinda and Others

RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2014) 173 PLR 667 : (2014) 2 SCT 744

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rameshwar Singh Malik, J.—Feeling aggrieved against the impugned order dated 13.10.1993 (Annexure P-5), passed by the learned Labour Court allowing the application of respondents No. 3 to 5 u/s 33(C)(2) of the Industrial Disputes Act, ("the I.D. Act" for short), thereby directing the petitioner to pay an amount of Rs. 26,488/-, petitioner-contractor has approached this Court by way of instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari for setting aside the impugned order. The writ petition was admitted for regular hearing by a Division Bench of this Court on 18.1.1994, by passing the following order:-

States that the Labour Court has no jurisdiction to entertain the claim u/s 33(C)(2) of the Industrial Disputes Act as there was no relationship of management and workman between the petitioner and the respondent.

Notice.

Operation of the award of the Labour Court is stayed.

2. Despite due service having been effected on respondents No. 3 to 5, none has put in appearance on their behalf nor any written statement has been filed.

3. Learned counsel for the petitioner strenuously argued that there was no relationship of master and servant between the petitioner and respondents No. 3

to 5. Respondents-workmen failed to adduce even any prima facie evidence before the learned Labour Court so as to establish their right to claim monetary benefits u/s 33(C)(2) of the I.D. Act. He next contended that since respondents-workmen could not establish the relationship of master and servant, the learned Labour Court proceeded on wholly erroneous approach, while passing the impugned order. He also submits that, had the respondents-workmen had a genuine claim, they would have certainly sought execution of the impugned order or at least would have filed their response to the present writ petition. Learned counsel for the petitioner places reliance on a judgment of Bombay High Court in Jagannath Bhagwandas Shrivastav and Others Vs. Harish Thadani and Another, and an order dated 16.7.2013 passed by this Court in C.W.P. No. 5871 of 1993 (Haryana State Electricity Board v. The Presiding Officer, Industrial Tribunal, Faridabad and another). Finally, he prays for setting aside the impugned order by allowing the present writ petition.

4. Learned counsel for respondent No. 2 submits that, the lis, as a matter of fact, was between petitioner and private respondents No. 3 to 5. Petitioner was a contractor and respondents-workmen were never employed by respondent No. 2, as well.

5. Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the arguments advanced, this Court is of the considered opinion that in the peculiar fact situation of the present case, the instant writ petition deserves to be allowed for more than one following reasons.

6. A bare reading of the impugned order passed by the learned Labour Court, would show that it was not based on any existing right of the respondents-workmen. Further, this Court has found force in the contention of the learned counsel for the petitioner that respondents-workmen failed to establish the relationship of master and servant. In the absence of any cogent evidence having been brought on record by the respondents workmen, the learned Labour Court exceeded its jurisdiction while passing the impugned order. Onus was on the respondents-workmen to lead at least prima facie evidence to establish their claim u/s 33(C)(2) of the I.D. Act. However, they had failed to do so. Having said that, this Court feels no hesitation to conclude that the learned Labour Court has proceeded on erroneous approach while passing the impugned order, which cannot be sustained.

7. The view taken by this Court also finds support from the judgment in Jagannath Bhagwandas Shrivastav's case (supra). The relevant observations made by the Court, which can be gainfully followed in the present case, read as under:-

It is clear from the scheme of the S. 33C and language of sub-sec. (2) thereof that the only limited question that a Labour Court can decide under this sub-section is "the amount at which any benefit should be computed", provided,

however, that the workman "is entitled to receive from the employer any money or any benefit". This section postulates the existence of relationship of an employer and workman and the entitlement of a workman to certain benefits. The only dispute that can be decided by the Labour Court under this section is in a very narrow compass, that is relating to the computation of the amount of money that may be due. Where the very foundation is absent, the remedy provided to a workman under the subsection cannot be availed of. The power of the Court in a proceeding U/s. 33C(2) of the Act, as observed by Supreme Court in Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, , is in the nature of an execution proceeding, and, therefore, when a claim is made before a Labour Court under S. 33C(2), that Court must clearly understand the limitations under which it is to function. It cannot arrogate to itself power to make adjudication in the nature of determination which some other authority or Court is competent to do. Thus, where there is a controversy in regard to very fact whether the person concerned was in employment or not, the question of computing the reliefs will not arise.

8. Similarly, the observations made by this Court in order dated 16.7.2013, which aptly apply to the present case, read as under:-

The facts of the case would reveal that there was no prior adjudication of the claim of the petitioner and therefore, the provisions of Section 33(C)(2) of the Act would not be attracted to the facts of the case. The Tribunal was wrong in adjudicating the application under the aforesaid provisions of law without there being any prior adjudication and determination of the claim of the petitioner.

9. Reverting back to the facts of the present case and respectfully following the law laid down in the above-said judgments, it is unhesitatingly held that the learned Labour Court has failed to appreciate the true facts of the case as well as true import of Section 33(C)(2) of the I.D. Act, while passing the impugned order, therefore, the same cannot be sustained.

10. No other argument was raised.

11. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that in the given fact situation of the present case, the instant writ petition deserves to be allowed.

12. Consequently, the impugned order dated 13.10.1993 (Annexure P-5) passed by the learned Labour Court is hereby ordered to be set aside. Resultantly, with the observations made and directions issued as here-in-above, the present writ petition stands allowed, however, with no order as to costs.