

(1996) 01 AHC CK 0035
In the Allahabad High Court
Case No : C.M.W.P. No. 22019 of 1994

Swadeshi Cotton Mills

APPELLANT

Vs

P.O. Labour Court and Others

RESPONDENT

Date of Decision : 10-01-1996

Acts Referred:

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

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6H(2)

Citation : (1996) 2 LLJ 444 : (1996) 2 UPLBEC 773

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : V.B. Singh, for the Appellant;

Final Decision : Allowed

Judgement

D.K. Seth, J.—The respondent No. 2 made an application u/s 6-H(2) of the U.P. Industrial Disputes Act, 1947, hereinafter referred to as "U.P. Act" claiming Dearness Allowance on the basis of the Government Order dated April 16, 1985 on the ground that the said Government order was issued by the Bureau of Public Enterprises for Central Government Undertakings and is also applicable in respect of the petitioner's Undertaking. The petitioner contested the said proceedings by filing written objections denying the entitlement of the workmen to the said benefit. The Labour Court, by order dated March 29, 1994, held that the Dearness Allowance may be given to the workmen according to the notification dated April 16, 1985 for the period between April 1, 1985, and February 26, 1987 which is Annexure "6" to the Writ petition. Aggrieved, the petitioner has challenged the said order dated March 29, 1994 by means of writ petition No. 22019 of 1994. During the pendency of the said writ petition, the Bank Account of the petitioner was attached for the realisation of the amount pursuant to the said order dated March 29, 1994. The petitioner thereupon moved the second writ, petition being Writ Petition No. 28421 of 1995 on the ground that the issue is pending decision in writ petition No. 22019 of 1994 and

that the petitioner is being considered for being declared as "sick industrial unit" by the Board of Industrial Finance and Reconstruction under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, Section 22 whereof prohibits such recovery.

2. Mr. V.B. Singh, learned counsel for the petitioner contends that Section 6-H(2) of the U.P. Act is *pari materia* with Section 33-C(2) of the Industrial Disputes Act. In the present case, the workmen had claimed Dearness Allowance on the basis of the Government Order dated April 16, 1985, but the said Government Order applies to Central Government Undertakings. It does not apply to the Undertaking of the Petitioner inasmuch as all the other units and undertakings of the National Textile Corporation in U.P. are being paid Dearness Allowance as being paid in the State of U.P. and the said Government Order dated April 16, 1985 is not applicable to them. Therefore, the claim of the workmen is not an existing right. Therefore, he contends; (i) the right of the workmen is not an existing right, therefore cannot be computed u/s 6-H(2) since the said exercise requires determination of entitlement, (ii) the Government of U.P. has issued a notification u/s 3-B of the U.P. Act in which the workmen were parties and had fixed the wage structure and, therefore, the workmen are estopped from claiming anything otherwise than the said wage structure particularly when the workmen have been receiving benefit of the said notification u/s 3-B of the U.P. Act.

3. Mr. A. Kumar, learned counsel for respondent No. 2, contends that before the Labour Court, the petitioner has not made out a case that the present determination does not fall within the ambit of Section 6-H(2). There is no such averment except a bald statement that the Government order dated April 16, 1985 is not applicable on the employers. Such statement is insufficient to make a ground which is being sought to be espoused now. Secondly, he contends that no document has at all been produced by the petitioner for proving that the workmen's claim is an entitlement and not an existing right. On the other hand, he claims that it is an existing right and not a determination of entitlement. The third contention of Mr. Kumar was that the petitioner had failed to establish that the notification dated April 16, 1985 is not attracted in the present case. He next contends that no issue was framed by the Labour Court concerning the issue. No question was raised before the Labour Court. It is for the first time such a question has been raised before this Court which can never be raised. Mr. Kumar then contends referring to various sections of the Swadeshi Cotton Mills (Acquisition and Transfer of Undertakings) Act, 1986, that there is no dispute that the Undertaking is a Central Government Unit and as soon it becomes a Central Government Unit, the employees are entitled to the Dearness Allowance payable by the Central Government.

4. Mr. Kumar has very ably argued the case and sought to distinguish the contention of Mr. Singh by attempting to prove that the claim of the workmen flows from an existing right which can be decided by interpretation of the

meaning "Taking over" as defined in Section 2(d) of the said Act. He has also relied on the definition of "National Textile Corporation" and Clause (c) of the said section. He also relies on the preamble for the purpose of interpretation of the provisions of the said Act. He draws my attention to the provisions for vesting as contained in Section 3. It implies that from the appointed day, the undertaking stood vested with the Central Government and immediately thereon it stands vested to the National Textile Corporation. With the formation of the subsidiary of the National Textile Corporation, the unit shall stand transferred and vested in such subsidiary. According to Mr. Kumar, vesting with the Government as contained in Section 3 of the Acquisition Act is complete and absolute. Subsequent vesting with the National Textile Corporation or its subsidiary does not take away the character of the Undertaking as a Central Government Undertaking by reason of such vesting. He also draws my attention to Section 5 with regard to the liability of such Undertaking and then Section 6 where such undertaking is transferred to the subsidiary. He also draws inspiration from Section 12 of the said Act. Analysing these provisions, he sought to establish that the Undertaking is a Central Government Undertaking and, therefore, the Government order dated April 16, 1985 applicable to Central Government undertakings shall also be applicable in the petitioner's Unit.

5. The contention of Mr. Kumar with regard to the vesting is fallacious. The question of vesting is clear and unambiguous as is embodied in Section 3 of the said Act. Immediately on taking over of the Undertaking with effect from the appointed date, there was no doubt that the undertaking stood vested in the Central Government but immediately the same stood vested in the National Textile Corporation which is altogether a different entity, namely, a company registered u/s 617 of the Companies Act. May be the shares might be held by the Central Government but in the eye of law it is altogether an entity legally different from the Central Government. The vesting in the Central Government was only for the limited purpose of taking over the Undertaking and for a very short duration, namely, for a moment with a notional effect. Then again by reason of Section 6, with the formation of the subsidiary, the Undertaking stood transferred and vested in the subsidiary. Admittedly, National Textile Corporation(U.P.) is a subsidiary of the National Textile Corporation. The subsidiary is also a Company registered u/s 617 of the Companies Act which is again an entity legally different from the National Textile Corporation. The State Government holds 49% share while the Central Government holds 51% share in N.T.C.(U.P.).

6. Therefore, how far the same can be called a Central Government Undertaking and whether the Notification dated April 16, 1985 is applicable is a question to be decided for the purpose of deciding as to the right of the workmen whether the same flows from an existing right. It is an established principle of law that while computing the claim of the workmen u/s 33(C)(2) of the U.P. Act (Section 6-H(2)), the Labour Court may decide matters ancillary or incidental for computation of the claim. But it cannot embark upon the exercise of determining

the existence of the entitlement of the workmen. The law is very clear on the subject.

7. Therefore, in the present case, we have to see whether the right of the workmen is an existing right and can be computed without determining their entitlement.

8. So far as the contention that this case was never made out by the petitioner before the Labour Court is concerned, in my view, though it has not been specifically pleaded in so many words, but the expression, "that the Government order dated April 16, 1985 is not attracted to the petitioner" clearly indicates that a dispute has been raised about the entitlement of the workmen to the extent that the claim does not flow ; from an existing right. In any event, while computing the claim, the Labour Court even if such a point is not raised cannot embark upon determining the right of entitlement because such an exercise would amount to encroachment upon the domain of the Industrial Tribunal or the Labour Court which can be gone into only on a reference u/s 10(1) of the Industrial Disputes Act (Section 4(K) of the U.P.Act). It is an established law that while exercising the power to compute, the Labour Court must be careful so as not to travel beyond the jurisdiction under which the power of computation is being exercised.

9. Admittedly the petitioner is one of the Units of N.T.C.(U.P.). The Unit cannot be singled out from the other Units. Section 12 of the Acquisition Act prescribes that the employees of the Undertaking shall continue to be the employees of the N.T.C. from the appointed day and shall be entitled to the same remuneration, terms and conditions of employment unless duly altered by the Corporation. Section 14 provides that every person referred to in Section 12 shall on and from the date of such transfer become an employee of the specific subsidiary Corporation and the provisions of Sections 12 and 14 shall apply to such employee of the N.T.C. as if the reference in the said section to the N.T.C. were reference to the subsidiary Textile Corporation.

10. Therefore, even if the Government Order dated April 16, 1985 is applicable to the N.T.C., still the same cannot be said to be applicable unless it is made applicable by N.T.C. (U.P.) by reason of Section 12 read with Section 14 of the Acquisition Act. These are questions which ought to be determined and clearly indicate that these are matters which cannot be decided in exercise of powers to compute. This dispute is in the realm of a dispute within the meaning of the Industrial Disputes Act and cannot be termed as an existing right within the meaning of Section 33-C(2) of the Industrial Disputes Act (Section 6H(2)U.P.Act).

11. Thus it appears that a complicated question relating to the entitlement of the employee is involved in the present case for determination whereof Section 33-C(2) of the Industrial Disputes Act cannot be invoked. Divisional Personnel Officer, Southern Railway Vs. P. Ramachandran and Another,

12. It is also an accepted proposition that wage structure and Dearness

Allowance are decided on the basis of the wage structure and Dearness Allowance payable in establishment or industries of similar nature or on regional basis. The N.T.C. (U.P.) has different Units. Therefore, there should be a similarity in between different Units on regional basis i.e. U.P. It cannot be equated with Delhi. Whether it can be so done is a question which cannot be gone into by the Labour Court while exercising the "power u/s 33-C(2). The scope and ambit of Section 33-C(2) was considered in the case of The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., where it has been held: at PP 94-95.

"The legislative history to which we have just referred clearly indicates that having provided broadly for the investigation and settlement of industrial disputes on the basis of collective bargaining, the legislature recognised that individual workmen should be given a speedy remedy to enforce their existing individual rights, and so, inserted Section 33-A in the Act in 1950 and added Section 33-C in 1956. These two provisions illustrate the case in which individual workmen can enforce their rights without having to take recourse to Section 10(1) of the Act, or without having to depend upon their Union to espouse their cause. Therefore, in construing Section 33-C we have to bear in mind two relevant considerations. The construction should not be so broad as to bring within the scope of Section 33-C cases which would fall u/s 10(1). Where industrial disputes arise between employees acting collectively and their employers, they must be adjudicated upon in the manner prescribed by the Act, as for instance by reference u/s 10(1). These disputes cannot be brought within the purview of Section 33-C. Similarly having regard to the fact that the policy of the Legislature in enacting Section 33-C is to provide a speedy remedy to the individual workman to enforce or execute their existing rights, it would not be reasonable to exclude from the scope of this Section cases of existing rights which are sought to be implemented by individual workman. In other words, though in determining the scope of Section 33-C we must take care not to exclude cases which legitimately fall within its purview, we must also bear in mind that cases which fall u/s 10(1) of the Act for instance, cannot be brought within the scope of Section 33-C".

13. In the case of U.P. State Electricity Board and Another Vs. Jhagreshwar Prasad and Another, this Court had held: at pp 379-380:

"A proceeding u/s 33C(2) is a proceeding, generally in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or the benefit, in view of its being previously adjudged, or, otherwise duly provided for. A workman cannot put forward a claim in an application u/s 33C(2) in respect of a matter which is not based on an existing right and which can be appropriately the subject matter of an Industrial Dispute which requires a reference u/s 10".

(1974 Lab IC 1018(SC) relied on.)

14. Thus it appears in my view, that the present question is a complicated one and does not fall within the ambit of an existing right which can be decided without requiring a reference. Therefore, the order impugned in Writ Petition No. 22019 of 1994 cannot be sustained and, as such, is quashed. This order, however will not prevent the respondents from espousing their cause in an appropriate reference.

15. By reason of the above order passed in Writ Petition No. 22019 of 1994, Writ Petition No. 28421 of 1995 also stands allowed. Inasmuch as the order sought to be implemented by seeking to recover the amount and attaching the Bank Account of the Petitioner having Been quashed, the same becomes irrecoverable and, therefore, the order seeking to recover the said amount pursuant to the order dated March 29, 1994 and the order seeking to attach the Bank Account of the petitioner, therefore, is hereby quashed and Writ Petition No. 28421 of 1995 is allowed on that score only.

16. The two Writ Petitions are thus disposed of. There will, however be no order as to costs.