

(2009) 06 KAR CK 0115

In the Karnataka High Court

Case No : Writ Petition No. 4960 of 2008

The Assistant Director of Animal Husbandary and Veterinary
Sciences

APPELLANT

Vs

General Secretary, Uttara Karnataka Animal Husbandary and
Veterinary Workers Union

RESPONDENT

Date of Decision : 25-06-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33 C (2)

Citation : (2011) 2 KCCR 1157

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : Vijaya Kumar and B.B. Bajantri, for the Appellant; Shastri and Hegde Associates for Respondent 1 and R.K. Hatti, High Court Government Pleader for Respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Ashok B. Hinchigeri, J.—The challenge in this petition is to the order dated 25.10.07 (Annexure-G) passed by the District Judge and Presiding Officer of Additional Labour Court, Hubli in Application No. 216/93.

2. The brief facts of the case are that the first Respondent union raised an Industrial dispute for treating its members as Class IV Government servants (Group-D employees). On the failure of the conciliation, the appropriate Government sent the reference to the Labour Court. The Labour Court passed the award dated 24.01.86 allowing the reference holding that the workers of the R.M.C. Farm are treated as permanent Class IV Government servants with all the benefits which are given to them. The first Respondent Union filed an application invoking Section 33C (2) of the Industrial Disputes Act, 1947 before the Labour Court, which by its order dated 25.10.07 directed to pay cash to each member of the Union a sum of Rs. 10,452/- with interest at the rate of 18% p.a. Aggrieved by this order, this petition is instituted.

3. Sri. Vijay Kumar Bajentri, the learned Counsel for the Petitioner submits that the Karnataka Administrative Tribunal, by its order dated 13.12.96 in Application No. 3754/95 and connected matters and by its order dated 03.04.98 in Application Nos. 147-151/98 and the Division Bench of this Court, by its order dated 11.09.01 passed in W.P. No. 23518/98 connected with W.P. Nos. 27855-58/98 have taken the considered view that the Petitioners/applicants therein are not entitled to any relief, as they were not holding any pensionary post. As the Petitioners/Applicants therein were not holding the civil post, their entitlement to pension does not arise at all. Sri Bajentri further submits that the applicants in application Nos. 147-151/98 are the members of the first Respondent Union. As their claims are negated in the individual cases filed by them, the question of their getting the benefits through the Union does not arise.

4. Sri R.K. Hatti, the learned Government Pleader appearing for the Respondent No. 2 submits that as the members of the first Respondent Union have attained the status of the Government servants, they are not entitled to maintain the petition under Sections 33C(2) of the said Act.

5. Sri Ravi Hegde, the learned Counsel for the Respondent No. 1 submits that putting the members of the first Respondent Union on par with Group-D employees is for the purpose of giving certain monetary benefits. The extension of the said monetary benefits does not make them the Government servants. He emphatically denies that the applicants in Application Nos. 147-151/98 are the members of the first Respondent Union. According to him, if they were the members of the first Respondent Union, there would not have been any need for them to approach the Tribunal and file the Applications.

6. Sri Ravi Hegde further brings to my notice that the Petitioner has indeed filed Mis. Application Nos. 6/93 and 7/93 for recalling the award. The recalling application is dismissed by the Tribunal by its order dated 05.09.1994. When the Petitioner has not challenged the award and the order refusing to recall the award, it cannot raise the challenge to the consequential order, which is passed only to implement the award.

7. Section 33C(2) of the said Act is inserted only to provide for a speedy remedy to the workman to enforce his individual rights. It provisions for computing both the monetary and the non-monetary benefits in terms of money. The Legislature has provided an inexpensive and expeditious remedy and a machinery for the recovery of such dues. The workman can always invoke Sub-section (2) of Section 33C, if he is entitled to receive from the employer some benefit capable of being computed in terms of money. The expression "entitled to receive" used in Sub-section (2) means that the claim is referable only to a pre-existing right or liability.

8. The mere denial of the fact would not be enough to take the matter out of the jurisdiction of the Labour Court. That the claim of the other employees of the Farm for similar benefits which were given to the members of the first

Respondent Union, is negated by the Karnataka Administrative Tribunal and the Division Bench is no ground for demanding that the matter be re-adjudicated. As far as the members of the first Respondent Union are concerned, there is an earlier adjudication. It is not in dispute that both the award and the order refusing to recall the award have attained finality. For the reasons best known to the Petitioner, the award dated 24.01.86 is not challenged. Only the order passed u/s 33C(2) of the said Act which is only consequential to the passing of the impugned award is challenged.

9. When the entitlement has been earlier adjudicated, the Labour Court is well within its jurisdiction to pass the order directing the Petitioner to give the computed amounts to the members of the first Respondent Union. The provisions contained in Section 33C are in the nature of execution provisions. The power of the Executing Court is only to implement a decree or an award, as no fresh adjudication is required. The interference of this Court in exercise of the power under Article 227 of the Constitution of India is not warranted in such matters.

10. In this regard it is profitable to refer to the Hon'ble Supreme Court's judgment in the case of State of Uttar Pradesh and Anr. v. Birjpal Singh reported in 2005 III LLJ 1003.

10. It is well settled that the workman can proceed u/s 33C(2) only after the Tribunal has adjudicated on a complaint u/s 33A or on a reference u/s 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. This Court in the case of Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another, , held that a proceeding u/s 33C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. Proceeding further, this Court held that the right to the money which is sought to be calculated must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman, and his employer.

11. As the rights of the members of the first Respondent Union are fully crystallized in the award dated 24.01.86, the benefits sought to be enforced in the application u/s 33C(2) is certainly a pre-existing right. The Hon'ble Supreme Court in the case of Union of India (UOI) and Another Vs. Kankuben (Dead) by LRs. and Others etc. etc., has held that the benefit sought to be enforced under such application must be a pre-existing right. Whenever a workman is denied of the money which he is entitled to receive, he can approach the Labour Court.

12. In a more or less identical case, the Division Bench of Rajasthan High Court by its judgment in the case of Shanker Lal Sharma Vs. K.E.C. International Ltd. and Another, has upheld the Labour Court's order passed u/s 33C(2) of the said Act, wherein the Industrial Tribunal had earlier held that the workman is entitled

to get the benefits given to other permanent employees. The jurisdiction to quantify the said benefits is with the Labour Court in an application filed by the workman u/s 33C(2) of the Industrial Disputes Act.

13. Thus, as the adjudication of the entitlement of the workman made in the award dated 24.01.86 has become final and considering the case law to which the reference is made hereinabove, I have no hesitation in holding that the passing of the impugned order by the Labour Court is unobjectionable. The workmen's rights resting on the said award are fulfilled. The Petitioner is directed to comply with the impugned order without any further loss of time.

14. In the result, this writ petition is dismissed. No order as to costs.