
(1996) 12 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6648 of 1996

The Executive Engineer 'DS' Division, Punjab State Electricity Board APPELLANT

Vs

The Presiding Officer, Labour Court RESPONDENT

Date of Decision : 19-12-1996

Acts Referred:

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

Citation : (1997) 115 PLR 528

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Anil Malhotra and Ranjit Malhotra, for the Appellant; I.D. Singla, for the Respondent

Final Decision : Allowed

Judgement

R.L. Anand, J.—The petitioner in the present case is the Executive Engineer, "DS" Division, Punjab State Electricity Board, Mansa, who has filed the present writ petition under Articles 226/227 of the Constitution of India, praying for the issuance of a writ in the nature of certiorari for the quashment of the order passed by respondent No. 1 on 15.12.1995 u/s 33-C(2) of the Industrial Disputes Act, in favour of the respondent No. 2, awarding a sum of Rs. 34032/- against the petitioner as allegedly due to respondent No. 2 upto 30.9.1995.

2. The case set up by the petitioner is that respondent No. 2 was appointed as an officiating Assistant Lineman w.e.f. 1.4.1978 in the service of the Punjab State Electricity Board (hereinafter referred to as "the Board (I). Respondent No. 2. completed 9 years regular service as Assistant Lineman on 1. 4. 1987. In accordance with the policies of the Board enumerated vide office order No. 197 dated 23.4.1990 to overcome the problem of stagnation prevailing amongst various cadres of regular employees, the Board introduced a scheme to "allow time bound benefit of promotional scales after the completion of 9/16 years of regular service in the Board. In accordance with the above policy, on completion

of 9 years regular service by respondent No. 2 on 1.4.1987 as Assistant Lineman, he was granted the first time bound scale on completion of 9 years of regular service with effect from the said date. Accordingly, the arrears in such regard due to respondent No. 2 were also paid to him. So far as the second time bound scale on completion of 16 years of service is concerned, respondent No. 2 was not entitled to the same since he had already obtained second promotion as officiating lineman with effect from 1.4.1988 before the completion of 16 years of regular service. Respondent No. 2 filed an application u/s 33-C(2) of the Industrial Disputes Act and claimed an amount of Rs. 10,000/-. The basis of this claim made by respondent No. 2 was that he was allegedly working in a work charged capacity since 1.6.1970. He further averred that he had been appointed as Assistant Lineman on 10.4.1973 when his services were allegedly regularised. This fact is being disputed by the petitioner because respondent No. 2 was appointed as Assistant Lineman on 10.4.1978 on ad hoc basis and his services were regularised with effect from 1.4.1978. In spite of this stand of the petitioner, it was held by respondent No. 1 that respondent No. 2 was entitled to the first time bound scale with effect from 1.1.1986 and in this manner the arrears of pay with effect from 1.1.1986 upto 10.4.1987 were computed and were directed to be paid by the petitioner. In so far as the second time bound promotional scale on completion of 16 years of service was concerned, respondent No. 1 gave the finding that respondent No. 2 would be entitled to the same with effect from 10.4.1989. Impugned order Annexure P1 has been challenged by the petitioner on the ground that respondent No. 1 could not adjudicate the matter with regard to the alleged entitlement of respondent No. 2 on his promotional scales and then proceed to compute the monetary benefit. In fact, respondent No. 2 was regularised with effect from 1.4.1978 and he became entitled to the first time bound promotional scale with effect from the said date. Vide the impugned order, respondent No. 1 has adjudicated the date of regular appointment of respondent No. 2 with effect from 10.4.1973 and this controversy could not be adjudicated by respondent No. 1 u/s 33-C(2) of the Industrial Disputes Act.

3. On the above premises, the petitioner has given challenge to the impugned order (Annexure P1) on the ground that while passing the impugned order respondent No. 1 had exceeded his jurisdiction and as such the order cannot be sustained in the eyes of law.

4. Notice of the writ petition was given to the respondents. Respondent No. 2 contested the writ petition and filed the written statement and he denied the allegations made in the writ petition. According to this respondent, the petitioner admitted his claim that he was promoted with effect from 10.4.1973 on regularisation of his services and, therefore, in view of the categorical admission made by the petitioner before the Labour Court, the impugned order (Annexure P1) was perfectly justified.

5. I have heard Shri Anil Malhotra, Advocate on behalf of the petitioner, and Shri

I.D. Singla, Advocate, on behalf of respondent No. 2, and with their assistance I have gone through the record of this Court.

6. In the opinion of this Court, the present writ petition is liable to be allowed as the Labour Court while passing the impugned order (Annexure P1) had exceeded its jurisdiction. Section 33(2) of the Industrial Disputes Act lays down as under:-

"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."

A perusal of the above provision would show that the proceedings u/s 33-C(2) of the Industrial Disputes Act are in the nature of execution proceedings and only pre-existing rights in favour of the workman can be adjudicated. Section 33-C(2) would apply only once there is an admission of the existing right of the workman by the employer in regard to the benefit which the former is entitled to and to receive the same from the latter. If those rights are in dispute, then there cannot be any proper adjudication u/s 33-C(2) of the Industrial Disputes Act. For such adjudication, the workman has to approach under the Industrial Disputes Act to some other authorities instead of moving an application u/s 33-C(2) of the Act itself. In this regard I will have to see what was the claim of respondent No. 2 before the Labour Court. It was averred by respondent No. 2 before the Labour Court that he was working as work charged lineman in the pay scale of Rs. 105-180 since 1.6.1970 and was promoted as Assistant Lineman with effect from 10.4.1973 and his salary was supposed to be protected as per circular dated 26.4.1982 on regularisation and absorption. In spite of this respondent No. 2 had been awarded 9 years step up increment with effect from 10.4.1987 instead of 1.1.1986 and he is entitled to 16 years step-up increment with effect from 1.4.1991 after completion of 9 and 16 years of service, respectively. This aspect of the case was categorically denied by the petitioner before the Labour Court and it was stated that the official completed his nine years of regular service on 1.4.1987 as Assistant Linemen and nine years of first time bound scale was granted to him and arrears were also paid to him. So far as the 16 years second time bound scale was concerned, the official was not entitled as he had already obtained second promotion as officiating Lineman on 11.4.1988 before the completion of 16 years of service at his credit. Thus, the said stand of the petitioner before the Labour Court was categorical that respondent No. 2 was not entitled to the second promotional grade on account of the reasons that he had already obtained second promotion as officiating Lineman on 11.4.1988. This point could only be adjudicated by a separate reference to the Labour Court if made by the appropriate Government. There was no pre-existing right which was admitted by the petitioner in favour of respondent No. 2 before the Labour Court. In the absence of any pre-existing right in favour of the workman, the Labour

Court could not give any finding with regard to the entitlement u/s 33-C(2) of the Industrial Disputes Act and by doing so it had exceeded its jurisdiction which never vested in it. In this regard I would like to refer to paras Nos. 6 and 7 of the impugned order whereby it dealt with this point. The said paras are reproduced as under:-

6. In this connection, the argument of the learned representative of the respondents is that the applicant has got no settled or pre-existing right and so the application u/s 33-C(2) of the Industrial Disputes Act 1947, is not maintainable. According to him, the applicant has been claiming promotional scale for which the matter is liable to be referred to the Industrial Tribunal u/s 10 of the Industrial Disputes Act, 1947. On the other hand, the learned representative of the applicant has contended that the applicant has been claiming the promotional scales on the basis of the instructions issued by the Punjab State Electricity Board itself and so he has got a pre-existing right to claim the promotional scales. According to him, in the circumstances, the claim set up by the applicant is not liable to be referred to the Industrial Tribunal u/s 10 of the Industrial Disputes Act, 1947, for adjudication.

7. I agree with the learned representative of the applicant. The respondents have admitted that they have granted time bound promotional scales to the employees of the Punjab State Electricity Board on completion of nine years and 16 years of service on the basis of the instructions issued by the Punjab State Electricity Board. Therefore, the application has got a pre-existing right to claim the time bound promotional scales on completion of nine years and 16 years of service. The mere fact that the respondents have disputed the claim of the applicant does not mean that the applicant has got no such right and the matter is required to be referred to the Industrial Tribunal for adjudication u/s 10 of the Industrial Disputes Act, 1947. There is no dispute about the fact that where an employee has got a pre-existing right, the Labour Court has got jurisdiction u/s 33-C(2) of the Industrial Disputes Act, 1947, to entertain and try the application filed under the said Section for recovery of amount which is ascertained or can be ascertained."

A perusal of the above operative part of the impugned order would show that the Labour Court has gone against the settled principles of law. Learned counsel for the petitioner has invited my attention to the citation reported as *Municipal Corporation of Delhi v. Ganesh Pazak*, 1995(1) Service Cases Today 408, wherein it was held that the power of the Labour Court u/s 33-C(2) of the Industrial Disputes Act, 1947, is limited only to award claims under the existing or accrued rights not to adjudicate and create rights. In the present case it was yet to be adjudicated whether respondent No. 2 was entitled to the second promotional scale in view of the fact that he had already obtained second promotion as Officiating Lineman on 11.4.1988 before the completion of 16 years of service. Before computing any benefits for respondent No. 2, the findings on the above point has to be given and this could only be given by making separate reference

to the Labour Court u/s 10 of the Industrial Disputes Act. The Labour Court could not assume the jurisdiction u/s 33-C(2) of the Industrial Disputes Act, which is prohibited.

7. Learned counsel appearing for respondent No. 2 Shri I.D. Singla, Advocate, however, has invited my attention to para No. 12 of this judgment and he tried to create a distinction by stating that the right of his client has already been recognised by the employer in paras Nos. 1 and 2 of his reply before the Labour Court, therefore, the impugned order is perfectly valid. I am not in a position to agree with the argument raised by Mr. Singla because I have to read the pleadings of the parties as a whole. At the cost of repetition, I may again refer to para No. 3 of the reply filed by the petitioner before the Labour Court, in which there is a categorical denial to the claim to respondent No. 2. No pre-existing right, as contemplated u/s 33-C(2) of the Industrial Disputes Act, was ever admitted by the petitioner.

8. In this view of the matter, the present writ petition is allowed and the impugned order (Annexure P1) is hereby set aside/quashed. However, the observations are made that it would be open for respondent No. 2 to avail his remedy according to law for the adjudication of his rights, if any, in his favour. There shall be no order as to costs.