

(2012) 06 MAD CK 0117
In the Madras High Court
Case No : W.P.No.15640 of 2007

The Managing Director, M/s.Pentafour Products Ltd.	APPELLANT
Vs	
The Presiding Officer, First Additional Labour Court, Chennai and Others	RESPONDENT

Date of Decision : 05-06-2012

Acts Referred:

Constitution of India, 1950 — Article 32
Industrial Disputes Act, 1947 — Section 10, 12(3), 18(1), 33A, 33C(2)

Citation : (2012) 06 MAD CK 0117

Hon'ble Judges : K.Chandru, J

Bench : Single Bench

Advocate : Sanjay Mohan and M/s. S. Ramasubramanian Associates, for the Appellant; K.S. Viswanathan for RR2 to 12, 15, 16, 19 to 29, 31 to 50, 52 to 63, 71 to 74, 76 to 87, 89, 91 to 94 96 to 100 and 102, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr.Justice K.Chandru

1. This writ petition is filed by the petitioner management, seeking to challenge an order passed by the Labour Court in C.P.No.724 of 2002, dated 13.02.2007. By the impugned order, the labour court had computed certain amounts due and payable to the contesting respondents. The writ petition was admitted on 26.4.2007. Pending the writ petition, this court had granted an interim stay. A vacate stay application was filed in M.P.No.1 of 2008. Subsequently, the applications for interim stay and vacate stay were heard together and disposed of by an order dated 19.1.2009. In that order, this court found that the total amount payable to contesting respondents worked out to Rs.1,23,22,262/-. Since the company had become a sick company and the matter was pending before the BIFR for framing a debt rehabilitation scheme (DRS) and the workers had contended that the amounts due to them should not be included in that scheme, this court gave liberty to both parties to agitate the issue before the

BIFR.

2.It was also brought to the notice of this court by Mr.Sanjay Mohan, learned counsel appearing for M/s.S.Ramasubramanian and Associates that subsequent to the writ petition, 20 workers have settled their claim and after entering into a settlement u/s 18(1), they have received the amount as agreed to between the parties and tendered resignation on 26.6.2006. He further submitted that a settlement reached between the parties u/s 12(3) and filed before the Labour Court in Ex.R.4 had come to an end. The Trade Union, i.e., Pentafor Products Employees Union had given a notice of termination on 24.5.2006 intending to terminate the settlement and to take up the further issue with the management. These facts were also intimated by the Deputy Commissioner of Labour-II, Chennai in his letter addressed to the management on 26.6.2006.

3.The details of settlement paid to respondent employees read as follows:

Sl.No.

Respondent Serial No.

Name of the Respondents

DD No.

Date

1

2

A.P.Santharam

212495

23.06.2006

2

12

G.Swathanthra

538117

23.07.2007

3

13

N.kittu

212486

23.06.2006

4

16

K.Padmavathy

212485

23.06.2006

5

17

S.KathirvelMurugan

212515

23.06.2006

6

28

S.Subramaniam

212429

23.06.2006

7

29

T.Subramanian

212468

23.06.2006

8

35

V.Selvaraj

212472

23.06.2006

9

50

S.Sugumar

212602

23.06.2006

10

67

R.Bhakthan

212564

23.06.2006

11

69

E.Sanuvel

212436

23.06.2006

12

74

J.Nagarajan

212561

23.06.2006

13

80

N.Venkata Subramanian

538115

23.07.2007

14

83

R.Dayalan

212600

23.06.2006

15

84

R.Bharathan

538094

23.07.2007

16

87

R.Parthasarathy

538099

23.07.2007

17

88

A.Jebaraj

212581

23.06.2006

18

89

G.Srinivasan

212523

23.06.2006

19

94

P.Ranganathan

212576

23.06.2006

20

100

M.Thankaraj

212611

23.06.2006

The copies of settlements were also filed in a typed set.

4.It is the case of contesting respondents, the management on 01.08.2001 had declared "suspension of operation" as they were incurring huge losses. The company as it also became sick, it was referred to BIFR as a sick company for providing a rehabilitation scheme. It was registered as case No.249 of 2002. In the meanwhile, the Madras-Chenglepet General Workers" Union (of which

contesting respondents were members), had raised an industrial dispute on 12.03.2001 stating that the suspension of operation was illegal. The dispute was conciliated by the Assistant Commissioner of Labour-II, Chennai. He gave a failure report dated 22.8.2001. The State Government upon receipt of the failure report, by its order dated 14.2.2003 had referred the dispute for adjudication by the Industrial Tribunal at Chennai. The dispute was taken on file by the Industrial Tribunal as I.D.No.32 of 2003. The Tribunal by its award dated 21.2.2006 held that suspension of operation was illegal and void and further held that workmen including contesting respondents were entitled to get reinstatement together with wages as well as other attendant benefits from the date on which the management gave the notice for suspending its operation, i.e., on 01.8.2001.

5. Even during the pendency of the industrial dispute, the workers led by one V. Sugumaran and 100 others filed a claim petition u/s 33-C(2) of the Industrial Dispute read with Section 33-C(5), claiming salary for the period from 1.6.2001 to September, 2002 for a period of 16 months. It was admitted in the claim statement that the dispute relating to suspension of operation raised by the Madras-Chenglepet General Workers' Union was pending conciliation. During the pendency of these proceedings, a settlement u/s 12(3), dated 19.4.2006 was reached between the union and the management. In that settlement, it was agreed that the union will not press the Award in I.D.No.32 of 2003 and that all workers whose names were mentioned in the annexure were deemed to have resigned the job on 31.7.2001. The arrears of wages payable to the workmen upto 31.7.2001 are set out in annexure I. In paragraphs 3 to 9 of the terms and settlement, it was agreed as follows:

3. That the amount specified in the annexure shall be accepted and is received by each workmen as full and final settlement of all claims due from the company on the clear understanding that there will be no claim whatsoever by any worker or workmen against the management thereafter as the claim proceedings initiated before the Labour forum are withdrawn and the Court award in ID32 of 2003 is treated as not pressed and settled.

4. The management specifically agrees that they will take all possible steps to implement the settlement and arrange for payment through Bank immediately on signing this settlement. For any reason whatsoever beyond the control of the management, if the management is unable to make payment as provided herein above, for that reason alone the settlement shall not fail and shall continue to be in force.

5

(a) The management in appreciation of the cooperation given by the workmen during the difficult days has agreed to give a special exgratia of 15 days wages for every completed year of service rendered by the confirmed workmen as set out in the annexure I herein.

(b) In addition to the above for the confirmed Workmen mentioned in annexure I,

the management agrees to pay a consolidated sum of Rs.10,000/- (Rupees Ten thousand Only) as Goodwill payment to each of the workmen.

(b)The management has also agreed to consider making payment of special exgratia of Rs.5000/- (Rupees Five Thousand only) to 18 persons mentioned in the annexure II.

6.The dues of the workmen to the society as per the list furnished by the Society shall be deducted from the amount set out in the annexure as the case may be at the time of full and final settlement and paid over to the Society by the company including the amount already deducted by the company.

7.The Union representing the workmen of Auto Division have clearly noted herein that the company is not closing its operations and is signing the settlement on the clear understanding that the required workmen will join the division as and when the operations are commenced on a salary at terms fixed by the management at that time. The management reserves its rights to choose the work force from the annexure mentioned herein. The Union hereby agrees to cooperate for smooth transition and commencement of operations as and when requested for by the management, subject however the dues of workmen covered herein are settled before such commencement.

8.The union after obtaining necessary approval from the workers at their General meeting entered into this settlement and further assures to assist the Management in settlement of the dues of the workmen mentioned at annexure I&II besides lodging with the company for its record the relevant documents as regards withdrawal of the claim proceedings by the union and workmen as settled out of court / Labour Forum.

9.Upon signing of this settlement, except for the amounts due and payable under the settlement, the workmen covered by this settlement shall have no claim of any kind, monetary or otherwise as against the Management of Pentafor Products Limited.

6.After the settlement was signed, the second respondent claiming to be the Unit Secretary of the Trade Union wrote to the conciliation officer on 25.04.2006 that their union had nothing to do with G.Muthu and he had left the union even two years back and therefore, cannot espouse the cause of the workers. They also complained regarding the non implementation of the Award.

7.But, before the labour court, in answer to the claim statement in C.P.No.724 of 2002 filed by contesting respondents, the management filed a memo, dated 24.7.2006 informing the labour Court regarding the settlement u/s 12(3) being reached between the parties and prayed for the dismissal of the claim statement.

8.Before the labour court, on behalf of workers, the second respondent Sugumaran was examined as P.W.1. On their side, 15 documents were filed and marked as Exs.P.1 to P.15. On the side of the management, five documents were filed and marked as Exs.R.1 to R.5. Ex.R.4 was the settlement u/s 12(3), dated

19.4.2006. In the evidence let in by P.W.1 (i.e., the second respondent), he had admitted the existence of the settlement, but contended that he had protested against Muthu signing the said settlement. The labour court upon these materials came to the conclusion that since the dispute was settled by two trade unions and Section 12(3) settlement was signed by one of the trade union after passing the award by the Tribunal declaring the suspension of operation as void cannot be binding on all parties. In paragraph 6, the Labour Court had observed as follows:

. Here in this case 12(3) settlement was entered into between the management and one of the 2 trade unions who raised the dispute, after passing of the award by the Industrial Tribunal in that dispute. Since 12(3) settlement was entered into by one of the trade unions after passing of the award by the Industrial Tribunal declaring the suspension of operation, as void cannot be held binding on all parties. The above settlement cannot be construed as one arrived at in the course of conciliation proceedings. Had it been obtained by way of award before the Tribunal or before the High Court (by filing W.P. against the award passed by the Tribunal in this dispute), the contention of the respondent will have to be accepted. The settlement can at the best be taken as one u/s 18(1) and not under 12(3) and therefore, it will be binding on those who are parties to it. Therefore, the contention of the respondent is not sustainable. For the aforesaid reasons, the petitioners are entitled to the amount as claimed in the petition and the point is answered accordingly._

In that view of the matter, the Labour Court had computed the amounts as noted above by the impugned order.

9. In this context, the only question arises for consideration is whether the impugned order passed by the Labour Court is legally sustainable and whether the labour court can go into the question of validity of settlement u/s 12(3) in a proceedings u/s 33-C(2) of the Industrial Disputes Act?

10. The Supreme Court had elaborated the scope of Section 33-C(2) vide its judgment in State of Uttar Pradesh and Another Vs. Brijpal Singh, and in paragraphs 10 and 11, it was observed as follows:

10. It is well settled that the workman can proceed u/s 33-C(2) only after the Tribunal has adjudicated on a complaint u/s 33-A 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 (P) Ltd. v. Suresh Chand¹ held that a proceeding u/s 33-C(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 or to the benefit which is sought to be computed 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. This Court further held as follows: (SCC p. 150, para 4)

__It is not competent to the Labour Court exercising jurisdiction u/s 33-C(2) to arrogate to itself the functions of an Industrial Tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject-matter of an industrial dispute in a reference u/s 10 of the Act.__

11. In the case of *Municipal Corpn. of Delhi v. Ganesh Razak*² this Court held as under: (SCC pp. 241-42, paras 12-13)

__12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding u/s 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen'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. It is only when the entitlement has been earlier adjudicated or recognised 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.

13. In these matters, the claim of the respondent workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of equal pay for equal work being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in the writ petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made u/s 33-C(2) of the Act by these

respondents._

11.The Supreme Court in *State Bank of India v. Ram Chandra Dubey* reported in (2001) 1 SCC 73 in paragraph 8 had observed as follows :

8.The principles enunciated in the decisions referred by either side can be summed up as follows:

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court u/s 33-C(2) of the Act. The benefit sought to be enforced u/s 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers u/s 33-C(2) of the Act while the latter does not.....Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference u/s 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages._

12.The Supreme Court once again reiterated the parameters of the power that can be exercisable u/s 33-C(2) by the labour court after referring to the *State Bank of India* case (cited supra) vide its judgment in *U.P. State Road Transport Corporation Vs. Shri Birendra Bhandari*, and in the following paragraphs 7 to 9, it was held as follows:

7.The benefit which can be enforced u/s 33-C(2) is a pre-existing benefit or one flowing from a pre-existing right.

8.In *State Bank of India v. Ram Chandra Dubey*¹ this Court held as under: (SCC pp. 77-78, paras 7-8)

7. When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference.

When a reference is made u/s 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

8. The principles enunciated in the decisions referred by either side can be summed up as follows:

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court u/s 33-C(2) of the Act. The benefit sought to be enforced u/s 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers u/s 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference u/s 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages. _

9. The position was reiterated by a three-Judge Bench of this Court in *State of U.P. v. Brijpal Singh*. _

13. The Supreme Court in *D. Krishnan and Another Vs. Special Officer, Vellore Co-operative Sugar Mill and Another*, had observed as follows :

12..... The fact that proceedings u/s 33-C(2) are in the nature of execution proceedings is in no doubt, and such proceedings presuppose some adjudication leading to the determination of a right, which has to be enforced. Concededly there has been no such adjudication in the present case..... _

14. In view of the above, the contention that the settlement is not binding on workers who were before the Labour Court cannot be accepted as the workers

themselves have stated in their claim statement that they are the members of the union and a conciliation was pending before the conciliation officer. In fact, their stand from the letter written by the second respondent was that Muthu who signed the settlement was left the union long before and he was not authorised to sign the settlement cannot be the issue which can be gone into in a proceedings u/s 33-C(2) of the I.D.Act. In view of the above legal precedents and the factual matrix involved, the labour court had clearly erred in computing the amounts in favour of contesting respondents. Hence the writ petition will stand allowed. The impugned order of the Labour Court will stand set aside. No costs.