
(2011) 08 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : OWP. No. 109 of 2009 and CMP. No. 205 of 2009

Tramboo Cement Industries

APPELLANT

Vs

Conciliation Officer and Others

RESPONDENT

Date of Decision : 25-08-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 12, 25F

Citation : (2011) 3 JKJ 276

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Judgement

Muzaffar Hussain Attar, Judge

1. Respondent no. 2 was working as a Labourer in the petitioner-Industry. A dispute arose between respondent no. 2 and the management of the

petitioner-Industry and, resultantly, a legal notice was sent to the Conciliation Officer under Industrial Disputes Act (Assistant Labour

Commissioner) Srinagar. The said Authority took cognizance of the legal notice and issued summons to the petitioner-management. The

Conciliation Officer of the concerned area was directed to submit the report after conducting the on spot inspection of the petitioner#s

establishment. In the legal notice, it was stated that respondent no. 2 was working in the establishment of the petitioner situated at Khanmoh for the

last eight years. It was also stated in the said notice that prior to this, respondent no. 2 was working in the establishment of the petitioner as a

casual labourer right from the date the Factory was set up viz., in the year 1991. It was also stated in the notice that the petitioner-management had

terminated the services of respondent no. 2 w.e.f. July, 2007 without any reason and lawful cause. The Conciliation Officer, vide his order dated

12th of January, 2009 issued following directions:

1. The applicant has put in 07 (seven) years of service on the regular establishment of the factory is entitled to wages in lieu of the Notice period of

Rs. 5800/-

2. He is also entitled to the retrenchment compensation equivalent to the tune of Rs. 20,300/- in terms of Section 25-F of Industrial Dispute Act.

3. The applicant is also entitled to leave salary of four months equivalent to Rs.23,200/-. Besides, the applicant is also entitled to Rs. 26585/- as

gratuity along with interest as per payment of gratuity Act. The applicant is also entitled to Bonus for his 7 years of service @ 8.33 equivalent to Rs.

3381/-.

The applicant is, therefore, entitled to his service benefits along with retrenchment compensation to the tune of Rs. 79266/-. The non-applicant is

therefore, directed to deposit the same amount with this forum within 30 days for disbursement to the applicant failing which the same shall be

recovered as per law.

2. The petitioner, being aggrieved of the said order of the Conciliation Officer, has challenged the same in this writ petition.

3. On notice issued, respondent no. 2 appeared and filed objections.

4. Heard learned counsel for the parties. Considered the matter.

5. Learned counsel for the petitioner invited the attention of this Court to Section 12 of the Industrial Disputes Act 1947 (for short 'Act of 1947')

and submitted that the Conciliation Officer lacked jurisdiction to issue directions in the manner same have been issued by him while passing the

impugned order. Learned counsel specifically referred to sub-sections (4) and (5) of Section 12 of the Act of 1947.

6. Learned counsel for respondent no. 2 in his fairness conceded the legal position and stated that the Conciliation Officer in law was not

authorized to issue directions as has been done by passing the impugned order but in terms of the statute he had to send full report to the

Government. Learned counsel submitted that the Conciliation Officer can be directed to proceed in the matter in terms of Section 12.

7. In order to appreciate the controversy raised in this petition, Section 12 of the Act of 1947 is reproduced as under:-

Sub Section (1) of the Section 12 provides for the procedure and manner in which conciliation proceedings are to be held.

Sub Section (2) of the Section 12 provides for the manner in which the Conciliation Officer was making effort for the right settlement of the dispute.

Sub section (3) of the Section 12 provides for signing of report to the appropriate Government in the event, the dispute is settled in the course of conciliation proceedings.

Sub Section (4) of the Section 12 provides that if, no such settlement is arrived at, the Conciliation Officer shall make report to the appropriate Government in the manner provided in this provision.

Sub- Section (5) of the Section 12 provides that if, on consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, it may make such reference.

8. Admittedly the parties had not arrived at a settlement. The Conciliation Officer was duty bound to follow the mandate as contained in sub-

section (4) of the Section 12 of the Act of 1947. The Conciliation Officer, instead of following the mandate, has issued directions for payment of

amount under different Heads. The Conciliation Officer is a statutory authority and is governed by the statute viz. Act of 1947. The statutory

authority has to deal with the matter strictly in accordance with the provisions of law. The statutory authority can not travel beyond the statute and

can not issue directions which he is not authorized.

9. In this case, the Conciliation Officer has acted beyond its authority when it issued directions for payment of amount. The impugned order to this

extent is held to be without jurisdiction.

10. For the above stated reasons, this petition is disposed of and by issuance of writ of Certiorari; the impugned order to the extent it issued

directions for payment of amount, which directions have been extracted in this order is quashed. The respondent no. 1 is directed to proceed in the

matter in accordance with sub-section (4) of the Section 12 of Industrial Disputes Act, 1947. The amount deposited with the Registry in terms of

interim direction shall be returned to the petitioner on proper identification.

11. Disposed of alongwith connected CMP(s).