(2013) 05 DEL CK 0032

In the Delhi High Court

Case No : WP (C) 12464-65 of 2005

Union of India and Another APPELLANT

Vs

S.C. Upadhyay RESPONDENT

Date of Decision : 15-05-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(1), 33C(2)

Citation : (2013) 05 DEL CK 0032

Hon'ble Judges : Veena Birbal, J

Bench : Single Bench

Advocate : Chandan Kumar with Mr. S.K. Srivastava, for the Appellant; T.S. Ahuja and Mr. Varun Singh Ahuja, for the Respondent

Judgement

Veena Birbal, J.—By way of this writ petition, a challenge has been made to the order dated 5th April, 2005 passed by the Central Government Industrial Tribunal-cum-Labour Court-II, New Delhi (hereinafter referred to as ''the Tribunal'') in LCA No. 2/1999. Background of the case is as under:-

Respondent had joined railway services in 1965. On 15th June, 1988 while holding the post of ''Electrical Signal Man'', respondent gave notice of voluntary retirement wherein respondent had stated that he was not in a position to continue for various attendant reasons. Petitioner had accepted the said notice on 10.8.1989 i.e., after a lapse of more than one year. Thereafter, when the respondent did not get any pension/retiral benefits, he had filed O.A. No. 2212/89 before the Central Administrative Tribunal, Principal Bench, New Delhi for claiming the said benefit. Petitioner had filed counter affidavit therein the dates on which pension, provident fund etc. were released in favour of respondent. The petitioner took a stand that gratuity was withheld by it as the respondent had not vacated the accommodation allotted to him. After hearing the learned counsel for the parties, the Tribunal vide its order dated 16th August, 1990 held that withholding of the entire amount of gratuity was not legally sustainable and ordered for the release of gratuity amount in favour of respondent after deducting the normal licence fee from 10.8.1989 within three months from the date of communication of the said order.

2. Thereafter, respondent had filed L.C.A. No. 90/1995 before the Tribunal claiming that he was paid gratuity amount of Rs. 16907/- vide cheque dated 23rd February, 1995 which was delivered to him on 10th March, 1995, as such, from the date of retirement till the date of payment of gratuity amount, respondent be given 18% interest on the said amount. Respondent had also claimed Rs. 2890/- as outstanding wages for 30 days and Rs. 8720 towards leave encashment of 67 days with interest @ 12% per annum. In all, he had raised claim of Rs. 44,700/-.

3. The aforesaid LCA was disposed of by the Tribunal vide order dated 14th February, 1997 wherein petitioner was directed to make the payment for outstanding wages, leave encashment and interest on gratuity. The details of payment are given in the said order.

4. Thereafter the petitioner had challenged the aforesaid order by filing the review application which was dismissed by the Tribunal on 16.10.1998.

5. When the aforesaid payment was not paid, the respondent had filed another application u/s 33-C(2) of the I.D. Act, 1947 being LCA No. 2/1999 before the Tribunal stating therein that the pursuant to the order dated 14th February, 1997, no payment was made to him, as such, he was entitled for further interest @ 12% per annum on the amount awarded in LCA 90/1995.

6. Aggrieved with the aforesaid order, present petition is filed.

7. Learned counsel for petitioner has contended that the respondent had availed 106 days leave encashment and 67 days leave was to be adjusted and thus the respondent was liable for recovery of 39 days excess leave encashment and as such vide order passed in LCA No. 90/1995 wrong payment has been awarded to respondent. It is further contended that the Tribunal ought not have granted any penal interest and litigation cost to the respondent as is awarded in the impugned order. It is further contended that if the petitioner had not complied with the order dated 14th February, 1997 passed in LCA No. 90/1995, in that event, the petitioner could have gone for the execution proceedings u/s 33-C(1) of the Act instead of filing a fresh petition i.e., LCA 2/1999 u/s 33-C(2) of the Act.

8. On the other hand, learned counsel for respondent has contended that the voluntary retirement of respondent was accepted in August, 1989. Thereafter, 24 years have passed and till date the petitioner has not cleared the legal dues of the petitioner. It is contended that in these circumstances, no case is made out for interference in the impugned order.

9. It is admitted position that the order passed in LCA No. 90/1995 on 14.2.1997 was only challenged by petitioner by way of review which was dismissed by the Tribunal vide order dated 16.10.1998. Thereafter, no challenge has been made to the said order.

The operative portion of the said order is as under:-

In view of the above statement of the parties the management is directed to pay the amount of Rs. 2014/- to the workman within two months failing which he shall be paid 15% interest from today. Regarding interest on gratuity on the amount of Rs. 16097/- paid to him on 10.3.95. This amount became due on 10.8.89 when he retired. So the management shall pay 12% interest on Rs. 16907/- for the period from 10.8.89 to 10.3.95. Regarding leave encashment the management shall pay the leave encashment for 67 days as mentioned in Annexure A/4. Notice No. 726-E/656/Loose-P-3 dated 7/92 and within the period of two months. Parties are left to bear their own costs.

10. As the said order was not challenged, it had become final after dismissal of review petition. It is also admitted position that no payment has been made to the respondent despite passing of the aforesaid order.

11. Another LCA No. 2/1999 was filed claiming penal interest for further delay and further interest on the amount due as the order dated 14.2.1997 was not complied with by the respondent. The same was allowed by the Tribunal vide impugned order dated 5th April, 2005. The operative portion of the said order is as under:-

The application u/s 33C(2) of the Industrial Dispute Act, 1947 is allowed. The Respondent Northern Railway is directed to make payment of Rs. 24,433/- along with 12% interest from 14.2.1997 up to the date of payment. The management is also directed to pay litigation cost of Rs. 10,000/-. In case the management does not comply with the order the workman applicant will be entitled to an additional interest of 5% on the amount that was due on 14.2.1997 up to the present day.

12. The respondent has been battling with the petitioner for claiming his dues since 23 years. The LCA No. 90/1995 was disposed of with the consent of the parties. The same was never challenged before the higher forum. The contention which is now sought to be raised that the respondent was excessively paid cannot be taken at this stage as the said order had become final on 16.10.1998 when the review was dismissed by the Tribunal. If the petitioner had any grievance against the said order it ought to have challenged the same before the higher forum. Even when the petitioner filed LCA 2/1999 for the penal interest and further interest on his legitimate dues even then the payment was not made. When the petitioner is retaining the amount of the respondent for no reasons which he had become entitled on 14.2.1997 there is no reason why the petitioner should not pay interest on the said amount. Considering the peculiar facts and circumstances and the delay caused by the petitioner, the contention that respondent ought to have gone for execution of proceedings u/s. 33(c)(1) has no force. It may also be mentioned that same was never raised before the Tribunal also. No illegality is seen in the order of the Tribunal in awarding the further amount of interest of 12% in favour of the respondent. There is no reason to

interfere with the order of litigation costs also. As regards the additional interest of 5% on the amount that was due on 14.2.1997 awarded by the Tribunal, petitioner will not be liable to pay the same provided it makes the payment of the dues as awarded by the Tribunal along with 12% interest and litigation costs of Rs. 10,000/- as awarded by the Tribunal within two months from today. The impugned order is upheld with the above modification.

The writ petition stands disposed of accordingly. No costs.

