

(2003) 11 AHC CK 0141
In the Allahabad High Court
Case No : C.M.W.P. No. 5131 of 1998

U.P. State Electricity Board

APPELLANT

Vs

Presiding Officer, Labour Court IV and Another

RESPONDENT

Date of Decision : 18-11-2003

Acts Referred:

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

Citation : (2004) 2 AWC 1226 : (2004) 2 UPLBEC 1537 : (2003) 3 UPLBEC 2365

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Ranjit Sexena, for the Appellant; S.N. Dubey, S.C., for the Respondent

Final Decision : Allowed

Judgement

Anjani Kumar, J.—By means of present writ petition under Article 226 of the Constitution of India the petitioner-employers U. P. Electricity Board have challenged the order dated 10th December, 1997, passed by the Labour Court-IV, U. P, Kanpur in Misc. Case No. 163 of 1996, copy whereof is annexed as Annexure-7 to the writ petition, whereby the labour court purporting to allow computation of amount for a sum of Rs. 1,44,676 in favour of the workman concerned in exercise of power u/s 33C(2) of the Industrial Disputes Act, 1947 (in short "Act").

2. Heard learned counsel appearing on behalf of the parties.

3. The case set up by the workman-respondent, in short, before the Labour Court is that the aforesaid workman has been retired by the petitioner-employers on an incorrect entry of the date of birth without his actually attaining the age of superannuation. The workman therefore, filed a suit being Suit No. 221 of 1993 before the Civil Court, Kanpur Nagar for declaration of his date of birth. The Civil Court vide its judgment and decree dated 22nd February, 1994 gave declaration in favour of the workman that the date of birth of the workman was 4th

November, 1939, therefore, the action of the employers treating his date of birth to be of the year 1933 and retiring him in the year 1999 is illegal. The aforesaid suit was filed by the workman concerned pursuant to the order passed by this Court in Writ Petition No. 39240 of 1993 filed by him, wherein this Court fide its order dated 26th November, 1993 directed as under :

"In the circumstances the proper course for the petitioner is to seek declaration from the civil court regarding the correct date of his birth. The writ petition lacs merit Inasmuch as the question involved in the writ petition cannot appreciably be resolved in the writ jurisdiction. In case, petitioner files a suit, this order will not stand in his way and shall not cause any prejudice for deciding the suit on merits.

With these observations, the writ petition is dismissed."

4. The workman concerned further stated that pursuant to the aforesaid order of this Court the workman concerned filed the aforesaid suit which as stated above has been decreed in favour of the workman concerned that the date of birth of the workman is 4th November, 1939 and not 4th November, 1933. This declaration has not been challenged by employers-petitioner.

5. In the aforesaid backdrop, the workman concerned filed an application u/s 33C(2) of the Act or computation of the wages for six years, which according to the workman, have been illegally denied by the employers on the basis of the incorrect date of birth. It would not be out of place to mention here that the workman concerned has not gone for the execution of the decree and possibly he could not have gone because the decree of declaration is not capable for execution. The workman without going into the question of getting the adjudication referred straightaway came under the proceeding u/s 33C(2) of the Act, which has resulted into passing of the order by the Labour Court for computation on the basis as if the date of birth of the workman is 4th November, 1939, the employers, no doubt, should have preferred objection that this is not a simple case of computation which may warrant interference u/s 33C(2) of the Act. In case the workman concerned is aggrieved he should get the matter referred to for adjudication and thereupon if the award is in his favour, at present it is not open to the employers to deny the date of superannuation, therefore, the contention of employers that no cause of action for filing application u/s 33C(2) of the Act is made out, cannot be accepted. Learned counsel appearing on behalf of the petitioner-employers Shri Ranjit Saxena then submitted that declaration of decree being incapable for execution the application u/s 33C(2) of the Act is not maintainable unless the workman concerned had got the adjudication made regarding action of the employers even assuming it to be illegal in retiring him treating him in the year 1933.

6. Shri S. N. Dubey learned counsel appearing for the contesting respondent-workman argued that since the workman concerned initially approached this Court and this Court has issued a direction directing the workman concerned to

approach the civil court, pursuance thereto the workman concerned had approached the civil court and got a decree with regard to his correct year of birth and now it does not lie in the matter of the employers, as is being submitted by Sri Ranjit Saxena and no error has been committed by the Labour Court in accepting the year of birth of the workman concerned to be 1939 and accepting the workman to have been born in the year 1939. There cannot be any dispute that the workman was illegally superannuated. Thus, it is a case of simple computation, which the Labour Court had jurisdiction to do so u/s 33C(2) of the Act.

7. I am afraid that this contention of Sri Dubey, learned counsel appearing on behalf of the contesting respondent cannot be accepted. Shri Dubey contends that the error has been committed by the employers in retiring the workman treating him to be born in the year 1933, instead in the year 1939 as declared by the civil court. The dispute automatic comes in which requires to be decided in adjudication u/s 10 of the Act or the corresponding proceeding of the U. P. Act. In this view of the matter, the order of computation passed by the Labour Court, which is mentioned in the present petition is an order which is wholly without jurisdiction in view of the law laid by the Apex Court that the proceeding u/s 33C(2) of the Act is executory in nature and the labour Court can compute the amount only if the liability is not denied by the employers. Here in the present petition as would be clear from the facts stated above, the employers having denied the liability, the Labour Court could not and could not have passed an order of computation as has been done by the impugned order. In this view of the matter, this writ petition deserves to be allowed.

8. In view of what has been stated above this writ petition succeeds and is allowed. The order of the Labour Court dated 10th December. 1997, Annexure-7 to the writ petition is set aside. However, in the facts and circumstances of the case, the parties shall bear their own costs. However, it is made clear that this order will not come in the way of workman, if he raises a dispute.