
(2008) 06 BOM CK 0156
In the Bombay High Court
Case No : A.S.W.P. No. 2939 of 2008

Vile Parle Mahila Sangh

APPELLANT

Vs

Rajaram Sitaram Rahate and Another

RESPONDENT

Date of Decision : 23-06-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2008) 3 LLJ 956

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : K.S. Bapat, S.S. Pathak and T.R. Yadav, for the Appellant; D.N. Mandavia, for the Respondent

Final Decision : Allowed

Judgement

D.Y. Chandrachud, J.—Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the first respondent waives service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. These proceedings arise out of an order passed by the Labour Court in an application u/s 33-C(2) of the Industrial Disputes Act, 1947. The first respondent was initially employed as a Peon by the petitioner on a temporary basis with effect from February 1, 1993. The petitioner conducts a school in the English and Marathi media of instruction. The first respondent had instituted a complaint of unfair labour practices under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, inter alia seeking the benefit of permanency in service. By an order dated March 19, 2003, the Industrial Court allowed the complaint and issued a declaration that the petitioner had engaged in an unfair labour practice under Items 6 and 9 of Schedule IV. The petitioner was directed to grant permanency to the first respondent with effect from March 1, 1999 and to pay arrears on the basis thereof. The operative part of the order passed by Industrial Court reads as follows:

Respondents are directed to make the Complainant permanent with effect from March 1, 1999 onwards and offer him pay scale applicable to the permanent peon. The respondents are further directed to pay the arrears to the Complainant arising out of the permanency from March 1, 1999 till making the Complainant as permanent.

3. The first respondent has instituted a petition before this Court in order to challenge the direction of the Industrial Court granting him permanency from March 1, 1999 and not from February 1, 1993 as claimed in the complaint. The Writ Petition is pending before this Court. In the meantime, the first respondent instituted an application u/s 33-C(2) (Application (IDA) 227/2000) claiming wages for the period between January 1, 1993 to December 31, 1998 and thereafter until 5 December 2002. The Labour Court rejected the application. In a Writ Petition before this Court, a Learned Single Judge of this Court by an order dated March 21, 2005 upheld the order of the Labour Court and held that once the Industrial Court had granted permanency only with effect from March 1, 1999, the Labour Court could not u/s 33-C(2) decide whether the difference in wages could be paid to the first respondent herein on the basis that he was a permanent workman with effect from February 1, 1993.

4. The Learned Single Judge held that since a Writ Petition has been filed by the workman challenging the order of the Industrial Court granting permanency only with effect from March 1, 1999, the Labour Court had committed no error in dismissing an application u/s 33-C(2) since two parallel proceedings for the same relief could not subsist.

5. After the order of the Learned Single Judge, dated March 21, 2005, the first respondent filed a fresh application on May 13, 2005, Application (IDA) 234/2005 u/s 33-C(2). In that application, the first respondent claimed the difference in wages payable from January 1, 1999 to June 30, 2005 in the total amount of Rs. 1,83,752/-. It is not disputed before this Court that an amount of Rs. 1,36,966/- was paid by the employer to the workman in purported compliance of the orders passed by the Industrial Court granting permanency with effect from March 1, 1999 with consequential benefits. By an order dated August 14, 2007, the Labour Court allowed the application u/s 33-C(2) and granted an amount of Rs. 1,73,632/- to the first respondent. That order has been questioned by the employer in these proceedings under Article 226 or the Constitution of India.

6. Counsel appearing on behalf of the petitioner has submitted that the entire basis on which arrears were claimed u/s 33-C(2) was flawed since the first respondent had lodged his claim on the basis of the wages, payable to another employee, namely, Shantaram Parshram. It is urged by Learned Counsel that ex-facie the evidence of the first respondent himself would show that Shantaram Parshram was made permanent in the year 1991.

7. On the other hand, admittedly under the order of the Industrial Court permanency was granted to the first respondent with effect from March 1, 1999.

In the circumstances, it was submitted that the first respondent could not have asserted a claim u/s 33-C(2) to be at parity with an employee who was made permanent eight years prior to the first respondent.

8. On the other hand, it is alleged on behalf of the first respondent that Shantaram Parshram, the employee who was taken as a basis for parity, was the juniormost peon confirmed in service and that therefore, the first respondent was justified in claiming arrears of wages on the same basis. Learned Counsel submitted that the management failed to substantiate the scale of the permanent workmen on the basis of which his wages were determined on the grant of permanency. Hence, it is urged that the Labour Court was not in error in allowing the application.

9. The judgment of the Labour Court that is impugned in these proceedings contains a categoric finding that the first respondent had claimed arrears on the basis of the salary of Shantaram Parshram and the relevant observation in paragraph 17 of the judgment reads as follows:

On the contrary, here the applicant has claimed arrears on the basis of salary of Shantaram Parashram the junior most permanent peon in the school.

10. This position is not in dispute in the submissions before this Court. In the course of cross-examination, the first respondent has admitted in terms that while another employee, Ravindra Khade, was made permanent in 1989, Shantaram Parshram was made permanent in 1991. The relevant part of the examination can be extracted for convenience of reference:

It is true that Ravindra Khade was made permanent in the service in 1989 and Shantaram was made permanent in the service in 1991. I expect that I should be paid salary which has been paid to Shantaram Parshram.

11. The admission of the first respondent is sufficient in itself to establish that the entire basis on which the claim was preferred u/s 33-C(2) was unfounded and erroneous. The first respondent could not have claimed parity with reference to an employee who was confirmed in service eight yeas prior to the date of confirmation fixed by the Industrial Court in so far as the first respondent is concerned. Shantaram Parshram was confirmed in 1991, whereas under an order of the Industrial Court, the first respondent was to be confirmed with 1 effect from 1st March 1999. The contention of the first respondent is that the management failed to substantiate how the salary of the first respondent was fixed by producing the applicable scale.

12. Even if that be so, that can be no ground for the Labour Court, having regard to the parameters of its jurisdiction u/s 33-C(2), to launch into an adjudication by treating the first respondent for the purposes or parity with an employee who was confirmed eight years prior to the date of confirmation of the first respondent.

13. In these circumstances, there is merit in the contention which has been

urged on behalf of the petitioner. The order of the Labour Court is unsustainable and the Petition would have to be allowed and is accordingly allowed. Ryles made absolute in terms of prayer Clause (a).

14. However, while doing so, it is clarified that this shall not preclude the first respondent from seeking to pursue appropriate remedies as are open in law for the assertion of his claim including by way of a substantive reference or, as the case may be, after the proceedings pending before this Court in Writ Petition 1703/2004 are concluded. In the circumstances, there shall be no order as to costs.