
(2009) 09 DEL CK 0300

In the Delhi High Court

Case No : Writ Petition (C) No. 11814 of 2009

Vishnu Kumar Mangla

APPELLANT

Vs

Dhaneshwar Gupta and Sons

RESPONDENT

Date of Decision : 18-09-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 33C(2)

Citation : (2009) 09 DEL CK 0300

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : Anuj Aggarwal, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.—The workman in this writ petition seeks to challenge an order dated 17.04.2008 in L.C.A. No. 08/2007 passed by the Labour Court by which his claim u/s 33C(2) has been rejected.

2. Heard on admission.

3. The petitioner was working as a part-time employee with the respondent management since 10.04.1986. He became a full-time employee with the respondent since April 1998 and his last drawn wages were Rs. 12,000/- per month. He alleged his termination from the service of the respondent w.e.f. 30.09.2006. After he was allegedly terminated by the respondent management, he filed a Legal Claim Application being L.C.A. No. 08/2007 u/s 33C(2) before the Labour Court and claimed an amount of Rs. 2,05,385/- (Rs. 1,32,000/- on account of earned wages for the period from 01.11.2005 to 30.09.2006; Rs. 55,385/- on account of gratuity and Rs. 18,000/- on account of bonus). The respondent in its written statement to the claim application of the petitioner denied the applicability of the Payment of Gratuity Act as well as the Payment of Bonus Act to the respondent establishment stating that these Acts were not

applicable to its establishment as only three employees were working with it. The respondent also denied the claim of the petitioner for earned wages for the period from 01.11.2005 to 30.09.2006 on the ground that the petitioner absented himself from service w.e.f. 01.11.2005 and, therefore, he was not entitled to the wages claimed by him in L.C.A. No. 08/2007.

4. There is a dispute between the parties on both these counts regarding right of the petitioner for earned wages and also for payment of gratuity and bonus to him. The petitioner says that he had worked with the respondent establishment for the period from 01.11.2005 to 30.09.2006 and, therefore, he is entitled to wages for the said period earned by him. The management denies the said fact and claims that the petitioner had abandoned the service of the respondent management w.e.f. 01.11.2005. This certainly gives rise to a dispute as to whether the services of the petitioner were terminated by the respondent management as alleged by him or whether he had abandoned the service of his own. This dispute by no means could have been entertained in a claim application u/s 33C(2) of Industrial Disputes Act, 1947. This dispute could have been decided only by way of an independent industrial dispute u/s 10 of the Industrial Disputes Act, 1947. In the same way, since the management disputes the applicability of the Payment of Gratuity Act and the Payment of Bonus Act to its establishment, the question whether the petitioner is entitled for payment of gratuity and bonus also gives rise to a dispute which can be decided only by way of an industrial dispute u/s 10 of the Industrial Disputes Act, 1947. The provisions of Section 33C(2) are in the nature of execution and presupposes an existing right in favour of the workman which can be passed on (i) adjudication, (ii) settlement and (iii) service conditions. Since in this case, there was no adjudication or settlement and as no service conditions were either pleaded or proved by the petitioner before the Court below, his alleged claim u/s 33C(2) could not have been granted unless the dispute with regard to the above was adjudicated.

5. In view of what has been stated above, I do not find any infirmity, illegality or perversity in the impugned order that may call for an interference by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution. This writ petition, therefore, fails and is hereby dismissed in limine.