

A.F.R.

Neutral Citation No. 2024:AHC:69169

Reserved on :18.04.2024

Delivered on :22.04.2024

Court No. - 51

Case :- WRIT - C No. - 61111 of 2012

Petitioner :- Executive Engineer Electricity Transmission Division

Respondent :- Mahesh Chandra And Another

Counsel for Petitioner :- A.L. Yadav

Counsel for Respondent :- Manu Mishra

Hon'ble Rohit Ranjan Agarwal,J.

1. This writ petition has been filed questioning the legality of order dated 02.05.2012 passed by Labour Court, Agra in proceedings under Section 33C(2) of Industrial Disputes Act, 1947 (hereinafter called as "Act, 1947"), on the ground that the Labour Court was not competent to award interest in the said proceedings.

2. Facts leading to filing of writ petition are that opposite party no. 1, Mahesh Chandra was appointed as Assistant Store Keeper on 01.05.1966 by U.P. State Electricity Commission at Electricity Transmission Division, Aligarh. He attained the age of superannuation on 31.01.1997. Provisional pension was sanctioned by Executive Engineer, Aligarh on 29.01.1997 subject to adjustment from his final pension by the Board. Before retirement, the Executive Engineer, Electricity Transmission Division, Aligarh sent a letter to Executive Engineer, Electricity Store Division, Gandhi Nagar, Agra and also to respondent no. 1 about No Dues Certificate and E.P.F. Certificate. On 24.06.1997, Executive Engineer, Agra informed that total dues against respondent no. 1 was Rs.27,38,504/-. Thereafter, a detailed report was submitted by Executive Engineer, Vidyut Bhandar Khand, Agra on 21.07.1999 before Superintending Engineer regarding No Dues Certificate. The Executive Engineer, Vidyut Bhandar Khand, Agra informed the Executive Engineer, Electricity Transmission Division, Aligarh that there is dues of Rs.7,110/-

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against respondent no. 1. Due to aforesaid reasons, the retiral dues of respondent no. 1 was not paid within time by Department. Respondent no. 1, in the year 2000, filed an application under Section 33C(2) before respondent no. 2. A reply was filed by petitioner who contested the application on the ground that Labour Court could not award interest. By order impugned dated 02.05.2012, the Labour Court directed for payment of 18% interest in delay payment of pension, Provident Fund and leave encashment and also directed to pay Rs.1,500/- for expenses of the case.

3. Learned counsel for the petitioner submitted that in proceedings under Section 33C(2) only the execution of award or settlement has to be done, and the workman is entitled to receive any money or any benefit which is capable of being computed in terms of money. The Labour Court does not have power to grant interest. According to him, as there was outstanding balance against respondent no. 1 and No Dues Certificate was not provided, there was delay in payment of the retiral dues which were however paid to respondent no. 1 once No Dues Certificate was received. Reliance has been placed upon decision of Apex Court rendered in case of **M/s Bombay Chemical Industries vs. Deputy Labour Commissioner and another, (2022) 5 SCC 629** and judgment of Apex Court rendered in case of **Municipal Corporation of Delhi vs. Ganesh Razak and another, (1995) 1 SCC 235** and also judgment of Apex Court rendered in case of **Union of India and another vs. Kankuben and others, (2006) 9 SCC 292**.

4. Opposing the writ petition, learned counsel appearing for respondent no. 1 submitted that the delay in payment of retiral dues was from petitioner's side. According to him, the entire amount should have been paid when respondent no. 1 retired on 31.01.1997. The payment was made after a lapse of three years and Labour Court had rightly awarded interest. He has relied upon decision of Supreme Court in case of **Phool Mohammad vs. Executive Engineer, Electricity Urban Distribution &**

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another, 2023 SCC OnLine SC 1722 and judgment of Kerala High Court in Writ Petition (C) No. 15945 of 2011, M.M. Joseph vs. Labour Court, decided on 13.03.2015.

5. According to him, the Labour Court under Section 33C(2) exercises power akin to an execution court as contemplated under the Civil Procedure Code, 1908.

6. I have heard respective counsel for the parties and perused the material on record.

7. The short question for consideration before this Court is as to whether the interest can be awarded in proceedings under Section 33C(2) of the Act, 1947.

8. Before adverting to decide the issue in hand, cursory glance of Section 33C is necessary for better appreciation of the case, which is extracted hereasunder:-

“33-C. Recovery of money due from an employer.—(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of [Chapter V-A or Chapter V-B], the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being

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computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government; [within a period not exceeding three months]:

[Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Explanation.—In this section “Labour Court” includes any court constituted under any law relating to investigation and settlement of industrial disputes in force in any State.]]”

9. A glance of Section 33C clearly reveals that entire scheme which has been given under Section 33C(1) and 33C(2) is in the form of execution proceedings for recovering the money due from an employer to a workman which is under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B. Section 33C(1) enumerates a situation where the amount is payable under a settlement or an award and application is made by a workman or any person authorised by him, or in case of his death by his legal heirs and the appropriate Government on being satisfied issues a certificate for that amount to Collector to proceed to recover the same as arrears of land revenue.

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10. While Section 33C(2) envisages a situation where a workman is entitled to receive money from his employer or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money then such question be decided by Labour Court as specified by appropriate Government. Meaning thereby that in case of dispute of quantum of money, the same has to be settled by Labour Court, and once the decision is made by Labour Court, it forwards the same to appropriate Government to be recovered in the manner provided under sub-section (1) of Section 33C. Thus, the entire scheme of Section 33C is in the form of execution of the amount from the employer to be paid to the employee.

11. In **Central Inland Water Transport Corporation Ltd. vs. The Workmen and another, (1975) 1 SCR 153**, the Apex Court held that proceedings under Section 33C(2) being in nature of an execution proceedings but it would appear that an investigation of the alleged right of re-employment is outside its scope and Labour Court exercising power under Section 33C(2) cannot arrogate to itself the functions of adjudication of the dispute.

12. The same view was taken in case of **M/s Bombay Chemical Industries (supra)** which followed the decision of Apex Court rendered in case of **Ganesh Razak (supra)**.

13. The entire mechanism as provided under Section 33C is in the form of execution, either in sub-section (1) which is the recovery of the amount quantified in the award or settlement or under sub-section (2) where the workman is entitled to receive any money or benefit which is capable of being computed in terms of money from the employer. The provision does not provide for awarding interest.

14. In the instant case, though the provisional pension was granted immediately but the other retiral dues could not be paid as there stood

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outstanding amount against respondent no. 1, and on the submission of No Dues Certificate, the amount was released. The Labour Court was swayed away with the fact that there was a delay on the part of petitioner in releasing retiral dues which was payable to respondent no. 1 on his retirement.

15. Heavy reliance has been placed by respondent counsel upon the decision of Kerala High Court rendered in case of **M.M. Joseph (supra)** wherein the Court had proceeded to grant interest on the principles of equity. I am not in agreement with decision of Their Lordships at Kerala High Court, as it is well settled by Hon'ble Apex Court that proceedings under Section 33C(2) are in form of execution, and awarding interest would be beyond the scope of provisions of Section 33C(2). I am in respectful disagreement with the view taken by the Kerala High Court as to the applicability of Section 34 of Code of Civil Procedure in light of the decision of Apex Court in case of **Central Inland Water Transport Corporation Ltd. (supra)**.

16. Moreover from perusal of the records of the instant case, it is clear that the delay cannot be attributed solely to petitioner as there stood outstanding amount against respondent no. 1 which after being settled that pensionary benefits were released.

17. In **Central Inland Water Transport Corporation Ltd. (supra)**, the Apex Court pointed out the distinction between proceedings in a suit and an execution proceedings. According to Their Lordships, plaintiff's right to relief against the defendant involves an investigation which can be done only in a suit and once the defendant's liability had been adjudicated in the suit, the working out of such liability with a view to give relief is the function of an execution proceeding. The distinction as brought out by Apex Court is as under:-

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*“In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff's right to relief; (ii) the corresponding liability of the defendant, including, whether the defendant is, at all, liable or not; and (iii) the extent of the defendant's liability, if any. The working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding. Determination No. (iii) referred to above, that is to say, the extent of the defendant's liability may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. Since a proceeding under Section 33-C(2) is in the nature of an execution proceeding it should follow that an investigation of the nature of determinations (i) and (ii) above is, normally, outside its scope. It is true that in a proceeding under Section 33-C(2), as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But that is merely ‘Incidental’. To call determinations (i) and (ii) ‘Incidental’ to an execution proceeding would be a perversion, because execution proceedings in which the extent of liability is worked out are just consequential upon the determinations (i) and (ii) and represent the last stage in a process leading to final relief. Therefore, when a claim is made before the Labour Court under Section 33-C(2) that court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions—say of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as ‘Incidental’ to its main business of computation. In such cases, determinations (i) and (ii) are not ‘Incidental’ to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal. It was, therefore, held in **State Bank of Bikaner and Jaipur v. R.L. Khandelwal [(1968) 1 LLJ 589]** that a workman cannot put forward a claim in an application under Section 33-C(2) in respect of a matter which is not based on an existing right and which can be appropriately the subject-matter of an industrial dispute which requires a reference under Section 10 of the Act.”*

18. Thus, in view of above, I find that Labour Court was completely misled in granting interest @ 18 % for the delayed payment. It was beyond the competence of Labour Court to have awarded interest, as under the scheme of Section 33C(2) granting of interest does not find any place.

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19. Considering the facts and circumstances of the case, I find that the order dated 02.05.2012 passed by Labour Court, Agra is unsustainable in the eyes of law as far as grant of interest @ 18% is concerned and the same is set aside to that extent.

20. The writ petition stands allowed.

Order Date :- 22.4.2024

V.S.Singh