

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ 7. **LPA 2118/2006**

DATE OF DECISION : 27th November, 2008

GANGA PASHAD TIWARI Appellant
Through: Mr. A.K. Jain, Advocate.
versus
KHYBER PASS MESS HOSTEL COMMITTEE & ORS.
..... Respondents
Through: Ms. Jyoti Singh and Mr. Ankur Chhibbar,
Advocates.
Mr. D.K. Pandey for Mr. V.K. Tandon, Advocates for
Respondent No. 3.

CORAM:
HON'BLE MR. JUSTICE MUKUL MUDGAL
HON'BLE MR. JUSTICE MANMOHAN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the digest?

J U D G M E N T

MUKUL MUDGAL, J: (ORAL)

1. This appeal challenges the order dated 15th September, 2006 passed by learned Single Judge of this Court. In the impugned judgment, the learned Single Judge, in our opinion, has taken a view which has completely misinterpreted Section 33 (C) (2) of Industrial Disputes Act, 1947 (hereinafter to be referred as the 'Act').

2. The learned Single Judge has observed in paragraph-6 of the impugned judgment as under:-

“6. A perusal of the record would show that the award dated 14.12.1989 passed by Labour Court N. VII was an ex-parte award and the court had not considered the question whether the petitioner was a workman or not. The present award which is subject matter of challenge

was not before the same Presiding Officer who presided the Labour Court VII. The present proceedings were under Section 33C(2) while the earlier award was on a reference made by the appropriate Government. It is settled law that the judgment and opinion of one Labour Court is not binding on the other Labour Court. It is only the judgments of High Court and Supreme Court which have binding effect on the lower courts. Labour Court No. III which passed the impugned award was not bound by the findings given by Labour Court VII. Every subordinate court has to give judgments and orders in conformity with the law laid down by High Courts and Supreme Court. The law laid down by Supreme Court has a binding effect on the lower courts under Article 14 of the Constitution of India and could not have been ignored by the Labour Court.”

(emphasis supplied)

3. In our view, the impugned judgment in holding that a Labour Court under Section 33C(2) of the Act is not bound by the findings given by the earlier Labour Court has totally misconstrued Section 33C(2) of the Industrial Disputes Act, 1947 and the impugned judgment is in fact contrary to the settled position of law laid down by the Hon'ble Supreme Court in ***State of U.P. and Anr. vs. Brijpal Singh, (2005) 8 SCC 58*** and the following judgments of the Hon'ble Supreme Court:-

- (i) Punjab Beverages Pvt. Ltd. vs. Suresh Chand, (1978)2SCC144,
- (ii) Municipal Corporation of Delhi vs. Ganesh Razak and Anr, (1995) 1 SCC 235
- (iii) State Bank of India vs. Ram Chandra Dubey and Ors., (2001) 1 SCC 73.

4. In fact, the learned Single Judge has totally erred in observing that it

is settled law that the judgment and opinion of one Labour Court is not binding upon the other Labour Court. This judgment has totally lost sight of the law laid down by the Hon'ble Supreme Court in ***State of U.P. vs. Brijpal Singh*** (*supra*). In paragraph-10 of the aforesaid judgment, the hon'ble Supreme Court held as under:-

“10. Thereafter, the labour Court, in the instant case, cannot arrogate to itself the functions of an Industrial Tribunal and entertain the claim made by the respondent herein which is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute in a reference under Section 10 of the I.D. Act. Therefore, the Labour Court has no jurisdiction to adjudicate the claim made by the respondent herein under Section 33C(2) of the I. D. Act in an undetermined claim and until such adjudication is made by the appropriate forum, the respondent-workman cannot ask the Labour Court in an application under Section 33C(2) of the I.D. Act to disregard his dismissal as wrongful and on that basis to compute his wages.”

5. Section 33C(1) and (2) of the Industrial Disputes Act, 1947 read as following:-

“33C. 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 VA or Chapter VB 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 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 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.”

6. A bare perusal of the said sub-sections (1) and (2) show that all that the labour court is required to do is to compute the amount capable of being payable to the employee and to permit a Labour

Court under Section 33C(2) of the Act to revisit the finding arrived at the time the award was rendered would lead to judicial anarchy besides rewriting both Sections 33C(1) and (2). We are, therefore, not in agreement with the view expressed by the learned Single Judge. This apart we believe that whenever in a judgment it is written that it is settled law it would be appropriate that the relevant judgment be referred according to which the law is stated to be settled. By not following such a practice it becomes extremely difficult for an Appellate Court to examine a judgment in appeal.

7. Accordingly, the appeal is allowed but in the circumstances without costs. The judgment of the learned Single Judge is set aside. The matter is now remanded back to the Labour Court to determine the amount due to the petitioner under the award dated 14th December, 1989. Taking into account, the fact that the matter has been pending for almost two decades, the Labour Court is directed to dispose of the matter not later than four months from the first hearing which is fixed as 7th January, 2009. The Registry of this Court is directed to send back the record of the Labour Court by courier on or before 25th December, 2008.

MUKUL MUDGAL, J

MANMOHAN, J

NOVEMBER 27, 2008
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