

Neutral Citation No. - 2023:AHC:200156

RESERVED

Court No. - 5

(1) Case :- WRIT - C No. - 7273 of 2010

Petitioner :- Union Of India Through D.R.M. And Another

Respondent :- Regional Labour Commissioner Central And Others

Counsel for Petitioner :- Govind Saran, Dr. Santosh Kumar

Tiwari, Gaurav Kumar Chand, Pawan Kumar Mishra, Praveen Kumar
Srivastava, Rajesh Tripathi, Vinod Swarup

Counsel for Respondent :- S.C., Devendra Kumar

Mishra, G.K. Gupta, S.S.P. Gupta, Shiv Shankar Pd Gupta

With

(2) Case :- WRIT - C No. - 44900 of 2010

Petitioner :- Union Of India And Others

Respondent :- Rajesh And Others

Counsel for Petitioner :- Govind Saran, G.K. Gupta, Rajesh
Tripathi, Vinod Swarup

Counsel for Respondent :- C.S.C., D.K. Mishra, Devendra Kumar

Mishra, Praveen Kumar Srivastava, S.S.P. Gupta

(3) Case :- WRIT - C No. - 44892 of 2010

Petitioner :- Union Of India And Others

Respondent :- Nanku And Others

Counsel for Petitioner :- Govind Saran, Manu Vardhana, Praveen Kr
Srivastava, Rajesh Tripathi, Vinod Swarup

Counsel for Respondent :- C.S.C., D.K. Mishra, Dharmendra Kumar
Mishra, S.S.P. Gupta

(4) Case :- WRIT - C No. - 44894 of 2010

Petitioner :- Union Of India And Others

Respondent :- Sampat Singh And Others

Counsel for Petitioner :- Govind Saran, Praveen Kr Srivastava, Rajesh
Tripathi, Vinod Swarup

Counsel for Respondent :- C.S.C., D.K. Mishra, Dharmendra Kumar
Mishra, S.S.P. Gupta

(5) Case :- WRIT - C No. - 44896 of 2010

Petitioner :- Union Of India And Others

Respondent :- Rashid Ahmad And Others

Counsel for Petitioner :- Govind Saran, Manu Vardhana, Praveen Kr
Srivastava, Rajesh Tripathi, Vinod Swarup

Counsel for Respondent :- C.S.C.,D.K. Mishra,Dharmendra Kumar Mishra,S.S.P.Gupta

(6) Case :- WRIT - C No. - 44897 of 2010

Petitioner :- Union Of India And Others

Respondent :- Irsan Ali And Others

Counsel for Petitioner :- Govind Saran,Manu Vardhana,Praveen Kr Srivastava,Rajesh Tripathi,Vinod Swarup

Counsel for Respondent :- C.S.C.,D.K. Mishra,Dharmendra Kumar Mishra,S.S.P.Gupta

(7) Case :- WRIT - C No. - 44898 of 2010

Petitioner :- Union Of India And Others

Respondent :- Sharwan Kumar And Others

Counsel for Petitioner :- Govind Saran,Manu Vardhana,Praveen Kr Srivastava,Rajesh Tripathi,Vinod Swarup

Counsel for Respondent :- C.S.C.,D.K. Mishra,Dharmendra Kumar Mishra,S.S.P.Gupta

(8) Case :- WRIT - C No. - 44901 of 2010

Petitioner :- Union Of India And Others

Respondent :- Hari Ram And Others

Counsel for Petitioner :- Govind Saran,Praveen Kr Srivastava,Rajesh Tripathi,Vinod Swarup

Counsel for Respondent :- C.S.C.,D.K. Mishra,Dharmendra Kumar Mishra,S.S.P.Gupta

and

(9) Case :- WRIT - C No. - 44902 of 2010

Petitioner :- Union Of India And Others

Respondent :- Shiv Pratap

Counsel for Petitioner :- Govind Saran,Manu Vardhana,Praveen Kr Srivastava,Rajesh Tripathi,Vinod Swarup

Counsel for Respondent :- C.S.C.,D.K. Mishra,Devendra Kumar Misra

HON'BLE PIYUSH AGRAWAL,J.

1. Heard Shri Praveen Kumar Srivastava, Shri Rajesh Tripathi, Shri Gaurav Kumar Chand and Shri Manu Vardhana, learned Central Government Counsel for the petitioners, Shri K.M. Mishra, learned Additional Chief Standing Counsel for the State –

respondent and Shri S.S.P. Gupta and Shri Devendra Kumar Mishra, learned counsel for the private respondents.

2. Since the issue involved in the connected writ petitions are consequential to the impugned order dated 09.11.2009 (challenged in Writ C No. 7273/2010), by which the recovery proceeds under challenge, therefore, the same are being decided by the common order. Writ - C No. - 7273 of 2010 is taken as a leading case for deciding the controversy involved in all the matters. The other connected writ petitions are confined to recovery amount in pursuance of the impugned order dated 09.11.2009.

Writ - C No. - 7273 of 2010

3. The instant writ petition has been filed challenging the order dated 09.11.2009 passed by the Regional Labour Commissioner (Central), Kanpur, the respondent no. 1.
4. The brief facts of the case, leading to the present controversy, are that on 01.09.1986, 110 casual daily wage employees were retrenched by the Railway Department. On 09.10.1989, the Labour Department of the Central Government made a reference to CGIT, Kanpur. The Central Government Industrial Tribunal made an award dated 16.01.1996 for reinstatement of all 110 employees without back wages. The said award was challenged before this Court in Writ Petition No. 2385/1997. On 13.12.2004, the said writ petition was dismissed by this Court. Thereafter, the matter was referred by the Railway Department for filing SLP before the Apex Court, but the Railway Board had not given approval for filing SLP before the Apex Court and therefore, the order of the Tribunal became final. On 18.08.2006, the petitioner complied with the direction given in the award dated 16.01.1996 and reinstated the respondent nos. 2 to 11 as well as all other persons as daily wagers.

5. In the year 2007, the Railway initiated regularization process of daily wage workers as per the Rules and during the regularization process, 74 persons were turned up, out of 110 persons, one person had already superannuated and one person had not turned up for screening and 4 persons declared as medically unfit in all category. Thereafter, the screening committee examined all the persons, who were present on 26.06.2007 and 27.06.2007 before the Committee and recommended 58 persons for regularization on Group 'D' post.
6. The requisite educational qualification for Group 'D' post was Class VIII pass, but in the case of Gangman/Trackman, there is no requirement of educational qualification of Class VIII pass, while for them, medical category of A-1 & B-1 was necessary, meaning thereby, if any persons having fulfilled medical criteria for Gangman/Trackman, they were regularized even though they do not possess Class VIII certificate.
7. The respondent nos. 2 to 11 are illiterate having no educational qualification of Class VIII, nor they fulfilled medical criteria of A-1 & B-1 category and in such situation, the Department referred the matter before the Railway Board for relaxation in educational criteria for regularization in Group 'D' post on 07.12.2007, which was refused by the Railway Board on 03.01.2008. On refusal of the Railway Board, the Department initiated retrenchment process of all those 10 persons (respondent nos. 2 to 11) and after giving notice and salary of one month under section 25-F of the Industrial Disputes Act, retrenched all those 10 persons (respondent nos. 2 to 11) vide order dated 20.08.2008.
8. Thereafter, the respondent nos. 2 to 11 made a complaint to the Regional Labour Commissioner (Central), Kanpur on 25.08.2008 for withdrawal of the retrenchment notice. Thereafter, notices were issued and a detailed reply was submitted by the petitioner, in which it was duly informed that the award dated 16.01.1996

has already been complied with and the respondent nos. 2 to 11 were permitted to join way back and therefore, no cause of action for compliance of the award was pending. As such, the present retrenchment of 2008 was a fresh cause of action, therefore, the respondent no. 1 not competent to adjudicate, but in spite of the said fact, the impugned order has been passed on 09.11.2009. Hence, this writ petition.

9. Learned counsel for the petitioners submits that the respondent nos. 2 to 11 were taken way back on 18.08.2006. Copy of the pay sheet has also been annexed along with the writ petition as Annexure No. 7, which shows that payments were made to the respondent nos. 2 to 11. He further submits that the Railway Department took a decision for regularization of all the daily wagers, to which a Committee was constituted, in which some of them did not turn up and after screening, the persons qualified in different categories were taken in service as a regular employee. The private respondent nos. 2 to 11 in the present case were neither qualified in Class VIII, nor they were able to qualify the medical examination of A-1 & B-1 for group 'D' post, but still the petitioner sent a letter on 07.12.2007 to the Railway Board for relaxing the condition of educational qualification, but the same was refused vide letter dated 03.01.2008. Thereafter, the private respondents were retrenched by order dated 20.08.2008. It is further argued that the retrenchment of 20.08.2008 was a fresh cause of action, therefore, the respondent no. 1 has no jurisdiction to entertain the application of the private respondents.
10. He further submits that the respondent no. 1 ought not to have entertained the complaint of the private respondents. He further submits that proceedings under sections 37-C(1) & C(2) of the Industrial Disputes Act are in the nature of execution proceedings as the labour court/labour commissioner cannot adjudicate the dispute under the said sections. In support of his submissions, he

has placed reliance on the judgements of this Court in ***Chandra Bhal Mishra Vs. State of U.P. & Others*** [2019 (10) ADJ 734] as well as the judgements of the Apex Court in ***D. Krishnan & Another Vs. Special Officer Vellore Cooperative Sugar Mill & Another*** [(2008) 2 SCC (L&S) 210], ***U.P. State Road Transport Corporation Vs. Birendra Bhandari*** [(2006) 10 SCC 211] and ***Hamdard (Wakf) Laboratories Vs. Deputy Labour Commissioner & Others*** [(2007) 2 SCC (L&S) 166].

11. In the alternative, he submits that the daily wage employees are appointed as per the need of work. Since the retrenched had been made in the year 2008 by fresh order, the same ought to have initiated fresh proceedings, instead of approaching the respondent no. 1. In support of his contention, he has placed reliance on the judgement of the Apex Court in ***Himanshu Kumar Vidyarti & Others Vs. State of Bihar & Others*** [(1997) 4 SCC 391].
12. He further submits that the impugned order has been passed directing to deposit the back wages is bad as for the period in which the respondent nos. 2 to 11 have not worked, no payment can be made to them in view of the principle of no work no pay. In support of his contention, he has placed reliance on the judgement of the Apex Court in ***P. Karupiah (Dead) through L.R. Vs. General Manager, Thruuvalluvar Transport Corporation Limited*** [(2018) 12 SCC 663] as well as the judgement of this Court in ***Vishweshwar Pathak Vs. State of U.P. & Others*** [2015 (2) (DB) (LB) 735]. He prays for allowing the writ petition.
13. Per contra, learned counsel for the private respondents supports the impugned order and submits that the award dated 16.01.1996 was never complied with in letter and spirit and therefore, the application was rightly moved before the respondent no. 1. He further submits that in spite of undertaking given by the petitioners at various forums, the same was not adhered to.

Therefore, the private respondents were compelled to move an application before the labour court, who has rightly passed the impugned order. In support of his contention, he has placed reliance on the judgements of this Court in ***U.P. State Electricity Board Vs. Presiding Officer, Labour Court, Kanpur*** [2004 (102) FLR 22) and ***State of U.P. & Another Vs. Labour Court, 1st, Meerut & Another*** [2002 (92) FLR 977], the judgement of the Madras High Court in ***Rambabu Kamath Vs. Union of India*** [2023 LABIC 1341] and the judgement of the Apex Court in ***Their Workmen through the Joint Secretary (Welfare) Food Corporation of India, Ex. Executive Staff Union Vs. Employer in relation to the Management of the Food Corporation of India & Another*** [AIR Online 202 SC 419 (SC)]. He prays for dismissal of the writ petitions.

14. After hearing learned counsel for the parties, the Court has perused the record.
15. It is not in dispute that against the award dated 16.01.1996, the petitioners challenged the same by way of Writ Petition No. 2385/1997 before this Court. The said writ petition was dismissed by this Court on 13.12.2004. Thereafter, the private respondents were reinstated on 18.08.2006. The record reveals that the respondents were reinstated. On the pointed query to the learned counsel for the private respondents with regard to the Annexure No. 7 to the writ petition (i.e., the pay sheet), that the same shows that the private respondents were reinstated, he could not give positive reply, which means that the private respondents were reinstated. The record further reveals that the Railway Department had initiated the proceedings for regularization of daily wagers out of which certain persons, who participated in the regularization process and after due test as prescribed under the law as well as screening, were selected and regularized as regular employees, but some of them could not qualify, to which letter

was sent to the Railway Board for relaxation of certain conditions, which was turned down and thereafter, the private respondents were retrenched vide order dated 20.08.2008. The record further reveals that the private respondents have not taken any proper legal recourse for challenging the said retrenchment order dated 20.08.2008, but moved an application before the respondent no. 1. In the said proceedings, the impugned order has been passed. Once the retrenchment has been made by fresh order on 20.08.2008, which gave rise to a fresh cause of action, the private respondents ought to have taken the legal recourse, instead of approaching the respondent no. 1.

16. The learned counsel for the private respondents could not justify the impugned order passed under sections 37-C(1) and C-(2) of the Industrial Disputes Act. Once a fresh cause of action has arisen on 20.08.2008, which has not been assailed before any competent forum, the impugned order cannot be sustained. The judgement relied upon by the learned counsel for the private respondents in ***U.P. State Electricity Board*** (supra) is distinguishable as the Court did not interfere in the awarded granted in favour of the workman and directed to reinstate with full back wages, but in the case in hand, the respondent nos. 2 to 11 were daily wage employees and not regular employees. Further, the judgement in the case of ***State of U.P. & Another*** (supra) is also of no aid to the respondents as already stated above, the appellant was not disputed that he was a daily wagger and once the private respondents are not regular employee, no claim can be made. The other judgements in ***Rambabu Kamath*** (supra) and ***Their Workmen through the Joint Secretary (Welfare) Food Corporation of India, Ex. Executive Staff Union*** (supra) are also of no help to the private respondents as in the facts of the present case, the private respondents are nowhere treated as regular employees and therefore, from the date of retrenchment, the back wages cannot be granted.

17. This Court in **Chandra Bhal Mishra** (supra) has held as under:

“26. The legal position which thus emerges is that the benefit which can be enforced under Section 33-C (2) must be a pre-existing benefit or one flowing from pre-existing right, and in an application filed under the said provision, relief can be granted only if the right had been recognized already and the benefits flow from such recognition and not otherwise. The Labour Court's jurisdiction under Section 33-C (2) is only in respect of computation of the monetary benefit which a workman is entitled to receive from the employer and powers can be exercised only in a case where the entitlement to the claim is not disputed. In a case where the claim of the workman involves adjudication of a dispute, the Labour Court cannot assume jurisdiction to first determine the entitlement and then to make the computation.

27. It may thus be inferred that an application filed for computation of difference of wages in respect of a claim for a promotional post, in the absence of any promotion having been granted, would essentially involve adjudication of a dispute regarding entitlement, which would be beyond the scope of the jurisdiction of the Labour Court under Section 33-C (2) of the Industrial Disputes Act, 1947, and would not be maintainable.

28. In view of the foregoing discussion, the claim sought to be raised in the present case for computation of an amount which would have been admissible to the petitioner had he been granted promotion to the higher post, would not fall within the ambit and scope of the powers under Section 33-C (2). The claim being not based on any pre-existing benefit or flowing from pre-existing right, the necessary preconditions for invocation of powers of the Labour Court under Section 33-C (2) did not exist, and as such the Labour Court has rightly rejected the claim.”

18. Further, in **D. Krishnan**(supra), the Apex Court has held as under:-

12. We have considered the arguments advanced by the learned counsel for the parties. The fact that proceedings under Section 33 C(2) are in the nature of execution proceedings is in no doubt, and such proceedings presuppose some adjudication leading to the determination of a right, which has to be enforced. Concededly there has been no such adjudication in the present case. It will be seen that the reliance of the appellant-workmen is exclusively on documentary evidence placed on record which consisted primarily of the punch time cards and the

representations that had been filed from time to time before the respondents. It is also true that the claim raised by the appellants had been hotly disputed by the respondents. The question that arises in this situation is whether reliance only on the documentary evidence was sufficient to prove the case.

14. We find that the claim by the appellants herein has been disputed from the beginning and that the documents filed by the appellants themselves suggest that they were unsure of their own status. We have also perused the representations which have been filed as additional documents. A perusal of the letter dated 10th February 1996 from S.Karuthiah Pandian, Special Officer shows that the appellant D.Krishnan was being posted as a Canteen Manager. The subsequent letters dated 20th May 1996, 20th January 1997, 20th February 1997, 15th April 1998 and 6th August 1998 were all written by the appellant D.Krishnan identifying his post as that of Manager of the canteen and in the body of the last letter, a specific plea has been made that amongst the several duties entrusted to him, he had to instruct 4 workers to come in the morning, to prepare breakfast and a complaint that on one particular day, one C. Uttharakumar, a Clerk working under him had refused to follow his orders. We also find similar letters written by the second appellant, K. Shanmugam and they too are on the record as additional documents. We are, therefore, of the opinion that in the light of the categorical statements time and again in the very documents relied upon by the appellants in support of their case, that they were, prima-facie, Managers and it would, therefore, be beyond the jurisdiction of the Labour Court to determine their status in proceedings under Section 33 C(2) of the Act.

17. Mr. Gonsalves, has, however urged that a pre-existing right could also emanate from a statute, in this case from Section 59 of the Factories Act, which provided for the payment of overtime wages and in this view of the matter, all that the Labour Court was called upon to do was to make a calculation of the amounts due to the appellants. The facts of the case are, however, not as clear cut and dried, as has been contended. The Division Bench has observed that though section 59 of the Factories Act undoubtedly provided for extra payment as overtime wages, but according to Rule 78B of the Tamil Nadu Factories Rule, 1950, only an employee authorized to work overtime by an overtime slip would be entitled to claim an overtime allowance. The specific case of the respondent-Management, which has not been contested by the appellants even during the course of the arguments before

us, is that no such slips had ever been issued. Additionally, we are of the opinion that in the absence of any supporting oral evidence by the workmen which would also result in their cross-examination, a mere reliance on the documents filed by them is insufficient for determining the factual basis of the issues involved, in proceedings under Section 33-C(2) of the Act. In this view of the matter, Mr. Gonsalves's argument based on Rameshwar's case (*supra*) or the scope and ambit of Section 33 C(1) vis-à-vis Section 33 C (2), is also unacceptable.

18. Mr. Gonsalves has finally submitted that in the light of the judgment of this Court in *Damodar Valley Corporation vs. Workmen* (1974) 3 SCC 57 and *State of Karnataka & Ors. vs. C.Lalitha* (2006) 2 SCC 747, an order made by a Court was required to be made applicable to all those similarly circumstanced and as Jayavelu, who was identically placed, had been granted the benefit of overtime wages by the Labour Court, the appellants too were entitled to the same relief. This submission is however not acceptable on account of the lack of particulars with respect to Jayavelu's matter. It is, thus, not possible to evaluate the matter as being identical on facts. We, thus, find no merit in the appeal. It is accordingly dismissed, with no order as to costs.

19. In **U.P. State Road Transport Corporation** (*supra*), the Apex Court has further held as under:-

7. The benefit which can be enforced under Section 33 C(2) is a pre-existing benefit or one flowing from a pre-existing right.

8. In the case of *State Bank of India v. Ram Chandra Dubey & Ors.*, [2001] 1 SCC 73, this Court held as under:

"7. When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a

reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

8. The principles enunciated in the decisions referred by either side can be summed up as follows:

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33 C(2) of the Act. The benefit sought to be enforced under Section 33 C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33 C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom, a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or

that the award of reinstatement itself conferred right for claim of back wages."

9. The position was re-iterated by a three-Judge Bench of this Court in *State of U.P. and Anr. v. Brijpal Singh*, [2005] 8 SCC 58.

10. Judged in the background of principles set out above, the orders passed by the Labour Court and the High Court are indefensible and are accordingly set aside.

20. Further, in ***Hamdard (Wakf) Laboratories*** (supra), the Apex Court has held as under:-

18. Section 6-H(1) of the Act provides for a proceeding which is in the nature of an execution proceeding. The said provision can be invoked *inter alia* in the event any money is due to a workman under an award. They cannot be invoked in a case where ordinarily an industrial dispute can be raised and can be referred to for adjudication by the appropriate government to an industrial court. The authorities to determine a matter arising under Section 6-H(1) of the Act and an industrial dispute raised by the workmen are different. Section 6-H(1) of the Act, it will bear repetition to state, is in the nature of an execution provision. The authority vested with the power thereunder cannot determine any complicated question of law. It cannot determine a dispute in regard to existence of a legal right. It cannot usurp the jurisdiction of the State Government under Section 11-B of the Act.

19. A Labour Commissioner is not a judicial authority. In view of Section 11-B of the Act, it is for the State Government to construe an award, in the event any dispute arises in giving effect thereto.

38. An application under Section 33C(1) of the Industrial Disputes Act, 1947 must be for enforcement of a right. If existence of right, thus, is disputed, the provisions may not be held to have any application.

21. In view of the aforesaid facts & circumstances of the case as well as the law laid down by the Apex Court and this Court, referred to above, the impugned orders passed by the Regional Labour Commissioner (Central), Kanpur, the respondent no. 1, in this writ petition as well as in the connected matters cannot be sustained in the eyes of law. The same are hereby quashed.

22. Consequently, the consequential recovery proceedings pursuant to the impugned order dated 09.11.2009, challenged in the connected writ petitions, are also hereby quashed.
23. The writ petitions succeeds and are allowed.
24. However, the private respondents will be at liberty to take any other legal recourse as available to them in law against the order dated 20.08.2008, but strictly in accordance with law.

Order Date :-17/10/2023

Amit Mishra