

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4688 of 1996

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1. Bihar State Electricity Board, Vidyut Bhawan Bailey Road, Patna through its Secretary.
 2. General Manager-cum-Chief Engineer, Central Bihar Area Electricity Board, Serpentine Road, Patna.

.... Petitioner/s

Versus

1. Presiding Officer, Labour Court, Patna
2. Yogendra Singh, Assistant Boiler Operator
3. Abdul Gaphar, Boiler Operator.
4. Permeshwar Singh, Lump Operator
5. Permanand Rai, Technician
6. Ram Babu Gupta, Assistant Boiler Operator
7. Sukhari Ram, Khalasi
8. Biphan Choudhary, Watchman
9. Ram Lakhan Mandal, Khalasi
10. Devendra Choudhary, Boiler Operator
11. Lalan Singh, Switch Board, Circle I
12. Sheo Balak Mahto, Pump Operator
13. Deoki Rai, Fitter No. 2
14. Rajendra Sharma, Black Smith No. 2
15. Kedar Nath Rai, Hammerman
16. Chandradeep Mahto, Khalasi
17. Tula, Head Fitter
18. Hari Prasad, Khalasi
19. Inderdeo Rai, Khalasi

All C/o Electrical Executive Engineer, Thermal Power Station, Karbigahia, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Vinay Kirti Singh and Vijay Kr. Verma, Advs.

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 03-02-2015

No one is appearing on behalf of the private respondent.

In this case, petitioners are challenging the order dated 27th October 1995 passed by Presiding Officer, Labour Court, Patna in Miscellaneous Case Nos. 1 to 20 of 1995 whereby and

whereunder he has held that each of the applicants of Miscellaneous Case Nos. 1 to 20 of 1995 are entitled to receive Rs. 1,500/- (one thousand five hundred) as L.T.C. from the management on the terms and conditions as laid down in Annexure-11 of the show cause and the amount must be paid latest by the end of the year 1995, accordingly, these petitions were disposed of.

It has been recorded that the respondents filed an application under Section 33-C (2) of the Industrial Disputes Act before the Labour Court, Patna was being representing by the General Secretary of the Bihar Rajya Bidhut Parishad, Field Kamagar Union, Patna.

Claim has been made by the Union that the applicants were/are workmen, under Section 2 (s) of the Industrial Disputes Act, 1947 employed on various posts of BSEB in Karbigahia Termal Power Station which was under the administrative control of the Chief Engineer, Patna, Electric Supply Undertaking who was delegated with the power to sanction the amount of LTC to the workmen concerned under his control.

The Management entered into an agreement providing that each employee was to get Rs. 1500/- as LTC once during a period of five years. The General Manager-cum-Chief Engineer, Bihar Area Electricity Board sanctioned the amount but till

filing of the applications, none of them received the amount even after the repeated demands.

It appears from letter No. 376 dated 17th December 1986, the erstwhile Electricity Board introduced a scheme of LTC to the workmen of the Board in a block of five years which is Annexure-2 to the writ application where it has been provided the facility of LTC to the workmen of the Board was/is applicable to the persons who are governed under the Certified Standing Order of the Board and the Board took a decision to grant a lump sum amount of Rs. 1500/- to each worker in a block of five years, towards the LTC, the initial block of five years was to be counted from the calendar 1986 and the manner, the scheme will operate, has been mentioned in para 2 of the said letter. It has further been provided that the workmen, who desire to avail the LTC facility in a particular year,, will be required to file an application in the prescribed form enclosed therewith, an application to be submitted through the head of office to the Director, Personnel so as to reach him by 31st March of every year. The Director, Personnel will scrutinize the application by 30th June and issue sanction order as has been mentioned in the said letter, priority was/is to be given to those who are older in age. Instruction regarding number of workmen to whom facility shall be extended yearwise in subsequent block will be issued in due course.



The workmen who intend to avail the facility of LTC, may file an application through their head office to the Director of Personnel in the prescribed performa so as to reach him by 15th January 1997. Eligibility period for the first year of the block of 1986 is extended upto March 1986.

Another letter was issued by the Board on 11th November 1987 whereby the scheme was decentralized and informed to all the General Manager whereby and whereunder it was decided to delegate the power to the General Manger/General Manager-cum-Chief Engineer of the Projects, Transmission and Area Electricity Board and Director, Personnel would be the responsible officer for granting the LTC with respect to workmen posted at head quarter, it was provided that workmen shall be allowed LTC facility only once in block of five years, commencing from 1986, the other conditions were mentioned in the said letter.

In pursuance of the said letter, the General Manager-cum-Chief Engineer issued Office Order No. 603 dated 1st July 1992 thereby sanctioned Rs. 1500/- as many as 42 workmen including the applicant for the block year of 1991-95 providing certain condition vide letter No. 436 dated 20/6/1992. Benefit of LTC was stayed in view of the financial stringencies and it was made available to those persons who were to superannuate in that year.

It appears that from time to time different letters were issued by the Board vide letter No. 463 dated 14th June 1993, letter No. 203 dated 18th February 1994, letter No. 397 dated 13th April 1994 and letter No. 680 dated 17th July 1992.

From those letters it appears that on account of the financial stringencies, the relief of LTC was only provided to those who were going to superannuate in the respective years and that was the cause for filing the application under Section 33-C (2) of the Act.

The Labour Court discussed the Circular and held that once the Board has taken a decision to provide LTC facility, delegatee did not have a jurisdiction to issue such letter and reject the claim of the workmen that is the disputed questions of entitlement arising from settlement is the subject in the proceeding of Section 33-C (2) of the Act, cannot be said that the matter cannot be decided in the aforesaid proceeding.

The counsel for the petitioners has submitted that the proceeding under section 33-C (2) of the Act is in the nature of execution proceeding and it cannot adjudicate the dispute which has not already adjudicated by the Tribunal in a reference, the nature of dispute about the entitlement and restriction of the LTC of the particular class of persons on account of the financial stringencies and the power of the Chief Engineer to pass such order could not have

been examined by the Labour Court in the execution proceeding, he has placed reliance on two judgments reported in **(1995) 1 SCC 235** (*Municipal Corporation of Delhi vs. Ganesh Razak*) and **2001 (4) PLJR 552** (*Kashi Prasad Chamaria vs. Presiding Officer & anr.*)

There is none on behalf of the private respondent and, as such, the case is being disposed of on the basis of assistance given by the counsel for the Board.

Having considered the rival contentions of the parties to deal with the contention of the petitioner, it is necessary to examine the power of the Labour Court under Section 33-C (2) of the I.D. Act.

In the Municipal Corporation of Delhi (supra), the Hon'ble Supreme Court has held that the power under Section 33-C (2) is in the nature of the execution proceeding and held that the claim or the issue which was not decided by any Labour Court or Tribunal in a dispute to be referred by the appropriate Government u/s 10 of the Act to Labour Court and Tribunal for proper adjudication. The Hon'ble Supreme Court in para 12 of the said judgment has held that where the very basis of claim or the entitlement of the workman to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding



under Section 33-C (2), as the Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on its power under section 33-C (2) of the Act. It is only when the entitlement has earlier been adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation is treated as incidental to the Labour Court's power under Section 33-C (2) I.D. Act like that of the Executing Court's power to interpret the decree for the purpose of its execution.

Similar view has been taken by this Court in Kashi Prasad Chamaria (supra) there the Court has followed the principle that has been decided by the Hon'ble Court in Municipal Corporation of Delhi (supra).

In the present case, LTC is being claimed arising from the agreement, the Board delegated its power to give benefit, by Notification, to the Chief Engineer of concerned respective Areas, they gave facility of LTC in limited manner on the ground of financial stringencies limited to those who were to retire on the respective years.

The issue before the Labour Court was whether the Chief Engineer delegatee of the Board has power to stay the benefit of LTC this is not an incidental issue but this issue could have been

adjudicated in a properly referred industrial dispute to the Labour Court or the Industrial Tribunal under the Industrial Disputes Act.

In view of judgment of the Hon’ble Supreme Court in Municipal Corporation Delhi (supra), this Court finds that the order of Labour Court passed under Section 33-C (2) is not sustainable and the same is set aside.

Accordingly, this petition is allowed.

(Shivaji Pandey, J)

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