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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2061 of 2016
Date of decision: February 02, 2016

Mangal Singh

.......Petitioner

Versus

Presiding Officer and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. B.D. Sharma, Advocate
for the petitioner.

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SABINA, J

Petitioner has filed this petition challenging the part of the award dated 05.10.2015, whereby, some of the reliefs claimed by him were not granted.

Petitioner moved an application under Section 33C(2) of the Industrial Disputes Act, 1947 ('Act' for short). The case of the petitioner, in brief, was that he had worked with the respondent-Management from February 1966 upto 25.06.2000. Services of the petitioner were illegally terminated w.e.f. 26.06.2000.

By way of said application, following arrears/dues as produced in the impugned order dated 05.10.2015 were claimed:-

i)	Particulars of dues unpaid salary/wages from 1.6.2000 to 25.6.2000 at the rate of ₹2825/- per month	₹2,354.15
ii)	Bonus for the year 1996, 1999 and 2000 uto 25.6.2000 at the rate of 20% per annum u/sec.11 of the Payment of Bonus Act, 1965 for 6 and half months at the rate of ₹2825/- per month as the managements of the respondents no.2 and 3 have been earning huge profits during the above stated years and have been paying bonus at the rate of 20% per year to all its employees/workmen during the above stated years.	₹18,572/-
Iii)	Earned leave with wages for the years 1998-1999 and 2000 upto 25.6.2000 at the rate of 15 days per year= 36 days wages at the rate of ₹94.17 paise per day under the Factories Act, 1947.	₹3,490/-
iv)	Casual leave with wages for 1998-1999 and 2000 upto 25.6.2000 at the rate of 7 days i.e. 18 days under Punjab Leave Wages Act at the rate of ₹94.17 paise	₹1,695/-
v)	18 days sick leave with wages for the year 1998-99 and 2000 at the rate of ₹94.17ps.	₹1,695/-
vi)	Retrenchment Compensation for entire continuous service from Feb.1966 to 25.6.2000 i.e. more than 28 years under section 25-N of the Industrial Disputes Act, 1947 at the rate of ₹2,825/- per month salary and daily rate ₹95/-	₹39,900/-
vii)	Three months salary in lieu of notice of three months under section 25-N of Industrial Disputes Act, 1947 at the rate of ₹2825/- per month.	₹8475/- Tota: ₹76181.15
viii)	Compound interest at the rate of 25% per annum for ₹76,181-15 ps dues stated above from 1.1.1998tIl the date of filing the present application i.e. 12.8.2009. And In future compound interest stated above at the same rate i.e. 24% per annum by this Court till the date of realisation of payment of all the dues/amount form the respondents.	₹4,00,000/-
ix)	Damages and compensation for causing mental torture and agony, harassment, humiliation, defamation/ adversely effecting health etc. as explained above since 1998 till the date of filing the present application and in future as stated above @ ₹One Lac. per year i.e. 1998 to 2009 as years. And in future be assessed by the Hon'ble Court at the rate of ₹Five Thousands daily till the final payment	₹12,00,000/-
	Total:	₹1676181.15

Learned counsel for the petitioner has submitted that the Tribunal had held that the petitioner was entitled to receive unpaid wages from 01.06.2000 to 25.06.2000, earned leave wages and casual leave wages, but was not held entitled to receive bonus, sick leave wages and retrenchment compensation. Learned counsel has further submitted that the petitioner was liable to be paid the amount in question along with compound interest at the rate of 24%, whereas, the Tribunal had only granted interest to the petitioner at the rate of 9% per annum.

In the present case, respondents were proceeded *ex parte* as none had appeared on their behalf despite service. Petitioner had himself appeared in the witness-box as AW1 and had tendered his affidavit. Basing reliance on the *ex parte* evidence led by the petitioner, the learned Tribunal held that the petitioner was entitled to unpaid wages from 01.06.2000 to 25.06.2000 amounting to ₹2,354.15 paisa, earned leave wages amounting to ₹3,490/- and casual leave wages amounting to ₹1,695/-. So far as the relief of Bonus is concerned, the learned Tribunal rightly held that the said relief could not be granted to the petitioner as no evidence in this regard was led by the petitioner. Petitioner had only examined himself as a witness and had not led any documentary evidence to the effect that he was entitled to be paid bonus for the relevant period. So far as the relief of retrenchment compensation and damages claimed by the petitioner under Section 25N of the Act is concerned, the same has been rightly disallowed by the learned Tribunal. It is settled preposition of law that proceedings under Section 33C (2) of the Act are in the nature of execution proceedings. The learned Tribunal can compute the benefit in terms of money qua an existing right in lieu of its being previously adjudged or otherwise duly provided for.

It has been held by Supreme Court in *Central Inland Water Transport Corporation Ltd. versus The Workmen and another*, 1974(4) SCC 696, as under:-

> *"It is now well-settled that a proceeding under section 33(C)(2) is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudged, or, otherwise, duly provided for. In* Chief Mining Engineer, East India Coal Co. Ltd. v. Rameshwar*, (1968) (1) SCR 140 it was reiterated that proceedings under section 33(C)(2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the benefit claimed by workmen is in such cases in the Position of an executing court. It was also reiterated that the right to the benefit which*

is sought to be computed must be an existing one, that it to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an industrial workman and his employer.

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 or 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 function 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) 2 Lab LJ 589 (SC), 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."*

As per the affidavit tendered by the petitioner in his evidence Annexure P-1, it is evident that the petitioner had also raised in Industrial dispute by serving a demand notice. During the course of arguments, learned counsel for the petitioner was unable to tell as to whether the reference made by the appropriate Government for adjudication of the dispute raised by the petitioner had been decided or not.

So far as the relief claimed by the petitioner seeking compound interest is concerned, the same was also rightly not granted by the learned Tribunal. The learned Tribunal had granted interest at the rate of 9% per annum on the due amount. The rate of interest allowed by the Tribunal is reasonable and calls for no interference.

Hence, in the facts and circumstances of the present case, no ground for interference by this Court while exercising jurisdiction under Article 226 of the Constitution of India, is made out.

Dismissed.

(SABINA)
JUDGE

February 02, 2016
mahavir