105

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.25976 of 2015
Date of decision: February 08, 2016

Atma Singh

.......Petitioner

Versus

The Presiding Officer and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Vikas Arora, Advocate
for the petitioner.

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SABINA, J

Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of certiorari for quashing order dated 04.05.2015 (Annexure P-1), whereby, application moved by the petitioner under Section 33C(2) of the Industrial Disputes Act, 1947 ('Act' for short), was dismissed.

Learned counsel for the petitioner has submitted that the petitioner was working with the respondent-Management and had worked upto 31.12.1998. However, wages for the period from 01.01.1998 to 31.12.1998 amounting to ₹1,02,744/- were deducted on the ground that the date of retirement of the petitioner was 31.12.1997.

In the present case, petitioner was to retire from service w.e.f. 31.12.1997. However, he was allowed to continue in service upto 31.12.1998. Consequently, the wages paid to the petitioner from 01.01.1998 to 31.12.1998 were recovered from the petitioner.

Petitioner had filed a civil suit seeking a mandatory injunction that the pensionary benefits be released to him. The said suit was got dismissed as withdrawn on 20.07.1999 (Annexure P-3).

Petitioner had earlier filed an application under Section 33C(2) of the Act on 29.07.2003 seeking a direction to the respondent-Management to pay his gratuity and other pensionary benefits. The said application was dismissed vide order dated 21.08.2012 (Annexure P-2) as the petitioner had already availed remedy before the Civil Court. Petitioner could have claimed the relief now sought by him in the earlier application moved by him under Section 33C(2) of the Act.

Paras 12 and 13 of the order dated 21.08.2012 (Annexure P-2) read as under:-

> *"Arguments put forth by the learned A.R. of the applicant are contrary to the evidence available on the file. In fact, the applicant was to be relieved on 31.12.1997 but he did not disclose his exact position and continued to work till 31.12.1998. He did not move application six months prior to the date of his retirement to close his GPF account. He deposited a sum of Rs.1,02,774/- received by him ni excess with the department on 28.08.2000 and thereafter, all the*

pensionary benefits were released to him. All these facts were concealed and suppressed by the applicant while filing the instant application. Not only this, dismissal of the Civil Suit by Sh. R.K. Jain (Civil Judge) Mansa as well as dismissal of previous application by the Labour Court were also not disclosed. Thereafter, he cannot be permitted to take advantage of his own wrongs.

Even otherwise, arguments put forth by the learned A.R. of the applicant are based upon conjectures and surmises and there is no substantive evidence in support thereof. In the absence of documentary evidence, it is difficult to establish that amount in question has not been disbursed to the applicant, instant application is not maintainable. Moreover, applicant has already availed the remedy before the Civil Court and now he cannot be permitted to re-agitate the same issues before this Tribunal. Therefore, he is not entitled to any amount. Accordingly, issue No.1 is decided against the applicant, whereas, issue No.2 is decided in favour of the respondents."

A perusal of the said order reveals that the petitioner had deposited a sum of ₹1,02,744/- received by him in excess with the Department on 28.08.2000 and thereafter, all the pensionary benefits were released to him. Thus, in the present case, petitioner himself had deposited the amount in question with the respondent-Management on 28.08.2000 and was aware of the fact that he would be paid the pensionary benefits after he deposits the said amount.

Even otherwise, the relief sought by the petitioner could not have granted to him under Section 33C(2) of the Act as the validity of the denial of the wages to the petitioner qua the period in question could not be adjudicated in proceedings under Section 33C(2) of the Act.

It has been held by this Court in *Vijay Parkash versus General Manager, Haryana Roadways Depot, Kaithal*, 1995(1) PLR 231, as under:-

> *"After hearing learned counsel for the petitioner we are of the view that the contention has no merit. The orders passed by the department stopping increments whether after hearing or even without hearing the petitioner continue to be the good orders till the same are set aside in appropriate proceedings. The apex court in State of Punjab and others v. Gurdev Sing Ashok Kumar, AIR 1991 SC 2219 : 1991 (3) S.C.T. 91 took a view that the order of dismissal though void is governed by Article 120 of the Limitation Act. Thus, it has to be concluded that a void order is also required to be set aside within the period of limitation. The petitioner has failed to show the dates of orders passed by the respondent-authorities whereby his increments were stopped. Even otherwise, the order stopping increments of the petitioner could be agitated before a forum either on the ground that the same were void or contrary to the principles of natural justice or against the statutory rules. In the absence of these orders having been set*

aside by a competent court, the petitioner could not straightway move a petition under section 33-C (2) of the Act and the Labour Court could not exercise its powers under the above provisions and grant relief. Thus, in our view the Labour Court has taken a correct view in declining the prayer and rightly dismissed the application of the petitioner under section 33-C(2) of the Act. In these circumstances, no interference is called for in the matter and the writ petition is consequently dismissed."

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."*

The relief sought by the petitioner was disputed one as the case of the respondent-Management was that the petitioner had been wrongly permitted to continue in service beyond the date of his retirement, whereas, the case of the petitioner was that he was entitled for the wages for the period in question as he had worked with the respondent-Management for the said period. In the facts and circumstances of the present case, the amount claimed by the petitioner could not be said to be pre-existing right which could have been granted by the Tribunal while exercising jurisdiction under Section 33C(2) of the Act.

Thus, the learned Tribunal rightly held that the application filed by the petitioner under Section 33C(2) of the Act was liable to be dismissed.

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 08, 2016
mahavir