

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

1. Letters Patent Appeal No. 474 of 2015

DATE OF DECISION : MAY 16, 2016

Suwa Lal Appellant

VERSUS

Cement Corporation of India Limited & another Respondents

2. Letters Patent Appeal No. 1789 of 2015

Randhir Singh Appellant

VERSUS

Cement Corporation of India Limited & another Respondents

3. Letters Patent Appeal No. 1839 of 2015

Man Singh Appellant

VERSUS

Cement Corporation of India Limited & another Respondents

4. Letters Patent Appeal No. 1840 of 2015

Chander Dev Prashad Appellant

VERSUS

Cement Corporation of India Limited & another Respondents

5. Letters Patent Appeal No. 1841 of 2015

Shish Ram Appellant

VERSUS

Cement Corporation of India Limited & another Respondents

6. Letters Patent Appeal No. 1842 of 2015

Dhoop Singh (since deceased through LRs) Appellant

VERSUS

Cement Corporation of India Limited & another Respondents

7. Letters Patent Appeal No. 1843 of 2015

Dalip Singh Appellant

VERSUS

Cement Corporation of India Limited & another Respondents

8. Letters Patent Appeal No. 1844 of 2015

Harpal Singh Appellant

VERSUS

Cement Corporation of India Limited & another Respondents

9. Letters Patent Appeal No. 1845 of 2015

Hukam Singh (since deceased through LRs) Appellant

VERSUS

Cement Corporation of India Limited & another Respondents

10. Letters Patent Appeal No. 1846 of 2015

Bala Ram Appellant

VERSUS

Cement Corporation of India Limited & another Respondents

11. Letters Patent Appeal No. 1847 of 2015

Dhoop Singh Appellant

VERSUS

Cement Corporation of India Limited & another Respondents

CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE A.B. CHAUDHARI

PRESENT: Mr. Pankaj Jain, Advocate, for the appellant.
Ms. Abha Rathore, Advocate, for respondent No.1.

...

1. Whether Reporters of local newspapers may be allowed to see the judgment? YES

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in the

digest? NO

...

A.B. CHAUDHARI, J.

These intra-Court appeals (LPA Nos.474, 1789 and 1839 to 1847, all of 2015) are directed against the common judgment and order dated 14.10.2014 made by the learned Single Judge of this Court in CWP Nos.6824, 7803, 7804, 7806, 7808, 7838, 7839, 7805, 7807, 7837 and 7944, all of 2011.

Facts :

Respondent No.1-Cement Corporation of India Limited was closed on 31.10.2008. It had on its roll 1600 workers out of which 800 were working in the mines. After closure of the undertaking, the services of all employees were terminated, but for 95 employees. The undertaking was eventually taken over by the Government of India under the Dalmia Dadri Cement Limited (Acquisition and Transfer of Undertakings) Act, 1981. To revive the unit, fresh employment was given to the ex-employees of the factory. However, the issue arose about the dates of birth of the employees who had to be re-inducted in service and the Cement Company fell back on the dates of birth recorded in the earlier appointment orders or as given by the Medical Board, in case there was no record. The issue was taken up to the Apex Court, which in all issued four directions, in the form of alternatives, in relation to the dates of birth of the employees. The Apex Court indicated that

(i) wherever the date of birth is indicated in the appropriate

document before the take over, the same shall be final and binding; (ii) if the date of birth was being supplied by the employee, on the basis of State Insurance Certificate, the same shall be taken into consideration only in case there is no entry in the appropriate document prior to taking over, in terms of clause (i); (iii) in respect of the employees whose dates of birth were not recorded as per clauses (i) and (ii) above, the School Leaving Certificate or S.S. Certificate, indicating the date of birth would be adequate; and (iv) in the cases not covered by any of the three situations, it would be open to the employer to have a regular medical examination as per the approved procedure for determining the age.

Appellant-Suwa Lal plus 26 other workmen filed applications before the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh, seeking wages for the extended period of service for various periods reflected in their claims, in their applications under Section 33C(2) of the Industrial Disputes Act, 1947 (for short 'the Act'). Some of the employees had superannuated in accordance with the fresh dates of birth allocated, as per directions of the Apex Court. The workmen were given 50% back wages by way of compensation for the extended period of service. In case of 11 other workmen, their dates of retirement fell in future i.e. 2002 and, therefore, they were asked to join their duties repeatedly by various letters but none except Suwa Lal reported for duty. Suwa Lal deposited his retirement dues on 09.06.2007 and joined his duty on

18.06.2007. He was paid wages till closure of the factory on 31.10.2008 and was also paid closure compensation. In the remaining 11 cases, the cement factory contested the claim of the workmen and a specific plea was taken that the proceedings under Section 33C(2) of the Act were not maintainable for there was no prior determination of the amount apart from the fact that those workmen had failed to substantiate their claim by producing evidence. The Labour Court, however, over-ruled all the objections and made the order directing payment in the sum approved by it, as per the operative order. The Cement Corporation of India filed writ petitions, which were heard and disposed of by the impugned judgment and the petitions were allowed. Hence, these appeals by the workmen.

Arguments :

The learned counsel for the appellants-workmen submitted that the learned Single Judge committed an error in reversing the order of the Labour Court made under Section 33C(2) of the Act by holding that the applications as filed by the workmen were not maintainable for want of determination of the dues. According to him, the learned Single Judge did not follow the ratio decidendi of the judgment of the Apex Court in the case of Central Bank of India Limited vs. P.S. Rajagopalan, 1964 AIR (SC) 743. He submitted that the learned Single Judge having held that the applications under Section 33C(2) of the Act were not maintainable before the Labour Court also addressed itself on the merits of matter, which had adversely

affected the appellants-workmen in their right to take up appropriate legal remedy as their applications were found not maintainable. In the alternative, he submitted that liberty should be reserved in favour of the appellants-workmen if this Court finds that the view taken by the learned Single Judge about the maintainability of the applications is correct.

Per contra, learned counsel for the employer-Cement Corporation supported the impugned judgment and order made by the learned Single Judge and submitted that the decision in the case of Central Bank of India Limited (supra) is clearly distinguishable and has no application in the instant case. She submitted that, on the contrary, in similar set of cases, the Apex Court has taken the view that the applications under Section 33C(2) of the Act, in the absence of pre-determination of the claims by any adjudicating authority or the Court, would not be maintainable. Learned counsel for the respondent-employer then submitted that orders made by the Supreme Court, by no stretch of imagination, had made any determination in terms of money to be paid to have the claim under Section 33-C(2) of the Act settled before the Labour Court. Those orders merely laid down the directions as to what should be done in relation to the employment of the remaining employees. The learned counsel for the respondent-employer, therefore, submitted that even on merits, the appellants do not have any case for grant of monetary claim that was awarded by the Labour Court. Lastly, she submitted that out of 11 employees, four employees who

had filed CWP Nos.7805, 7807, 7837 and 7944, all of 2011, had already taken voluntary retirement and also received benefits under the Voluntary Retirement Scheme and, therefore, no order could be made in their cases. She, therefore, prayed for dismissal of the appeals.

Consideration :

We have heard learned counsel for rival parties and also perused the record.

At the outset, we concur with the finding recorded by the learned Single Judge that the applications filed by the workmen in all these 11 appeals before the Labour Court under Section 33C(2) of the Act, were not maintainable. The celebrated decision cited by the learned counsel for the appellants in these appeals in the case of Central Bank of India Limited (supra) has been carefully seen by us. What we find is that in that case, as seen from para-2 of the judgment, the workmen had claimed that they had been operating the adding machine provided for use in the clearing department of the Branch of the Bank during the period mentioned in the list annexed with the petition and, as such, they were entitled to the payment of ₹10/- per month as special allowance for operating the adding machine, as provided for under paragraph 164(b)(1) of the Sastry Award (emphasis supplied). It is in this background the Apex Court found that there was already an award; namely, Sastry Award about payment of ₹10/- per month as a special allowance. It is in that context the Apex Court

found that the applications filed by the workmen were clearly maintainable though the Management had raised a dispute about the entitlement of the workmen to the same. The Apex Court held that merely because the Management had raised a dispute, the entitlement of the workmen to the monetary benefits in accordance with the award; namely, Sastry Award, could not be questioned and, therefore, the applications under Section 33C(2) of the Act were maintainable. It is in that context the ratio of the said judgment will have to be understood. We, therefore, find that the decision of the Apex Court in the case of Central Bank of India Limited (supra) is hardly applicable in the facts of the present case.

A reading of the order of the Apex Court on the basis of which claims were made by the workmen in the cases of employees of the Cement Corporation of India as to the issue of date of birth, etc., to our mind does not show any determination of any right in their favour. The Apex Court had merely given directions in relation to the dates of birth and the further consequential action and there was no determination of the compensation of any money due to the workmen. The Labour Court was, therefore, clearly wrong in assuming that there was pre-determination or pre-adjudication of the alleged rights of the workmen. The learned Single Judge was, therefore, right in holding that the applications under Section 33-C(2) of the Act were not maintainable. The decisions in the cases of State of U.P. and another vs. Brijpal Singh, (2005) 8 Supreme Court

Cases 58 and A. Satyanarayana Reddy and others vs. Presiding Officer, Labour Court, Guntur and others, (2008) 5 Supreme Court Cases 280, have clear applicability in the instant case to buttress the view taken by us above.

The second submission made by learned counsel for the appellants indeed has merit. The learned Single Judge having recorded a categorical finding that the applications under Section 33C(2) of the Act were not maintainable, we think the further course of action to record findings on merits about the claims made by the workmen on whatever grounds or reasons, should not have been undertaken or rather no finding could have been recorded on merits. We, therefore, find the appellants should be given liberty to find out their own remedy since their applications under Section 33C(2) of the Act were found to be not maintainable by the learned Single Judge and have been found to be so by us as well. In the result, we make the following order :-

Order :

LPA Nos.474, 1789 and 1839 to 1847, all of 2015 against the judgment dated 14.10.2014 are dismissed.

However, liberty is reserved in favour of the appellants to take up any other remedy as would be available in accordance with law.

(SURYA KANT)
JUDGE

(A.B. CHAUDHARI)
JUDGE

May 16, 2016
Kang