

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 7921 OF 2018

Rashtriya Mill Mazdoor Sangh
vs.
Vijay s/o Shamraoji Jivtode & another

Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri. S. G. Nigot, counsel for petitioner.
Smt. S. P. Giratkar, counsel for respondent No.1.

CORAM : MANISH PITALE J

DATED : 21/11/2019

By this writ petition the petitioner has challenged order dated 22/01/2018, passed by the Labour Court, Nagpur, whereby an application filed by the respondent No.1 under Section 33-C(2) of the Industrial Disputes Act, 1947 (I.D.Act), has been allowed and the petitioner has been directed to pay difference in wages, as claimed by the respondent No.1.

2. The respondent No.1 raised grievance under the aforesaid provisions, claiming that he was entitled to minimum wages and that since the petitioner i.e. the employer was paying monthly salary lower than the salary payable under the Minimum Wages Act, he was entitled to the difference in salary.

3. It is not disputed that petitioner, which is a worker's union having its office at Nagpur, has employed the respondent as a 'Peon'. Therefore, employer-employee relationship is not disputed. But the petitioner has taken exception to the impugned judgment and order passed by the Labour Court on the ground that the application of the respondent No.1 under Section 33-C(2) of the I.D.Act, could not have been entertained by the Labour Court, because the respondent No.1 was not agitating an existing right. It was contended on behalf of the petitioner that the very applicability of the Minimum Wages Act, 1948 was seriously disputed by the petitioner and in the absence of adjudication of such a fundamental issue raised by the petitioner, the Labour Court could not have exercised jurisdiction in the present case.

4. By referring to Sections 2(g), 5 and 12 read with other provisions of the Minimum Wages Act, 1948, the learned counsel appearing for the petitioner raised serious objection to the manner in which the Labour Court exercised jurisdiction to entertain the application filed on behalf of the respondent No.1 under Section 33-C(2) of the I.D.Act. On this basis, it was contended that the impugned judgment and order is wholly unsustainable and it deserves to be set aside.

5. As opposed to this, the learned counsel appearing for respondent No.1 submitted that the position of law on Section 33-C(2) of the I.D.Act was very clear and merely because the employer i.e.

petitioner in the present case disputed entitlement of respondent No.1, it could not be said that the Labour Court could not exercise jurisdiction in the present case. It was submitted that incidental enquiry could certainly be undertaken by the Labour Court by exercising power under Section 33-C(2) of the I.D.Act. into the objections sought to be raised by the petitioner and therefore, the impugned order was not rendered without jurisdiction.

6. In order to examine the contentions raised by the rival parties it would be appropriate to refer relevant provisions of Section 33C of the I.D.Act. It reads as follows :-

“33C. Recovery of money due from an employer .—

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of [Chapter VA or Chapter VB], the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue :

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer :

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the Appropriate Government; [within a period not exceeding three months:]

[Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]”

7. In the context of the aforesaid provision, the **Hon'ble Supreme Court** in its judgment in the case of **State of U. P. and another vs. Brijpal Singh (2005) 8 supreme Court Cases 58** has held that existing right would be one which has been already adjudicated upon and thereafter, the workman could agitate his grievance under Section 33-C(2) of the I.D.Act for realization of difference of wages or other such relief which could be termed as existing right of the workman. In the said judgment, the Hon'ble Supreme Court referred to earlier judgments on the said point and reiterated the scope of jurisdiction that could be exercised by the Labour court under Section 33-C(2) of the I.D.Act. The position of law reiterated in the said judgment clearly spells out that if the right sought to be agitated, like the one which is sought to be raised by respondent No.1 in the present case, the same would first have to be adjudicated upon and thereafter, Section 33-C(2) of the I.D.Act would be applicable. The learned counsel appearing for

respondent No.1 sought to rely upon judgment of **Delhi High Court** in the case of **Municipal Corporation of Delhi vs. Ganesh Razak ILR 1994 Delhi 21**, wherein emphasis was placed by the Delhi High Court on the power of the Labour Court to determine incidental question while considering the main relief. Merely because the employer disputed or did not admit the claim of the workman, jurisdiction of the Labour Court would not be ousted. But, reliance placed on the said judgment is clearly misplaced, because in the above mentioned judgment of the Hon'ble Supreme Court in the case of **State of U. P. vs. Brijpal Singh** (supra), the Hon'ble Supreme Court quoted from its own judgment wherein a challenge was raised by the Municipal Corporation of Delhi to the said judgment of the Delhi High Court. While reiterating the position of law as noted above, the Hon'ble Supreme Court held in paragraph 11 as follows :-

In the case of *Municipal Corporation of Delhi vs. Ganesh Razak & Anr.* , (SCC pp.341-42, paras12-13)

"12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen 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) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then

proceed to compare the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity required interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.

13. In these matters, the claim of the respondent-workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of "equal pay for equal work" being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in the writ petition filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made under Section 33-C(2) of the Act by these respondents."

8. Applying the said position of law to the facts of the present case, it becomes evident that the Labour Court ignored the question of its own jurisdiction sought to be invoked by the respondent No.1 in the present case. By relying upon provisions of Minimum Wages Act, 1948, a specific case was made out by the petitioner to contend that the provisions of the said Act were not applicable and therefore, the very basis of difference in wages claimed by the respondent No.1, could not be claimed in a proceeding under Section 33-C(2) of the I.D.Act. As noted above, reference was made to provisions of the Minimum Wages Act, 1948, specifically Sections 2(g), 5 and 12 thereof, to demonstrate that the right sought to be agitated by the respondent No.1 could not be termed as an existing right at all.

9. This Court is of the opinion that unless the right sought to be agitated by the respondent No.1 was adjudicated upon, an application under Section 33-C(2) of the I.D.Act before the Labour Court was not maintainable. The Labour Court failed to appreciate this aspect of the matter while passing the impugned judgment and order.

10. In view of the above, the writ petition is allowed. It is held that the application filed by respondent No.1 under Section 33-C(2) of the I.D.Act before the Labour Court was not maintainable. The impugned order is quashed and set aside. The respondent No.1 would be at liberty to agitate his right

as regards wages payable under the provisions of Minimum Wages Act, 1948, in an appropriate proceeding before the appropriate forum.

11. Writ Petition is disposed of in above terms.

JUDGE

KOLHE/P.A.