

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

HON'BLE MR. JUSTICE ABHIJIT GANGOPADHYAY

WPA 3111 of 2016

**Kanchan Oil Industries Limited
-Versus-
Sri Ranganath Sukla & Anr.**

For the petitioners : **Mr. Rabindranath Majumder
Mr. Sourav Chakraborty
Mr. Supratim Bhattacharjee
Mr. S. M. Obaidullah**

For the Respondent No. 1 : **Mr. Suvadip Bhattacharjee
Mr. Balaram Patra**

Heard on : **12.01.2021,21.01.2021,
12.02.2021,18.02.2021,
24.02.2021,12.03.2021,
16.03.2021 & 06.04.2021**

Judgment on : **06.07.2021**

Abhijit Gangopadhyay, J .:

1. This writ application by the employer is directed against the order passed by the Second Labour Court in connection with an application under Section 33C(2) of the Industrial Disputes Act,

1947, (ID Act, in short). The contention of the employee/petitioner is that the Labour Court while deciding the said application has acted going beyond the jurisdiction as it has virtually made out a case and consequently have granted some relief which was not granted by the Tribunal while passing the award in respect of reference made to it by the Government of West Bengal.

2. The writ petitioner has submitted that while the award says payment of full back wages etc., the Court under the 33C(2) application (2nd Labour Court) has awarded certain amounts in respect of VDA (variable dearness allowance), medical allowance and bonus. According to the petitioner the award did not say anything about the VDA, medical allowance and bonus but the 2nd Labour Court has granted those benefits to the employee. The 2nd Labour Court has also gone wrong while awarding interest on the amount due to the employee.
3. The employee was a Security person/Darwan in the Oil Mill of the petitioner. The employee/respondent therein was on unauthorised leave for some time. As it was unauthorised leave, disciplinary proceeding was initiated against him wherein he on the first day appeared with an outsider and therefore not allowed to participate and on next dates he remained absent and the proceeding was continued ex-parte and ultimately the employee was terminated.
4. This termination was challenged by the employee and thereupon a reference was made by the Government of West Bengal. The matter was heard by the 7th Industrial Tribunal wherein oral

evidence was adduced by the parties and documents were exhibited.

5. The writ petitioner submits that as the 2nd Labour Court has gone beyond its jurisdiction and have recalculated the amount to be paid as wages to the employee/respondent and has included in the wages the VDA, medical allowance and the bonus, the order passed by the said court dated 31.07.2015 should be set aside. Placing the definition of wages as given in Section 2(rr) of the ID Act the petitioner has submitted that the wages can never include the VDA, the bonus and the medical allowance. It has further been submitted that the wages as is understood from the award has already been paid to the employee and no further amount is required to be paid as he is not entitled to it.
6. The employee/respondent has submitted that the definition of wages includes the dearness allowance and medical allowance as these components can be calculated in money value which comes within the meaning of wages as has been defined in Section 2(rr) of the ID Act, 1947. And bonus is consequence of wages and he is entitled to it. The employee/respondent further submitted showing his affidavit-in-opposition wherein the evidence adduced by the Company's (i.e. the petitioner's) witness has been recorded that the companies witness (two witnesses) nowhere in their evidence stated that the employee is not entitled to VDA, medical allowance and bonus. By referring to the evidence adduced it has also been submitted by the employee/respondent that the Company withheld the salary statement etc. to suppress it from the Tribunal that the employee was getting VDA, medical allowance and bonus.

He was also getting house rent which he could not prove and therefore it has not been included in the order passed by the 2nd Labour Court. In respect of the 2nd Labour Court's decision in calculating the amount the employee/respondent has stated that the said Court under Section 33C(2) of the ID Act has never exceeded its jurisdiction, it only calculated the amount which comes within the definition and meaning of wages. The "consequential benefit" was included in the award and if something is calculated, what was given in the award, it can never be alleged that by making the calculation the executing court has acted exceeding its jurisdiction. It has been submitted that the calculation was made of some monetary benefits included which comes within the meaning of full back wages as has been given in the award. As the dismissal has been held illegal, a legal fiction comes into play which holds that the employee was in service without any break. In view of this he cannot be deprived of Bonus.

7. Affidavits have been exchanged between the parties. They have also filed written notes of argument.
8. The definition of wages as given in the ID Act, 1947 :

(rr) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes-

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

(iii) any travelling concession;

[(iv) any commission payable on the promotion of sales or business or both;

but does not include-

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service;

9. After the award was passed the employee filed application under Section 33C(2).

Section 33C(2) of the ID Act 1947 is as follows:

(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.

- 10.** From the reading of definition of wages and from the reading of power of the Court under Section 33C(2) I find that there is neither any perversity nor any act beyond jurisdiction by the 2nd Labour Court while deciding the application under Section 33(C)2 of the ID Act filed by the employee.

In the award it has been stated that the employee has to be given full back wages as its dismissal from service was illegal and the back wages is to be paid together with all consequential benefits. Within the meaning of the wages as defined in the said Act of 1947 it is clear that dearness allowance and medical allowance and other remuneration capable of being expressed in terms of money are covered as those are capable of being calculated in money value. Bonus of an employee is also capable of being expressed in terms of money value and it is consequence of wages. It is to be kept in mind that “bonus” not included within the meaning of “wages” and “bonus” of an illegally dismissed employee are different things. They mean, while calculating ‘wages’ bonus would not be included but while paying

wages to an illegally dismissed employee “bonus” is to be added to the “wages” due to the legal fiction that the illegally dismissed employer was in continuous service; therefore there is no reason as to why bonus in such cases would not be added to the wages to be paid. A person who is not entitled to get wages cannot get bonus. Bonus is something paid in excess to the wages. Therefore, direction by the 2nd Labour Court for payment of bonus cannot be said as a direction beyond the jurisdiction. The 2nd Labour Court has only calculated the benefits to be given to the employee in accordance with the award. As the salary register etc. was not produced by the employee/respondent despite giving them opportunity to produce the same, presumption has been drawn by the executing court while giving effect to the already granted benefit in the award. Making calculation of the awarded amount is not an Act without jurisdiction.

- 11.** The petitioner’s submission that the benefit which was not adjudicated by the tribunal was outside the scope of the proceeding under Section 33C(2) of the ID Act is of no basis as the tribunal when awarded full back wages after setting aside the charge-sheet as a whole, shows that all claims of a illegally dismissed employee, the respondent herein, has been decided and there is no such issue which was not adjudicated. Therefore, in the proceeding under Section 33C(2) all claims capable of being computed in terms of money has been adjudicated and decided without any illegality.

In the facts and circumstances of this case the judgment cited by the petitioner in 1995 SCC (L&S) 296 (Municipal

Corporation of Delhi -versus- Ganesh Razak & Another) is not applicable.

- 12.** In respect of interest I hold that the employee/respondent was deprived of the amount of money which he is entitled to and therefore, he is also entitled to interest as consequential benefit. Calculating the interest part as 10% per annum is not an exorbitant rate at all and the same need not be interfered with. As the petitioner company has approached this Court instead of paying the amount as decided in Section 33C(2) of the ID Act I do not hold that it has made default in payment of money to the respondent.
- 13.** It has been submitted at the time of hearing that an amount of Rs 2 Lakh has already been deposited with the Registrar General of this Court by the Company (i.e. the writ petitioner) but the said amount does not cover the whole amount as has been calculated by the executing court.
- 14.** Therefore, I direct the Registrar to pay within a period of one month from date the said amount to the respondent No.1 with accrued interest thereon till the date of withdrawal of the amount from the bank and I direct the writ petitioner to pay the rest of the amount (after deducting any other amount if already paid to the respondent No.1) as has been directed in the application under Section 33C(2) with interest @ 10% per annum from the date of dismissal of the employee till the date immediately before the date of payment.
- 15.** The writ application is dismissed with a cost of Rs. 25,000/- to be paid by the petitioner to respondent/employee as I have found that for no reason at all the writ application has been filed with

the sole intention to deprive the employee from getting the dues as directed by the 2nd Labour Court.

(Abhijit Gangopadhyay, J)

Later: After passing of this judgment and order prayer has been made on behalf of the writ petitioner for stay of operation of the order which is considered and rejected.

(Abhijit Gangopadhyay, J)