Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.241 OF 2021

VISHAL GOMANTAK SHIPPING COMPANY PVT. LTD., REP. BY ITS AUT. REP., SUBRAMANY ...Petitioner

Versus

THE MORMUGAO WATER FRONT WORKERS UNION ...Respondent

Mr. A.D. Bhobe, Mr. Chirag Angle and Ms. Annelise Fernandes, *Advocates for the Petitioner.*

Mr. Gaurish Agni and Mr. T. Gawas, *Advocates for the Respondent.*

CORAM: MANISH PITALE,J.

DATED: 27th October, 2021.

ORAL ORDER:

1. By this Writ Petition, the petitioner has challenged order dated 07/06/2021 passed by the Commissioner, Labour and Employment in proceedings initiated by the respondent Workers Union under Section 33-C(1) of the Industrial Disputes Act, 1947, for recovery of the amount due from the petitioner i.e. the employer in terms of Award dated 30/11/2018, passed by the Industrial Tribunal and Labour Court in Reference No.IT/38/02. After considering the contentions raised on behalf of the rival parties, the Commissioner held that the workmen were entitled to recovery of backwages as claimed by them and a recovery certificate for Rs.3,09,64,050/- was issued, to be paid along with interest @9% till the actual date of payment.

2. The facts in brief leading up to filing of the present Writ Petition are that the Industrial Tribunal passed the aforesaid Award dated 30/11/2018, holding that the termination of service of the workers in the present case was illegal. But, it was found that due to subsequent events and the fact that the Unit in question was closed, the relief of reinstatement of service could not be granted. Instead, the Tribunal held that it would be in the interest of justice that the workers are paid compensation by directing payment of 50% of backwages, to be calculated on the basis of notifications and orders pertaining to minimum wages, that were placed on record before the Tribunal.

3. As noted above, the respondent Union initiated the aforesaid proceedings before the Commissioner. When the question of calculation of the amount due arose before the Commissioner, the workers through the Union sought to place on record documents pertaining to their last wages, to support the calculation of the amount due claimed on behalf of the workers. The Commissioner permitted the workers Union to produce such material on record. Aggrieved by the same, the petitioner filed Writ Petition No.11 of 2021, before this Court.

4. By order dated 19/04/2021, this Court disposed of the Writ Petition by observing that the Commissioner shall be sensitive to the observations made in paragraphs 32 and 33 of the Award Dated 30/11/2018, while calculating the actual amount due.

5. Thereafter, by the impugned order, the Commissioner proceeded to issue the recovery certificate for the aforesaid amount by accepting the calculations placed on record on behalf of the workmen. The Commissioner took into consideration the documents produced by the workmen pertaining to last wages drawn and other such documents. The Commissioner held that the true purport of the order dated 19/04/2021, passed by this Court in Writ Petition No.11 of 2021 was that paragraphs no.32 and 33 of the Award passed by the Tribunal could be interpreted to mean that such additional documents could be taken into consideration.

6. Mr. A.D. Bhobe, learned Counsel appearing for the petitioner submitted that the approach adopted by the Commissioner was erroneous and amounted to going beyond the Award passed by the Tribunal. The learned Counsel placed reliance on Section 33C of the Industrial Disputes Act, 1947, to contend that proceedings initiated under the said provision are in the nature of execution proceedings and if the impugned order was to be upheld, it would mean that the order passed in the execution proceedings had travelled beyond the Award passed by the Tribunal. Much emphasis was placed on paragraphs No.31 to 33 of the aforesaid Award to contend that the amounts due to workmen had to be calculated on the basis of notifications and orders specifically referred to, on behalf of the petitioner before the Tribunal when the said Award was passed. It was submitted that no other document could have been taken into consideration. It was submitted that the Commissioner had erred in observing that the petitioner had not placed on record calculation of the amounts due to the workmen, because such a calculation was indeed placed on record on behalf of the petitioner, on the basis of the interpretation placed by the petitioner on the award passed by the Tribunal. The learned Counsel placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Fabril Gasos v/s. Labour Commissioner and others** [(1997) 3 SCC 150].

7. On the other hand, Mr. G. Agni, learned Counsel appearing on behalf of the respondent – Union submitted that the impugned order was justified, for the reason that the Commissioner had taken into consideration the contents of paragraphs no.32 and 33 of the Award passed by the tribunal, which was in tune with the observations made in the order dated 19/04/2021 passed by this Court in Writ Petition No.11 of 2021. By drawing attention to paragraph 25 of the impugned order, the learned Counsel submitted that the Commissioner had passed an order balancing the concerns of both parties by holding that wherever the wages brought on record by the workmen fell short of the minimum wages, the minimum wages were taken into consideration and where they exceeded the minimum wages, benefit of the same was granted to the workmen. It was submitted that the legislation under which matters concerning labour are taken up for adjudication, the beneficial nature of such legislations is always taken into consideration and the interpretation leaning towards the workmen ought to be applied. It was further submitted that merely because appropriate material could not be placed on record before the Tribunal when the Award was passed, it cannot preclude the workmen from placing on record appropriate documents or calculation of the quantum of backwages payable to the workmen in terms of the Award passed by the Tribunal. The learned Counsel placed reliance on the judgment of this Court in the case of **Canara Bank Staff Union and Ors. v/s. Canara Bank and Anr.** [2005 II CLR 374].

8. Heard learned Counsel for the rival parties and perused the material on record. The rival contentions will have to be considered on the basis of interpretation of paragraphs no.32 and 33 of the Award passed by the Tribunal. The relevant portion of the Award reads as follows:

> *31. The question therefore is what reliefs the Party I/workmen are entitled to, once it is held that the refusal/termination is illegal, whether they are entitled for re-instatement with full back wages and continuity in service with consequential benefits attached to the post or adequate monetary compensation in lieu of reinstatement and back wages.*
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> *32. Needless to mention, the Court may substitute re-instatement by compensation onjustifiable grounds viz. where the Industry is closed or where the employee has superannuated or going to retire shortly and no period of service is left to his credit or where workman has been rendered incapacitated to discharge the duties and is not fit to be reinstated or when he has lost confidence of the management to discharge duties. The Party I have proved*

that the refusal of their services were illegal and without following the principles of natural justice. The employer has terminated the services of Party I w.e.f. 17.1.2002 for Part A workers and 18.1.2002 for Part B workers. The workmen have however not pleaded as well as deposed that they were unemployed during the said period. There is also no dispute that some of the workmen have expired and some have already crossed the date of superannuation. There is also nothing on record that the workmen were permanent workmen. The appointment letters have not been produced on record. There is also no evidence that Party II is still functioning and is carrying on business at Goa. They are therefore not entitled for reinstatement in service.

33. The Party I have also not produced on record the last drawn salaries of any of the workmen. The Notifications of minimum wages relied upon by Party II varies from Rs.85/- to Rs. 423 from the year 1.10.2000 till date for skilled workers. and Rs. 60/- to Rs.310/- from the year 1.10.2000 till date for unskilled workers. The above orders of office of the Commissioner, Labour and Employment have revised the rates of VDA on the basis of average Consumer Price Index number for various categories of employees in the Scheduled Employment. There is no dispute that no compensation has been paid to the Party I workmen and that they are entitled for atleast minimum wages and other benefits as per the said Notifications and Orders. The workers from Part A from Sr. No. 1 to 8 and 12 to 14 were *skilled workers and the others were unskilled workers. The workers from Part B from Sr. No. 1 to 8, 10 to 13 and 30 were skilled workers and others were unskilled workers. The workmen however cannot claim entire back wages from its employer as of right as they have to plead and prove with the aid of evidence that after his refusal from service, they were not gainfully employed anywhere and had no earning to maintain themselves and their families, which they have failed to prove and therefore the workmen would not get back wages in its entirety. It would therefore be just and proper and in the interest of justice to award the workers of Part A and Part B of the schedule, 50% of the total back wages along with other consequential benefits like in the case of* ***Rajasthan State Road Transport Corporation****, supra. It is therefore ends of justice would be met, if the Party I workmen are paid 50% of total back wages along with other consequential benefits to be calculated on the basis of above Notifications and Orders, which would be just, proper and equitable in the facts and circumstances of the case. Hence, the above issues are answered accordingly."*

9. As noted above, the petitioner had approached this Court by filing Writ Petition No.11 of 2021 to challenge the approach adopted by the Commissioner in taking into consideration documents pertaining to wages sought to be placed on record on behalf of the workmen. The said Writ Petition was disposed of by observing as follows:

> *"4. Of course at this stage, this court is not required to go into the entitlement of the respondent to the wages particularly by looking into the calculations. However, it would be in the interest of both the parties to observe that while dealing with the claim of the respondent for backwages, the Commissioner shall also be sensitive to the observations made in para 32 and 33 made in the aforesaid award delivered on 30.11.2018."*

10. A perusal of the impugned order would show that the Commissioner has proceeded on the basis that when this Court directed that the observations made in paragraphs No.32 and 33 of the Award passed by the Tribunal would have to be taken into consideration, it amounted to granting liberty to the Commissioner to not only look at the Notifications and orders pertaining to minimum wages specifically referred to in paragraph 33 of the Award of the Tribunal, but the documents sought to be placed on record by the workmen could also be taken into consideration. The question that arises for consideration is, as to whether the aforesaid approach adopted by the Commissioner was justified and whether it was in tune with the jurisdiction exercised by the Commissioner under Section 33-C(2) of the aforesaid Act.

11. In the case **Fabril Gasos v/s. Labour Commissioner and others** (supra), the Hon'ble Supreme Court in paragraph 19 has held that Section 33-C of the aforesaid Act is in the nature of execution proceedings designed to recover the dues of workmen. Thereafter, the Hon'ble Supreme Court has adverted to the distinction between Section 33-C(1) and 33-C(2) of the aforesaid Act. Therefore, there cannot be any quarrel with the proposition that the proceedings initiated by the respondent – Union before the Commissioner in the present case under Section 33-C of the aforesaid Act were in the nature of execution proceedings. Therefore, the further question that would arise for consideration is, as to whether the approach adopted by the Commissioner would amount to going beyond the Award passed by the Tribunal, of which execution was sought on behalf of the respondent – Union.

12. A perusal of the above quoted paragraphs of the Award would show that in paragraph 32, the Tribunal found that although the termination of services of the workmen was unsustainable, the relief of reinstatement could not be granted. Instead, the Tribunal found that the workmen were entitled to payment of compensation, which was 50% of the total backwages along with other consequential benefits payable to the workmen. In paragraph 33 of the Award, the Tribunal categorically observed that the workmen had failed to produce on record the last drawn salary of any of the workmen. Thereafter, specific reference was made to the notifications of minimum wages and orders that were relied upon by the petitioner. A reference was made to the quantum of minimum wages during the relevant period. Thereafter, the Tribunal specifically observed as follows:

> *“It is therefore ends of justice would be met, if the Party I workmen are paid 50% of total back wages along with other consequential benefits to be calculated on the basis of above Notifications and Orders, which would be just, proper and equitable in the facts and circumstances of the case.”*

13. The above quoted portion of the Award of the Tribunal clearly shows that as per the Award, the workmen stood entitled to payment of 50% of total backwages along with consequential benefits to be specifically calculated on the basis of the notifications and orders pertaining to minimum wages placed on record on behalf of the petitioner. It is crucial that the Tribunal observed that this would be just, proper and equitable in the facts and circumstances of the case. It becomes clear that the arithmetical calculation of the quantum of compensation amounting to 50% of backwages was to be calculated specifically on the basis of the aforesaid notifications and orders mentioned in paragraph 33 of the Award of the Tribunal. Therefore, it cannot lie in the mouth of the respondent – Union to claim that it was entitled to place on record further documents in the proceedings before the Commissioner to indicate the last wages drawn by the workmen, to be made the basis of calculation of the amount payable to the workmen. This would amount to the Commissioner going beyond the scope of the Award, which was sought to be executed on behalf of the respondent–Union under Section 33-C(2) of the aforesaid Act.

14. The Commissioner committed a grave error in interpreting the order dated 19/04/2021 passed by this Court in Writ Petition No.11 of 2021, to hold that being sensitive to the contents of paragraphs 32 and 33 of the Award of the Tribunal, as directed by this Court, would mean that the Commissioner was free to interpret and same and permit the respondent–Union to place on record further material to calculate the amounts due to the workmen. This Court is of the opinion that the approach adopted by the Commissioner shows improper exercise of jurisdiction under Section 33-C(2) of the aforesaid Act.

15. The judgment in the case of **Canara Bank Staff Union and Ors. v/s. Canara Bank and Anr.** (supra) on which the learned Counsel for the respondent has placed much reliance cannot be of assistance to the respondent. A perusal of the said judgment would show that the Award passed by the Tribunal in the said case directed the Management of the Bank to treat the employees as part-time employees on 3/4th scale from the date of their initial appointment and thereafter directed the Management to make the due payment to them by deducting the payments already made. The nature of the Award passed by the Tribunal in the said case was different from the Award passed in the present case. A perusal of the Award passed by the Tribunal in the present case, particularly paragraph 32 quoted above, would show that specific directions were given even as regards the manner in which the amounts due and payable to the workmen were to be calculated.

16. In view of the above, this Court finds that the impugned order is unsustainable. Since, the application filed before the Commissioner necessarily involves calculations, the matter will have to be remitted back to the Commissioner for decision afresh by strictly adhering to the contents of paragraphs 32 and 33 of the Award passed by the Tribunal. This would mean that the Commissioner will have to calculate the amounts payable to the workmen by taking into consideration only the notifications and orders pertaining to minimum wages placed on record before the Tribunal on behalf of the petitioner when the Award dated 30/11/2018 was passed. It is made clear that the time period on the basis of which the amounts due to the workmen will have to be calculated will be between the dates of termination of services of the workmen till the dates of superannuation of the workmen or the date of the Award, whichever is earlier.

17. Writ Petition is disposed of in above terms.

MANISH PITALE, J.