

11 24.03.2022
 RP Ct. No. 16
 AN

FMA 260 of 2022
 With
 IA No. CAN 1 of 2022

Sri Mahendra Mishra
 vs.
 M/s. Gluconate Health Limited & Ors.

Mr. Ranjit Kumar Jaiswal
 Mr. Mrinal Kanti Kundu
 Mr. Nandalal Pradhan

... for the appellant

Mr. Jayanta Dasgupta
 Mr. Balaram Patra
 Mr. Shib Shankar Roy

... for respondent no.1

Mr. Susovan Sengupta
 Mr. Manas Kumar Sandhu

... for State

Heard the learned Counsel for the parties.

This intra-court appeal is directed against an order dated 4th October, 2021 passed in WPA 13798 (W) of 2021 filed by the appellant/workman. The appellant/workman challenged the order dated 31st October, 2017 passed by the Labour Court, Calcutta in Case No. Comp 13 of 2010 filed under Section 33C(2) of the Industrial Disputes Act, 1947. The Labour Court has dismissed the said application on the ground that it cannot decide the entitlement of the workman and only after the entitlement is adjudicated and recognized and for the purpose of implementation or enforcement thereof, if it requires interpretation that interpretation can be treated as incidental to the Labour Court's power under

Section 33C(2) of the Act like that of executing Court's power to interpret the decree for the purpose of its execution.

The learned Single Judge dismissed the writ petition by the impugned order after noting the order passed in the earlier round of litigation at the instance of the appellant/workman. So far as the legal position is concerned, we approve the finding of the Labour Court that the Labour Court has no jurisdiction to first decide the workman's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under 33C(2) of the Act. Therefore, it has to be seen as to whether the workman's entitlement had been decided in any earlier proceeding. The workman was transferred from the respondent's head office to the factory and this order of transfer dated 9th June, 1994 was put to challenge by filing a writ petition, being WP 694 of 1997. The learned writ Court by order dated 8th July, 1997 did not interfere with the order of transfer but disposed of the writ petition with certain observations. At this juncture the following paragraphs of the order would be relevant.

“However, the petitioner in terms of the impugned order of transfer would be entitled to all the existing benefits as he was enjoying the date of the impugned order of transfer and respondent are directed to ensure that the same are provided to him.”

The appellant/workman, alleging that the respondent/workman has willfully disobeyed the order and direction issued by the Court, filed contempt petition being CC 139 of 1997. In the said contempt petition, the learned writ Court went into the question as to whether the appellant/workman was entitled to such benefit as claimed by him. After taking note of the fact, the learned Court by order dated 27.03.1998 dismissed the contempt application. The following findings rendered by the Court would be of relevance.

“The benefits as claimed by the petitioner has been out in his letter dated 10th September, 1997 being Annexure to the contempt application.

The said benefits appear to be available to employees who are posted in the Head Office in general and are not benefits, which are personal to the petitioner. Since the petitioner has been transferred to the factory, the said benefits which are not extended to all employees posted in the factory, in my opinion, cannot be made available to the petitioner in terms of the order dated 8th July, 1997. The intention of the Court was that the petitioner should not be deprived of any benefits which were personal to him on account of the transfer.”

Thus, it could be seen that the Court had gone into the aspect as to whether the petitioner would be entitled to certain benefits consequent upon his transfer from the head office to the factory. The Court noted that the benefits available to the employees, who are posted in the head office, are not benefits which are personal to the petitioner and the petitioner has been transferred to the factory and the benefits are not extended to all employees posted in the factory and, therefore, the Court proceeded to clarify its observations made in the writ petition by stating that such benefit cannot be made available to the appellant/workman in terms of the order dated 8.7.1997 as the intention of the Court was that the appellant should not be deprived of any benefits which were personal to him on account of transfer. After having suffered such an order before this Court the appellant moved before the Labour Court by filing an application under Section 33C(2) of the Act. As pointed earlier the Labour Court has rightly understood the legal position, scope and jurisdiction of the Court under Section 33C(2) of the Act. The Labour Court has rightly taken note of the order passed by this Court in the contempt petition and denied the relief.

In such circumstances, we find that there is no error in the order passed by the Labour Court nor by the learned Writ Court in refusing to entertain a challenge to the order passed by the Labour Court.

For the above reasons, the appeal and the connected

application fail and are dismissed.

Urgent Photostat certified copy of this order, if applied for, be delivered to the learned Advocates for the parties, upon compliance of all formalities.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)