24-07-2024
ct no. 13
sl. no. 61
pk

F.M.A. No. 432 of 2024

Agent/CE (E&M), Sodepur/Nemeatpur, Central Workshop, Eastern Coalfields Limited
-Versus-
Dilip Kumar Viswakarma and others

Mr. Soumya Majumdar,
Mr. Syed Nurul Arefin,
Mr. Rahul Singh
...for the appellant

1. This appeal is directed against judgement and order dated 10th October, 2023 passed by a Single Bench in WPA 7404 of 2019.

2. The Appellant ECL is aggrieved by the portion of the order which has directed payment of interest @ 12 per cent on the claim of dues of the petitioner from the date of filing of the application under Section 33C (2) of the Industrial Disputes Act, 1947, till the date of actual payment.

3. Mr. Soumya Majumdar, learned advocate for the appellant would argue that the workman had not prayed for any interest before the Labour Court under Section 33C(2) of the Act. Hence the Labour Court did not grant any such interest. According to Mr. Majumdar, a Writ Court under Article 226, while considering grant of a writ of

certiorari, cannot travel outside the scope of the application of the workman or even the decision of the Tribunal under Section 33C(2) of the said Act. Therefore, according to Mr. Majumdar, learned Single Bench has committed error in law in awarding interest from December, 1998 (date of filing of the application under Section 33C(2) of the Act of 1947) till the actual date of payment.

4. The list of dates set out to the Memorandum of Appeal by the ECL, to say the least is inadequate, incomplete and could also be interpreted as an attempt to suppress facts. The conduct of the ECL in filing of Memo of Appeal in such a slipshod manner must not only be deprecated but could also be viewed with some suspicion.

5. Be that as it may, this Court has ascertained the facts and dates from Learned Advocate for the Appellant.

6. It appears from the facts, that the workman was alleged to have committed misconduct, and disciplinary proceedings were instituted under the Standing Orders concerned. The workman was dismissed from service by the ECL after the enquiry.

7. The employer sought permission of the Authorities under Section 33(2)(b) of the 1947 Act to implement the order of dismissal which was rejected by the Tribunal, vide the order dated 10th September, 1997.

8. The workman was reinstated on 22nd August, 1998 and started to receive wages. However for the period from 6th September, 1993 till 22nd August, 1998 (the period of dismissal to reinstatement) the employer did not pay the workman any sum of money.

9. Sometime in December, 1998, the workman thereupon applied before the Labour Court for computation of his dues for the said period under Section 33C(2) of the Act of 1947. The said proceedings culminated in an order dated 23rd November, 2016 where the ECL was directed to make payment of full back wages. The ECL paid the said back wages to the workman on 18.04.2017.

10. It is clear from the above that the workman was deprived of any income whatsoever from 6th September, 1993 till 22nd August, 1998. The plight of the workman for said five years without any source of income whatsoever is anybody's guess.

11. Section 33 of the Act of 1947 needs to be considered at this stage.

> *[33C. Recovery of money due from an employer.—(1) Where any money is due to a workman from an employer <u>under a settlement or an award</u> or under the provisions of 6 [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 <u>an arrear of land revenue:</u>*

12. In the case of **Chief Mining Engineer, East India Coal Co. Ltd. v. Rameshwar**, reported in **1967 SCC OnLine SC 132**, the Supreme Court formulated the following propositions as regards the Scope and purport of Section 33C:-

> *(1) The legislative history indicates that the legislature, after providing broadly for the investigation and settlement of disputes on the basis of collective bargaining, recognised the need of individual workmen*

of a speedy remedy to enforce their existing individual rights and therefore inserted Section 33-A in 1950 and Section 33-C in 1956. These two sections illustrate cases in which individual workmen can enforce their rights without having to take recourse to Section 10(1) and without having to depend on their union to espouse their case.

(2) In view of this history two considerations are relevant while construing the scope of Section 33-C. Where industrial disputes arise between workmen acting collectively and their employers such disputes must be adjudicated upon in the manner prescribed by the Act, as for instance under Section 10(1). But having regard to the legislative policy to provide a speedy remedy to individual workmen for enforcing their existing rights it would not be reasonable to exclude their existing rights sought to be implemented by individual workmen. Therefore though in determining the scope of Section 33-C care should be taken not to exclude cases which legitimately fall within its purview, cases which fall, for instance under Section 10(1), cannot be brought under Section 33-C;

*(3) Section 33-C which is in terms similar to those in Section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950 is a provision in the nature of an **executing provision;***

(4) Section 33-C(1) applies to cases where money is due to a workman under an award or settlement or under Chapter VA of the Act already calculated and ascertained and therefore there is no dispute about its computation. But sub-section 2 applies both to non-monetary as well as monetary benefits. In the case of monetary benefit it applies where such benefit though due is not calculated and there is a dispute about its calculation;

(5) Section 33-C(2) takes within its purview cases of workmen who claim that the benefit to which they are entitled should be computed in terms of money even though the right to the benefit on which their claim is based is disputed by their employers. It is open to the Labour Court to interpret the award or settlement on which the workmen's right rests.

(6) The fact that the words of limitation used in Section 20(2) of the Industrial Disputes (Appellate Tribunal) Act, 1950 are

omitted in Section 33-C(2) shows that the scope of Section 33-C(2) is wider than that of Section 33-C(1). Therefore, whereas sub-section 1 is confined to claims arising under an award or settlement or Chapter VA, claims which can be entertained under sub-section are not so confined to those under an award, settlement or Chapter VA.

(7) Though the court did not indicate which cases other than those under sub-section 1 would fall under sub-section 2, it pointed out illustrative cases which would not fall under sub-section 2 viz. cases which would appropriately be adjudicated under Section 10(1) or claims which have already been the subject-matter of settlement to which Sections 18 and 19 would apply.

(8) <u>Since proceedings under Section 33-C(2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the benefit claimed by a workman is in such cases in the position of an executing court, the Labour Court like the executing court in execution proceedings governed by the Code of Civil Procedure, is competent under Section 33-C(2) to interpret the award or settlement where the benefit is claimed under such award or settlement and it would be open to it to consider the plea of nullity where the award is made without jurisdiction. (Emphasis applied)</u>

13. The Labour Court may be debarred from considering a prayer for interest for which reason the workman did not pray for interest before it.

14. What is however important to note is that such sum due from the employer is to be recovered as *'arrears of revenue'*. Therefore, the enforcement of the due under Section 33C is a deemed late payment, which, however, must have been

paid earlier in time. Therefore, if the employer is found to have further unwarrantedly delayed such deemed late payment, interest on the sum, enforceable under Section 33C by the Labour Court, can definitely be imposed by Writ Court.

15. In this regard, the decision of Justice S. B. Sinha of the Patna High Court in **Central Coalfields Limited v. Presiding Officer,** reported in **1991 SCC OnLine Pat 374** would be relevant, portions whereof are set out hereunder:-

> *4. In the year 1918, the petitioner filed an application before respondent no. 1 purported to be under Section 33C (2) of the Industrial Disputes Act claiming interest from the petitioners for non-payment of his retinal benefits and other dues amounting to Rs. 1,89,705/- datails whereof have been mentioned in Annexure-A thereto.*
>
> *5. By reason of the impugned order, as indicated hereinbefore, the respondent no. 1 has held that respondent no. 2 is entitled to a sum of Rs. 1,53,287/- by way of interest.*
>
> *……………………*
>
> *22. The question, therefore, which arises for consideration in this case is as to whether a claim of interest can be said to be an existing legal right or not which can be enforced in a proceeding under section 33C(2) of the Industrial Disputes Act.*
>
> *23. It is true that in a given case, the High Court or the Supreme Court while considering an application under Articles 226 and 227 of the Constitution of India or Articles 32 and 136 thereof arising out of an order of reinstatement and back wages*

may allow interest on the back wages and other benefits payable to the workmen if it be held that the employer has without any just cause withheld the lawful dues of the workmen.

31. Thus, if any body has any legal right under the terms and conditions of service or under the relevant statutory Rules to obtain interest on the amount due, no legal right exists in him to enforce so far as his claim of interest is concerned in a proceeding under section 33C(2) of the Industrial Disputes Act.

32. In The Management of Nathan's Press v. K. Krishnan and othars reported in 1988 LAB I.C. 700, a learned Single Judge of the Madras High Court has clearly held that where the award reinstated the workman with full back wages, the Labour Court under Section 33C(2) while making the computation has got only role of an executing court and it cannot go beyond the award unless the question is incidental to working the reliefs on the basis of the award.

35. Further in this case, although the petitioner filed an application under Articles 226 and 227 of the Constitution of India before this Court challenging the order of the Labour Court under Section 26(2) of the Bihar Shops & Establishment Act, it did not pray for any stay of the award. It was, thus, open to respondent no. 2 to file a suitable application in this Court for a direction upon the employer to pay the amount or in the alternative he could have taken steps for executing the said order. It is not the case of the respondent no. 2 that any prayer was made for grant of interest either before this Court in the aforementioned C.W.J.C. No. 326 of 1979 (R) or in the Special Leave Petition filed before the Supreme Court of India.

36. However, the question which now arises is as to whether it would be equitable to set aside the order of the respondent no. 1 in its entirety or not.

39. This Court in exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India can refuse to interfere with the order or a part thereof passed by an authority *subordinate to it if it finds that substantial justice has been done to the parties. In this view of the matter, in my opinion, the petitioner should be held to be liable to at least pay interest on the amount of pension and gratuity to the respondent no. 2 from 1st October, 1975, that is, after the expiry of two months @ 12% per annum.*

16. It is clear from the above that the Labour Court under Section 33C is powerless to grant interest. The powers of a writ court under Article 226 are however much wider and in a given and befitting case can award interest and compensation to ensure Rights under Articles 14, 16 and 21 of the Constitution to a workman.

17. While dealing with the argument that the workman has not prayed for interest by the findings of the Learned single bench must be noticed. The relevant portions are set out hereunder:-

"12. In this case, I find that the petitioner at the relevant point of time was employed with the respondent company, when on the basis of a charge sheet issued against him, he was dismissed from service. Although, the respondent company had approached the concerned Labour Court/Tribunal under Section 33(2)(b) of the said Act, for giving effect to the order of dismissal, the application filed by the respondent company did not succeed and the learned Tribunal was, inter alia, pleased to reject such application by an order dated 10th

September, 1997. Notwithstanding dismissal of such application, the petitioner was not permitted to resume his duties.

13. In the interregnum, the respondent company had unsuccessfully challenged the order of rejection by filing a writ petition before this Hon'ble Court. Since, the challenge to the said order was turned down by a Co-ordinate Bench of this Hon'ble Court in WP No. 1809 of 1998 by its order dated 23rd March, 1998, in intra Court appeal was filed by the respondent company, challenging such order as well.

14. Records reveal that the Division Bench of this Hon'ble Court refused to interfere and had dismissed the said appeal in limine, by its order dated 30th July, 1998. Notwithstanding the dismissal of the such appeal the petitioner was not permitted to join nor was he disbursed his pay. The petitioner had thereafter filed a contempt application, which was registered as CPAN No. 1025 of 1998. It was only after the service of the contempt application that the petitioner was permitted to join his duties. It appears that by an order dated 4th September, 1998 the Co-ordinate Bench of this Hon'ble Court had granted liberty to the petitioner to apply in accordance with law for realisation of his dues. The petitioner immediately thereafter, had filed an application under Section 33©(2) of the said Act, inter alia, praying for computation of the amount payable to him. Such application was filed on 22nd December, 1998 and was registered as computation case no. 25 of 1998. After contested hearing, by an award dated 23rd November, 2016, which was published on 2nd January, 2017 that the claim of the petitioner could be quantified. ***It appears that that the matter was pending before the Tribunal for more than a decade that is for nearly 18 years. Admittedly, the petitioner had been wronged****. The respondent company had wrongfully not only refused employment to the petitioner but also held back his rightful entitlements, in the form of back wages. The respondent company cannot evade responsibility for the same and cannot avoid payment of compensation to the petitioner, inter alia, by contending that the petitioner having not prayed for interest is not entitled to the same. While filing the application in the year 1998, little did the petitioner know that on account of resistance put forward by the respondent company,*

> *determination of a simple computation case would take nearly two decades to conclude.*
>
> *15, It has been established that the initiation of proceedings to seek eviction of the petitioner from his quarter and to dismissed him was to victimize the petitioner. Despite award of the tribunal the respondent company did not permit him to rejoin duty. By its conduct it wrongfully refused employment to the petitioner. The respondent company did not stop there, despite having unsuccessfully challenged the award passed by the tribunal, before two judicial forums, did not permit the petitioner to rejoin service. It waited and watched the next move of the petitioner and ultimately on the threat of contempt despite permitting the petitioner to rejoin his duties, had held back the back wages without any justifiable reason. Having regard to the aforesaid it would be iniquitous not to compensated the petitioner. The respondent company having not adhered t the rule of law cannot disentitle the petitioner's claim towards compensation, for not having claimed interest. The judgement Babulal Rana (supra) relied on by the respondents is not in relation to payment of back wages. The same is otherwise factually distinguishable. The Court exercising jurisdiction under Article 226 of the Constitution has the power and competence to remedy the wrong. It must be noted that there cannot be a wrong without a remedy. In this case the petitioner has been wronged." (Emphasis added)*

18. It is clear from the above that the ECL was rather adamant in its attitude towards the workman concerned. The workman, even after reinstatement, must have struggled to repay debts for borrowing sums of money for survival for a period of five years without employment or any source of income. While there is no clear evidence to this effect, this Court under Article 226 and its appellate

jurisdiction can definitely come to a logical inference in this regard.

19. The learned Single Judge has awarded the interest to the petitioner/respondent, compensation in the form interest, for the wrong caused to him by the Employer. The employer ECL is an authority under Article 12 of the Constitution and is also a designated "Navaratna Company". It needs to act as a model employer, which in the present case, it has not done. The writ court does have jurisdiction to award compensation for the wrong caused by the State. Therefore, interest in this regard is in the form of compensation, awarded not merely because of delay, but to heal the wounds inflicted on the worker.

20. In **Central Council for Research in Ayurvedic Sciences v. Bikartan Das, 2023 SCC OnLine SC 996** has explained to the law as regards the issuance of writ of certiorari in the following manner:-

Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.

51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under

> *Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.*
>
> *52. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this* ***flexible*** *power to pass such orders as public interest dictates & equity projects.* ***The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the the High Court a normal court of appeal which it is not.*** [Emphasis Added]

21. The submission of Mr. Majumder is premised on the normal rule that a writ of Certiorari quashes only an order, and the said writ cannot be issued to remedy any wrong obtaining due to such order. The submission cannot be accepted applying the second part of the **Bikartan Das decision (Supra)** which

describes the writ of certiorari as a flexible one and requires the High Court not to upset a view that does substantial justice. The writ court is not an ordinary court of appeal.

22. A conjoint reading of the two-fold dicta in the aforesaid read with bar upon the Labour Court to grant an interest in the exercise of Section 33C, this court is of view that the learned Single Judge has done substantial justice, and thus this court, therefore will not interfere into an order doing substantial justice.

23. Therefore, the direction for payment of interest by the Single Bench must be considered in the light of the expression damages and fair and due compensation to a wronged and deprived workman. Undoubtedly in the facts of the case as narrated by the learned Single Bench and found by this Court, the workman has been treated unfairly if not inhumanly by the ECL.

24. For the reasons stated hereinabove, this Court finds no reason to interfere with the impugned judgement dated 10th October, 2023 passed by a Single Bench.

25. Accordingly, the appeal is dismissed.

26. In view of dismissal of the appeal, connected application CAN 1 of 2024 is also dismissed.

27. As for the deliberate and wilful negligence on the part of the ECL in filing a Memorandum of Appeal without an effective, comprehensive and proper list of dates, this Court issues a stern warning against such conduct in future.

28. There shall be not order as to costs.

29. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)