

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.15687 OF 2022

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M/s. Zoom Communications Ltd. ... Petitioner
V/s.
Sharad Dipchand Patil ... Respondent

Mr. Shailesh S. Pathak a/w T. R. Yadav for the
Petitioner.

Mr. Shailesh More for the Respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 9, 2024

P.C.:

1. The employer is challenging an order passed by Labour Court directing him to pay an amount of Rs.4,99,288/- towards retrenchment compensation, leave encashment and bonus.
2. The respondent filed an application before the Labour Court contending that he was employee with petitioner Company as Logistic Coordinator from 15th December 2000.
3. According to the petitioner, he was appointed in the year 2000, however, appointment letter issued to him was dated 30th June 2007. Since, respondent's services were terminated with effect from 9th July 2015, he filed proceedings for reference before the Labour Court claiming reinstatement. The Labour Court by

award dated 16th March 2019, held that respondent was not entitled to reinstatement however, it held that the respondent was entitled to retrenchment compensation along with other legal dues.

4. Based on the entitlement recognized by award dated 16th March 2019, the respondent filed an application under Section 33(C)(2) of the Industrial Disputes Act, 1947 [33 (C)(2) of the I.D. Act] claiming, Rs.2,24,308/- towards retrenchment compensation; Rs, 2,49,480/- towards encashment of 154 days of privilege dues; Rs 20,000/- towards unpaid bonus for the year 2014-2015 at 8.33%; Rs.5,500/- towards unpaid bonus for the year 2015-2016 upto 9th July 8.33%. The respondent, therefore, claimed Rs.4,99,288/- towards total dues.

5. The petitioner appeared in the said proceedings and filed its written statement. He raised an issue that respondent was not workman and, therefore, is not entitled to claim any relief as he was performing managerial work.

6. The Labour Court based on oral evidence and documents produced by respondent and petitioner company directed petitioner to pay an amount of Rs.4,99,288/- along with 10% with effect from 10th July 2015 till its realization.

7. The petitioner has, therefore, filed present petition.

8. Learned counsel for the petitioner relying on judgments of Apex Court in the case **Management of M/s. Sonapat Co-operative Sugar Mills Ltd. Vs. Ajit Singh** (2005) II CLR 66 contended that the dues as to whether respondent was working was not required to be

adjudicated by Labour Court in a proceedings under Section 33 (C)(2) of the I.D. Act. He further contended that the averments in the original complaint indicated that the respondent was appointed in 2007 however, the Labour Court while passing impugned order has considered respondents appointment to be of 2000. He submitted that the salary of respondent was more than Rs.20,000/-, hence he was not entitled to the bonus.

9. Per contra, learned counsel for the respondent invited my attention to the documents produced before the Court indicating TDS certificates of the year 2003 and 2005, which deducted tax at source by the petitioner company which supports respondent's plea that he was in service from 2000. He submitted that the recital in the complaint has been explained by the respondent in a proceedings under Section 33 (C)(2) of the I.D. Act by producing evidence on record to show that the respondent was employed with the petitioner from 2000. He submitted that the proceedings under Section 33 (C)(2) of the I.D. Act being executory in nature. The adjudication of question of fact relating to entitlement of claim cannot be gone into which would amount to questioning legality of award passed by the Labour Court. He, therefore, submitted that the petition is liable to be dismissed.

10. Having considered both sides, in my opinion, the statement of dues claimed by the petitioner falls in three independent categories.

- 1) Two items are in relation to retrenchment compensation;

- 2) Eacashment of privileged leave:
- 3) Third category is in relation to payment of bonus.

11. In relation to claim regarding payment of bonus, the material on record indicates that the respondent was getting salary of more than Rs.20,000/- at the relevant time. Therefore, provisions of the Payment of Bonus Act, 1965 were inapplicable to the respondent. With the result, respondent was not entitled to the dues of payment of bonus. However, in so far as the respondent's claim for retrenchment compensation and privileged leave are concerned, the contention raised on behalf of petitioner that respondent not being workman, he is not entitled to said reliefs needs to be adjudicated, considering the scope of Section 33 (C)(2) of the I.D. Act.

12. It is now well settled that proceedings under Section 33 (C) (2) of the I.D. Act are in the nature of execution. The entitlement of person to get relief is adjudicated by the Competent Court in original proceedings. The Labour Court while exercising power under Section 33 (C)(2) of the I.D. Act is not entitled to travel beyond the terms of award of Labour Court. The question as to whether, a person is working or not is a question of fact. Such issue needs to be decided by the Court deciding entitlement of a person approaching the Labour Court. Once the Labour Court based on material on record, records a finding that complainant is entitled to claim legal dues, the Executing Court in exercise of power under Section 33 (C)(2) of the I.D. Act is not entitled to adjudicate as to whether such person is workman or not. Whether, a person is a

workman or not is generally an adjudicatory fact which requires evidence to be lead and based on such finding the Labour Court in original proceedings adjudicates entitlement of such person for relief.

13. In the facts of the present case, the petitioner filed its written statement. However failed to lead oral evidence. The document produced by the respondent before the Labour Court in a proceedings under Section 33 (C)(2) of the I.D. Act to justify its claim of service from 2000, were statutory documents issued under the provisions of the Income Tax Act, 1961 which carry rebuttable presumption. The TDS certificates for the year 2003 and 2005 produced by the respondent indicates payment of salary of Rs.4,500/- paid to the respondent each month. The certificate indicates name of the petitioner as a person deducting tax and the name of the petitioner's employee as a person responsible for deducting the tax. It also contains name of respondent as a person to whom payment is made. Therefore, in my opinion, the statement in the complaint filed by respondent contending his appointment is of the year 2007, is explained by producing documents having statutory flavour carrying rebuttable presumption, the presumption which petitioner failed to rebut by adducing oral evidence to that effect. Therefore, in my opinion the finding recorded by the Labour Court that the Respondent had worked with petitioner from the year 2000 and not from the year 2007 is based on material on record.

14. Therefore, the grant of relief directing petitioner to pay retrenchment compensation and privileged leave need not be

interfered with.

15. The judgment in the case of **Management of M/s. Sonapat Co-operative Sugar Mills Ltd.** (supra) arises out of a complaint involving dispute of employee to be workman or not. In proceedings of such nature, the Apex Court held that it was obligatory for the Court to decide the issue of workman and in absence of such decision, principle of res judicata has not been applicable. No legal proposition of law is laid down by the Apex Court in the said judgment that the Labour Court while exercising power under Section 33 (C)(2) of the I.D. Act is entitled to adjudicate issue as to whether complainant is workman or not.

16. Moreover, this Court while exercising extraordinary constitutional jurisdiction in a petition, seeking writ of certiorari is entitled to consider as to whether the order impugned is suffers from apparent error on the face of record or exercise power by the Sub-ordinate Court or the Tribunal is in excess of jurisdiction conferred on them. It is well settled that the power of this Court under Article 227 of the Constitution of India need to be exercised to keep Sub-ordinate Courts or Tribunals within their bounds and such power need not be invoked merely because it is lawful to do so. Therefore, in absence of legal infirmity or error apparent on the face of record, the impugned order to the extent of grant of retrenchment compensation and privileged leave need not be interfered with. Hence, following order:

- a) The judgment and award dated 11th May 2022, to the extent, it directs unpaid bonus for the year 2014-2015

and 2015-2016 indicated in Annexure-A to the statement of claim in application (IDA) No.162 of 2019, is quashed and set aside.

b) The impugned judgment and award to the extent of payment of retrenchment compensation, and encashment of 154 days of privileged Leave at Sr. Nos.1 and 2 of Annexure-A of the application is confirmed.

17. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)