IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.6128/2017

Sub Area Manager, WCL .Vs. Sadashiv Sattidin Gupta

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. A. M. Ghare, Advocate for petitioner.
Mr. S. S. Gupta, Respondent in person.

CORAM : ANIL L. PANSARE, J.
DATE : NOVEMBER 27, 2024

On 25.09.2024, following order was passed.

"Heard.

The dispute is whether respondent was NCDC employee? According to the respondent, he was. However, he has not placed on record the appointment letter. His claim of benefit of NCDC employee is on the basis of payments made by the petitioner to him either under orders passed by the Labour Court or under the settlements arrived at by and between the parties. It appears that the petitioner had paid VDA to the respondent at the rate of 30-31 days per month for the period from 1986 to 1993. According to the petitioner, this has been done under compelling circumstances.

There are two categories of the employees. One is NCDC employees to whom VDA is payable for 30-31 days and the other is CMA employees to whom VDA is payable for 26-27 working days.

In the circumstances, counsel for the petitioner shall justify payment of VDA to the respondent for 30-31 days for the period from 1986 to 1993 or for that purpose at any time after his appointment.

Counsel for the petitioner shall take further instructions as to whether under so called compelling circumstances, the petitioner has paid to the CMA employees VDA for 30-31 days. This would, in a way, enable this Court to ascertain *whether the respondent was NCDC employee or CAM employee.*

List in the week commencing from 14.10.2024."

2] Thus, the petitioners were called upon to justify payment of Variable Dearness Allowance (VDA) to the respondent. As has been observed, there are two categories of the employees. One is National Coal Development Corporation (NCDC) employees, to whom VDA is payable for 30-31 days and the other is Coal Mines Authority (CMA) employees to whom VDA is payable for 26-27 working days.

3] Admittedly, the VDA for 30-31 days per month was paid to the respondent during the period from 1986 to 1993. The petitioners were called upon the justify the said payment, which the petitioners failed to do. So far as compelling circumstances are concerned, the counsel for the petitioners submit that trade unions were demanding payment of the VDA and accordingly the same was paid.

4] I do not find substance in the aforesaid submission. If the CMA employees were not entitled for VDA at 30-31 days per month, there arises no question of trade unions demanding such allowance and even if so demanded, there arises no question of petitioners paying the same.

5] Thus, the petitioners have, by conduct, in a way, admitted that the respondent was NCDC employee. Learned Labour Court, therefore, has rightly held that the respondent is entitled for salary (basic + DA/VDA) 30-31 days per month.

6] At this stage, the counsel for the petitioners submits that the application itself was not maintainable because the right to receive the amount was not existing and was not adjudicated by appropriate forum. In my view, and as rightly held by the Industrial Court, the right to receive VDA was existing, being part of the salary payable to the respondent. Once it is found that the respondent was NCDC employee, he will be entitled to receive VDA for 30-31 days per month. That being so, there is no question of adjudicating such a claim.

7] The counsel for the petitioner then submits that the respondent has approached Labour Court belatedly and, therefore, the alleged arrears of salary is not payable to him. The Counsel relied upon judgment of the Supreme Court in ***Rushibhai Jagdishbhai Pathak .Vs. Bhavnagar Municipal Corporation, (2022) 18 SCC 144.*** The Supreme Court underlined the position of law of limitation and doctrine of delay and laches and also taken into consideration the aspect of "continuity", "recurrence" of cause of action and "continuity wrongs" in the context of service law. It is held that in case of continuing wrongs in the cases of salary or pension, only date of raising claim in judicial forum is relevant while examining question of delay and laches or limitation. In the said case, the appellant approached the forum with delay of seven years. The Supreme Court held that the appellant will be entitled to arrears of three years before the date of filing of writ petition.

8] As against, the respondent in person has relied upon the judgment passed by the Bench of three Judges of the Hon'ble Supreme Court in ***Bombay Gas Company Ltd. Vs. Gopal Bhiva and others [AIR 1964 SC 752]***, wherein the Court, while dealing with the issue of limitation for filing application under Section 33C(2) of the Industrial Disputes Act, 1947 (for short "ID Act"), has held thus :

> *"15. It is true that in dealing with claims like bonus, industrial adjudication has generally discouraged laches and delay, but claims like bonus must be distinguished from claims made under S. 33C (2). A claim for bonus, for instance, is entertained on grounds of social justice and is not based on any statutory provision. In such a case,, it would, no doubt, be open to industrial adjudication to have regard to all the relevant considerations before awarding the claim and in doing so, if it appears that a claim for bonus was made after long lapse of time, industrial adjudication may refuse to entertain the claim, or Government may refuse to make reference in that behalf. But these considerations would be irrelevant when claims are made under S. 33C (2) where these claims are, as in the present case, based on an award and are intended merely to execute the award. In such a case, limitation cannot be introduced by industrial adjudication on academic ground of social justice. It can be introduced, if at all, by the legislature. Therefore, we think that the labour court was right in rejecting the appellant's contention that since the present claim was belated, it should not be awarded."*

9] Thus, the Supreme Court held that the legislature has not made any provision for limitation in enacting Section 33C(2) of the ID Act.

10] The question, however, is whether the respondent's claim for payment of VDA has a statutory force. The answer ought to be in affirmative inasmuch as the respondent is entitled to receive salary, which includes VDA. The claim under VDA cannot be equated with claim of bonus. The Variable Dearness Allowance is a wage adjustment mechanism that helps employees cope with inflation. This adjustment is necessary to help employees cope with inflation and is thus receivable as of right.

11] At this stage, the learned Counsel for the petitioners has relied upon the judgment of Constitution Bench of the Supreme Court in ***The Moon Mills Ltd Vs. M.R. Meher, President, Industrial Court, Bombay and Others [AIR 1967 SC 1450]***. The Court, while dealing with delay and laches in approaching writ court, held that writ of certiorari is legally a matter of sound discretion and will not be granted if there is negligence or omission on part of the applicant to assert his right as, taken in conjunction with the lapse of time and other circumstances, cause prejudice to the adverse party. This judgment will not help the petitioners firstly because the law laid down in *Bombay Gas's case* has been not considered and secondly emphasis was on entertainment of writ of certiorari in context with delay and laches to approach writ court.

12] The petitioners have then placed reliance upon yet another judgment of the Supreme Court in the case of ***Prabhakar Vs. Joint Director, Sericulture Department And Another [(2015) 15 SCC 1]***. The Court held that though no limitation is prescribed under the provisions of the ID Act for making reference under Section 10(1), yet appropriate Government may consider whether reference should be made in a case, which suffers from delay and laches. The Court further clarified that very stale claim should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanation for delay as, apart from obvious risk to industrial peace from entertainment of claims after long lapse of time, it is necessary also to take into account the unsettling effect, which it is likely to have on the employers' financial arrangement and to avoid dislocation of industry. Thus, the Supreme Court has held that there is no limitation prescribed under the provisions of the ID Act but observed that very stale claim should not be generally encouraged. Thus, there is no bar to entertain belated claim.

13] The question, however, is whether the claim made by the respondent is very stale claim. The respondent has pointed out that he had made various representations in this regard, which the Labour Court has considered in paragraph 16 of its judgment, in following terms :

> "*It appears that the applicant had repeatedly made representations to General Manager, WCL, Jaripatka for payment of VDA for 30/31 days instead of 26 days. These representations are at Exh. 39 to 42 and 45 to 47. It appears that even after the receipt of letters, the non-applicants have not taken appropriate steps and have also not responded to applicant.*"

14] Thus, the respondent had made several efforts to get his dues but the petitioners did not respond. It further appears that the petitioners did not even enter witness box nor cross-examined the respondent on merits. Thus, the case of the respondent that he was hopeful of getting VDS remains uncontroverted. In the circumstances, one cannot really say that the respondent has remained inactive throughout the period and that the claim made by the respondent is a stale claim.

15] As such, the petitioners by relying upon judgment of the Supreme Court in the case of ***Karnataka Power Corpn. Ltd. Through Its Chairman & Managing Director And Another Vs. K. Thangappan And Another [(2006) 4 SCC 322]*** contended that mere making representation to the employer cannot justify belated approach, however, in the said case, the employee was removed in the year 1979. The employee then made representation for the first time in 1997, i.e., after about 18 years. The Court further noted that though the employee therein had pleaded that he made couple of representations earlier, reference to same was not found in the representation made in the year 1997. In such background, the Supreme Court held that mere making representation will not justify belated approach. Such is not the case here. The respondent was in employment and continued up to the year 2014. During employment, he made various requests for releasing VDA, which the petitioners never denied. The respondent submits that he could not press for the claim because of fear of adverse action against him and since the petitioners did not refuse to pay the claim, he was hopeful of getting the same. He further submits that immediately after retirement in the year 2014, he approached the Labour Court and, thus, has taken steps in time. I find substance in the aforesaid submissions.

16] The petitioners have then relied upon the judgment passed by the Co-ordinate Bench of this Court in ***Deputy Engineer, Zilla Parishad (Works) and others Vs. Shantaram Ramaji and others [1996 (3) L.L.N. 684]***. The Co-ordinate Bench held that though there is no limitation for making claim under Section 33C(2), application has to be made within a reasonable time. This judgment, however did not consider the law laid down by the Supreme Court in *Bombay Gas's* case. Further, what has been held is that though the law of limitation is not applicable to the applications under Section 33C(2), the claim will be not barred by limitation but the Courts below ought to consider whether the claim was a stale claim. Thus, the emphasis is on stale claim, which is what the Supreme Court has said in *Prabhakar's* case. I have already held that the claim raised by the respondent herein was not stale claim and, therefore, the judgment will not be of any assistance to the petitioners.

17] Put all together, the Labour Court has considered all the issues in accordance with law. No interference is, therefore, called for in the impugned judgment. The petition is dismissed.

18] The petitioners shall release the payment along with interest as is permissible in terms of National Coal Wage Agreement issued by the Central Government within 12 weeks from today.

(Anil L. Pansare, J.)

Kahale