



2024:DHC:486-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 22.01.2024*+ **LPA 32/2020 CM APPL. 2074/2020 CM APPL. 25766/2020
CM APPL. 25767/2020 CM APPL. 40266/2021 CM APPL.
40336/2021 CM APPL. 32202/2022****DELHI SOCIETY FOR PREVENTION OF
CURELTY TO ANIMALS (DSPCA)**

..... Appellant

Through: Ms.Sonia A Menon and
Mr.Madhur Bhatnagar,
Advocates.

versus

JOINT LABOUR COMMISSIONER & ORS RespondentThrough: Mr.Jawahar Raja, ASC,
Ms.Aditi Saraswat and
Mr.Parth Goyal, Advocates
for R1/GNCTD.
Ms.Meghna De and
Ms.L.Gangemi, Advocates
for R2 to R8.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE TARA VITASTA GANJU****VIBHU BAKHRU, J. (Oral)**

1. The appellant has filed the present intra court appeal impugning an order dated 19.11.2019 passed by the learned Single Judge rejecting the appellant's petition [W.P.(C) No.12376/2018 captioned ***Delhi Society for Prevention of Cruelty to Animals (DSPCA) v. Joint Labour Commissioner & Ors.***] impugning a Show Cause Notice dated 12.10.2018 (hereafter '**the impugned SCN**') issued by respondent No.1 (Joint Labour Commissioner, District North,



Government of NCT of Delhi).

2. The appellant has assailed the impugned SCN on the singular ground that the proceeding initiated by respondent nos. 2 to 8 (hereafter '**the Workmen**') before respondent no.1 under Section 33C(1) of the Industrial Disputes Act, 1947 (hereafter '**the ID Act**') was not maintainable. According to the appellant, the recourse to said provision was not available in respect of any contentious issue. And, the quantum of the dues payable to the Workmen involved was disputed.

3. The Workmen had approached the Labour Court in an earlier round challenging their termination and had secured an award dated 22.12.2017. The Industrial Tribunal had held that the services of the Workmen were illegally terminated and directed the appellant to pay them 50% backwages, along with continuity of service and all other consequential benefits. Undisputedly, the award has attained finality and requires to be enforced.

4. The appellant does not dispute that, in terms of the award dated 22.12.2017, the Workmen were entitled to 50% backwages with continuity in service. However, it claims that the said amount could not be determined in the proceedings initiated under Section 33C(1) of the ID Act as the same involves a further adjudicatory process. According to the appellant, the issue as to the determination of the amount payable to the Workmen, in terms of the award dated 22.12.2017, was required to be referred to the Industrial Tribunal



under Section 33C(2) of the ID Act.

5. There is no cavil that recourse to Section 33C(1) of the ID Act is not available in a case where an adjudicatory exercise needs to be carried out to resolve contentious issues. The learned counsels have relied upon on the same decisions in support of their rival contentions: ***Fabril Gasosa & Ors. vs. Labour Commissioner & Ors.: 1997 (1) Scale 544***, and ***Canara Bank Staff Union & Ors. v. Canara Bank & Anr.: 2004 SCC OnLine Bom 1016***.

6. In ***Fabril Gasosa (supra)***, the Supreme Court had explained the difference between the scope of Section 33C(1) and 33C(2) of the ID Act. The relevant portion of the said decision is extracted as below:-

“19. Section 33-C is in the nature of execution proceedings designed to recover the dues to the workmen. Vide Sections 33-C (1) and (2), the legislature has provided a speedy remedy to the workmen to have the benefits of a settlement or award which are due to them and are capable of being computed in terms of money, be recovered through the proceedings under those sub-sections. The distinction between sub-section (1) and sub section (2) of Section 33-C lies mainly in the procedural aspect and not with any substantive rights of workmen as conferred by these two sub-sections. Sub-section (1) comes into play when on the application of a workman himself or any other person assigned by him in writing in this behalf or his assignee or heirs in case of his death, the appropriate Government is satisfied that the amounts so claimed are due and payable to that workman. On that satisfaction being arrived at, the Government can initiate action under this sub-section for recovery of the amount provided the amount is a determined one and requires no



"adjudication". The appropriate Government does not have the power to determine the amount due to any workman under sub-section (1) and that determination can only be done by the labour court under sub-section (2) or in a reference under Section 10(1) of the Act. Even after the determination is made by the labour court under sub-section (2) the amount so determined by the labour court, can be recovered through the summary and speedy procedure provided by sub-section (1). Sub-section (1) does not control or affect the ambit and operation of sub-section (2) which is wider in scope than sub-section (1). Besides the rights conferred under Section 33-C(2) exist in addition to any other mode of recovery which the workman has under the law. An analysis of the scheme of Sections 33-C(1) and 33-C(2) shows that the difference between the two sub-sections is quite obvious. While the former sub-section deals with cases where money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or V-B, sub-section (2) deals with cases where a workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money. Thus, where the amount due to the workmen, flowing from the obligations under a settlement, is predetermined and ascertained or can be arrived at by any arithmetical calculation or simpliciter verification and the only inquiry that is required to be made is whether it is due to the workmen or not, recourse to the summary proceedings under Section 33-C(1) of the Act is not only appropriate but also desirable to prevent harassment to the workmen. Sub-section (1) of Section 33-C entitles the workmen to apply to the appropriate Government for issuance of a certificate of recovery for any money due to them under an award or a settlement or under the provisions of Chapter V-A and the Government, if satisfied, that a specific sum is due to the workmen,



is obliged to issue a certificate for the recovery of the amount due. After the requisite certificate is issued by the Government to the Collector, the Collector is under a statutory duty to recover the amounts due under the certificate issued to him. The procedure is aimed at providing a speedy, cheap and summary manner of Recovery of the amount due, which the employer has wrongfully withheld. It, therefore, follows that where money due is on the basis of some amount predetermined like the VDA, the rate of which stands determined in terms of the settlement, an award or under Chapter V-A or V-B, and the period for which the arrears are claimed is also known, the case would be covered by sub-section (1) as only a calculation of the amount is required to be made.”

7. In *Canara Bank Staff Union* (*supra*), the Bombay High Court held as :-

“12...If the ratio laid down by the Apex Court is considered it would be clear that once there is an award it will be open to the authority if the amount is pre-determined or ascertained or can be arrived at by an arithmetical calculation or *simpliciter* by verification, then in such case the only enquiry to be made is, whether it is due to the workmen or not? The order of this Court on remand clearly enjoyed on the authority to determine the amount considering the facts as accepted in the award of the Industrial Tribunal. The learned authority on the one hand proceeded to hold that the application under S. 33- C(1) is not maintainable as there are disputes which can only be answered in an application under S. 33-C(2) whereas on the other hand held considering the award held that the applicants are not entitled to any other benefits except wages. From the record it is clear that the authority has recorded a finding that apart from the payment of the wages the workmen would not be entitled to any other dues in terms of award. To my



mind the order is liable to be set aside for failure to exercise jurisdiction in terms of the order of this Court and also the law laid down in the case of *Fabril Gasosa* [1997 (2) L.L.N. 55] (vide supra). If the reasons in the award are considered with the final order, the conclusion is inescapable that the action by the bank in not regularising, the workers was held not to be legal. In other words the workmen were entitled to be regularised and be regularised from the date of their first appointment in 3/4th scale. There is no dispute that from the year 1990 and thereafter the bank itself has treated them as regular employees and given them all consequential benefits to which they were entitled. For the earlier period therefore their entitlement could be verified by mere arithmetical calculations by fixing the basic in the year of regularisation and thereafter considering annual increment. In so far as the earlier period before the regularisation by the bank is concerned the workmen were in service, the records if any would be available with the bank, and in these circumstances the bank ought to have produced the records to show for which days or period they were not entitled to the monies after the workmen had filed the calculations. The contentions advanced on behalf of the respondent-management that the workmen are entitled only for the days they worked is meaningless, in the absence of disputing the correctness of the calculations done by the workmen based on the records with the management had in their possession. The dispute if at all would be from the date of initial appointment to the date of regularisation by the bank. The record if at all was with management. Before the Tribunal evidence was recorded and in Para. 27 of the award, considering the evidence of W.E. Moses the Tribunal observed that they were paid daily and they were not required to sign attendance register or muster-roll. If the management had in their possession any other documents contrary to what



was stated by Moses, it should have been the duty of the respondent-management in whose custody such records were, to place them before the authority. The only consequence of such records would be that these petitioners/workmen if they had claimed wages for a day on which they had not worked, would be deducted from the amount claimed. No such evidence was produced.

13. All seven workmen had filed independent applications. The management was aware of the calculations shown to them. Merely disputing the calculations to my mind is not sufficient to take the matter out of Section 33-(C) (1). The entire exercise by the authority was totally without jurisdiction. The petitioner no.1 Union who thereafter had filed replies on behalf of the workmen had specifically set out in one of their replies that, all that the workmen were claiming was DA, CCA, HRA and conveyance allowances which they were entitled as regular employees. This could be proved by an arithmetical calculation. The orders of the authority on that count would therefore have to be set aside.”

8. In view of the above, the only question to be addressed is whether there is a contentious dispute regarding the amounts payable to the Workmen in terms of the award dated 22.12.2017. It appears that none of the parties have any records, which are readily available, for verification of the amount as claimed by the Workmen. The appellant claims that there are no records available with the appellant, which would indicate the amount of wages payable to the Workmen.

9. The learned counsel for the Workmen also submits that amount claimed was quantified on the basis of the minimum pay scales as were paid by the appellant at the material time. She submits that in



the absence of any record, the Workmen have quantified their claims on the minimum amount that would have been payable by the appellant at the material time. It is also submitted that four of the Workmen have expired and their claims are being pursued by their legal heirs.

10. On the other hand, the learned counsel for the appellant submits that the quantification may be done on the basis of minimum wages payable (per the Minimum Wages Act, 1948) at the material time. However, the appellant is unable to contest the Workmen's case that the minimum scale of wages paid by the appellant, at the material time, was higher than the minimum wages as were applicable.

11. It is apparent that the appellant is facing some difficulty, on account of non-availability of its records, in calculating the amount payable to the Workmen in terms of the award dated 22.12.2017, however, there is no real dispute in that regard. There is no dispute that the Workmen are entitled to 50% of the backwages in terms of the award dated 22.12.2017. The appellant has no record to assail the quantification of the amount payable to the Workmen. Thus, no adjudicatory exercise is required to be undertaken. The amount payable merely needs to be verified on the basis of material available.

12. In the given circumstances, we are unable to accept that the recourse to Section 33C(1) of the ID Act was not maintainable. The issue regarding the quantification of the amount payable – which is clearly the subject matter in the present case – falls squarely within the



scope / powers of respondent no.1 under Section 33C(1) of the ID Act.

13. As noted above, the only controversy raised by the appellant was whether the application filed by the Workmen under Section 33C(1) of the ID Act, which had resulted in the issuance of the impugned SCN, was maintainable. Thus, we find no fault in the decision of the learned Single Judge.

14. Having stated the above, we are also of the view that respondent no.1 is required to examine the Workmen's quantification of the amount due. Since there is some ambiguity as to the material produced by the Workmen before respondent no.1, we consider it apposite to direct respondent no.1 to once again examine the same for the purpose of satisfying itself as to the quantum of amount that is due and payable to the Workmen in terms of the award dated 22.12.2017. The appellant may also be heard in this respect. The impugned SCN is set aside. However, we clarify that the impugned SCN has been set aside solely for enabling respondent no.1 to revisit the calculation of the amount payable and should not be construed to mean that we have found the same to be erroneous. This order does not preclude respondent no. 1 from issuance of a fresh show cause notice, if necessary, after satisfying itself of the amount payable by the appellant.

15. The amount deposited by the appellant, which is lying with the Registry of this Court shall abide by the orders passed by respondent no.1.



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16. Considering that four of the Workmen have already expired, we request respondent no.1 to conclude the proceedings as expeditiously as possible.

17. The appeal stands disposed of in the aforesaid terms. Pending applications also stand disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

JANUARY 22, 2024

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