IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS

CO 1528 OF 2012

THE BLOOMFIELD TEA CO. LTD.
VS

AMARNATH CHATTERJEE

For the Petitioner : Mr. Shounak Mukhopadhyay, Adv.
Mr. Sayantan Bose, Adv.
Ms. Priyanka Gope, Adv.

For the Opposite Party : Mr. Jayanta Dasgupta, Adv.
Mr. Balaram Patra, Adv.

Last Heard on : 22.05.2025

Judgement on : 11.06.2025

CHAITALI CHATTERJEE DAS, J:-

1. This revisional application is directed against an order of affirmation dated 29th February, 2012 passed by the learned Judge Kolkata in compensation case number 15 of 1999. The brief fact of the case is that the respondent was engaged by the petitioner sometimes in the year 1968 as an Export Assistant for a period of 6 months as probationer and subsequently terminated on 1st February 1972, taking into consideration that his service was no longer required.

Brief Resume of the case.

2. A proceeding was initiated before the 7th Industrial Tribunal at the instance of the Opposite Party /employee praying for setting aside such order of termination. This case has a chequred history .The initial attempt of the opposite party was turned down but later on by virtue of direction of the High Court at Calcutta, was treated as an Industrial Disputes within the meaning of section 20 A of the Industrial Disputes Act. The Government of West Bengal by its order dated 20.9.82 referred the dispute to the Tribunal Application treating the same within the meaning of section 20 A of Industrial Disputes Act, 1947 and a proceeding was registered. An award was passed on 7th September 1990 by the said court whereby, the order of termination was set aside and direction was given to reinstate the opposite party with full back wages and other financial benefits. It was further directed by the Tribunal that the opposite party shall be deemed to be in service from the date of termination that is 1st February 1972. The said award was challenged by the present petitioner company before this Hon'ble High Court being W.P. No. 290 of 1992.

3. An order of stay of the operation of the award was directed by the High Court but the petition was dismissed for default and then application for recalling of such order was filed by the present petitioner which is pending as of now. On 1st March 1999 the opposite party filed an application under Section 33C-(2) of the Industrial Dispute Act, 1947 before the 1st labour court, West Bengal, as compensation case number 15 of 1999 with the prayer for computation of monetary benefits in terms of the award dated 7th September, 1990 . Vide an order dated 20th April, 2006 the said court allowed the claim of the respondent taking into consideration the monthly increment at the rate of ₹8/- per month. Accordingly, the amount determined was ₹8, 50, 754. 65 as payable by the petitioner company to the Opposite Party.

4. Being aggrieved by such order a writ petition being WP number 16793 (W) of 2006 was filed by the present petitioner for setting aside the order of the Tribunal. The Hon'ble court by virtue of an order passed on 4th September, 2006 quashed the order with a direction to the petitioner to deposit the sum of ₹2, 00,000 and also directed the learned labour court to hear out the application under Section 33-C (2) Industrial Disputes Act, 1947 afresh after giving opportunity of hearing to the parties.

5. Accordingly, fresh application was filed and the present petitioner also filed additional written statement. After taking evidence and after going through the pleadings, by a judgement and order dated 29th February, 2012 the labour court held that the opposite party is entitled to a further sum of ₹5, 16, 431 in addition to the sum of ₹2, 00, 000 and ₹41, 280 already paid by the petitioner, to the opposite party calculating the salary amount with rs 8/- per month as increment .Challenging such order of the learned labour court Kolkata, this revisional application under Article 227 of the Constitution of India has been filed by the company.

6. The learned advocate, appearing on behalf of the petitioner company submits that the case of the petitioner/workman is hit by principles of waiver and estoppel and therefore is prima facie not maintainable. Secondly, against the order of reinstatement of the present opposite party, the petitioner company moved one writ petition which was dismissed for default and the application for recalling of such order is still pending, so the award is still under challenge and no computation case is maintainable. The opposite party by suppressing such fact filed the subsequent application under Section 33-C (2) of the Industrial Dispute Act and did not come before the court with clean hand.

7. The specific argument advanced by the learned advocate that the opposite party in course of his employment was offered ₹10 per year as increment, which was all along accepted. His salary was ₹200 in the year 1968 and enhanced to ₹240 in January, 1972 with annual increment of ₹10. Therefore, increment in the salary of the opposite party at all material time was at the rate of ₹10 per annum and not at the rate of ₹8 per month as claimed by him. It is also submitted that the amount stated in the appointment letter of ₹8 per month was erroneous and typographical mistake and the parties never acted on the same. It is further argued that the learned judge failed to consider that the original claim made by the Opposite Party, was consequent upon passing of the award dated 7th September 1990 by cover of the letter dated 11th September, 1995, was computed by the opposite party on the basis of an annual increment of ₹10 per annum and not by treating a monthly increment of ₹8 per month. The learned counsel draws the attention of this court to the award, whereby the order of termination was set aside, with the observation that the workman should be deemed to be in service on and from 1.2.72, and he is entitled for reinstatement in service with full pay from that onward at the rate drawn by him on 31.1.72 along with all other benefits from the company, he was entitled to from the period onward till reinstatement in service.

8. It is strenuously argued that the labour court, while considering application for computation of the total amount to be paid had limited scope of adjudication like executing court and cannot go beyond the award. Unfortunately, the learned court went a step further, and considered the statement of the workman who for the first time raised that his increment was ₹8 per month and not Rs. 10/- per annum and came to a finding that the claim of the applicant regarding increment at the rate 8/-per month is not unjustified and accordingly calculated such amount at ₹5, 16, 431, which is without any jurisdiction and colourable exercise of the power. Hence the company prayed for setting aside the order passed by the labour Court.

9. In refuting the contention of the petitioner the learned advocate, appearing on behalf of the Opposite Party argued that the inaction on the part of the petitioner company gives a grim scenario about the prolong exploitation by the companies to the poor workers . It is submitted that the opposite party was appointed in the year 1968 and in terms of the letter of employment, he was entitled to ₹8 per month as increment, but the increment was given at the rate of ₹10 per annum and the opposite party never raised protest to the same in writing. It is submitted that in the year 1968/1970 when an unrest situation was prevailing and employment was a big issue, the Opposite Party was obviously not in a position to raise a voice against the employer being the company, in black and white, against their unlawful act, in deprivation of legitimate claim, however verbally asked the management for the same. It is argued on behalf of the opposite party that the point taken by the learned advocate of the petitioner is not tenable in the eye of law as the learned labour Court never exercised power going beyond the award. The opposite party challenged the order of termination as a workman before Industrial Dispute Tribunal which was referred to the learned 7th Industrial Tribunal for adjudication. Pursuant to the judgement and order the said court directed the company to reinstate the workman with full pay from the date onwards at the rate drawn by him on 31.1.72 and at that point of time, his salary was ₹240/-. It is also argued that the full wages last drawn means the full wages which the workman was entitled to draw pursuant to the award. In terms of the letter of appointment the respondent was entitled to draw the increment of Rs. 8/- per month but he was paid salary only on the basis of ₹10 per annum arbitrarily .More so the relief under section 17 B of the Industrial Disputes Act 1947 is an independent right available to workman during pendency of the proceeding .Since It was his last drawn salary the workman obviously could not deviate from the said amount and thereby committed no wrong on his part.

10. Therefore, when by filing the application under Section 33 C (2) of the Act he raised the issue, the question of waiver does not arise. It is undisputed that in the letter of appointment, it was clearly mentioned that ₹8 per month is to be paid along with the wages, but it was denied to the opposite party for which the opposite is fighting for his lawful entitlement. The letter of appointment as has been annexed with this revisional application was issued in accordance with shops and establishment act so there was no question of deviation from the same rather the denial of agreed increment by the petitioner shows the arbitrariness and colourable exercise of the power on their part. Therefore, after adjusting ₹2 lakhs as awarded the total amount was payable pursuant to the order of learned labour court is ₹5, 16, 431/- which is to be paid by the petitioner company. It is also contended that the workmen is now aged about 92 years and the fight is still going on since 1972 and excepting ₹2 lakhs, no amount has been paid to this Opposite Party . It is therefore prayed that the petition filed by the petitioner should be rejected with exemplary cost and the market at the rate of interest should be paid along with the said amount.

Heard the submission of the learned advocates

Anaysis

11. In view of the argument of both the learned advocate and after going through the materials on record and the order impugned the moot question falls for consideration is whether the Labour Court exceeded his jurisdiction while computing the amount to be paid to the opposite party pursuant to the direction of the Award and or the learned labour court rightly assess the quantum of back wages considering the lawful entitlement of the Opposite Party.

12. This is a dispute between an employee and an employer, potentially related to unpaid legal dues or benefits that have been outstanding for long 53 years. While hearing this revision application, I put this question to myself what exactly is the meaning of justice delayed justice denied. As per mandate of Article 21 of the constitution, speedy trial is implicit and is one of the facets of the fundamental right to life and liberty as enshrined in Article 21. The principles emphasizes that delays in legal process can deny the individuals their rightful justice, causing further harm and injustice.

The concept of a speedy trial is essential to ensure that Justice is served fairly and efficiently. Therefore it is essential to prioritize the rights and interests of litigants, ensuring early disposal of the cases.

13. Sri Amarnath Chatterjee the opposite party herein was appointed by virtue of a letter of appointment dated 23 April 1968 as Export Assistant on probation basis for six months temporarily up to 22.10.1968 at the rate of Rs. 8 per month increment in wages per month and would draw a total wage of ₹200 as consolidated, per month. The salary of the opposite party was enhanced to ₹210 in the year 1969, after giving an annual increment of ₹10 per annum instead of Rs 8/- per month. Similarly in the year 1970, it was enhanced to ₹20 after giving an annual increment of ₹10 and ₹230 in the year 1971 and in 1972, his salary was ₹240 with the annual increment of ₹10 per annum and then his service got terminated with effect from 1st February 1972 On the ground of he being surplus. The Opposite Party challenged such order of termination under section 10 (1) read with section 28 of the Industrial Dispute Act for adjudication on the issue whether the termination of service of the respondent Sri Amarnath Chatterjee was justified or not .The petitioner here in did not appear and an Ex parte award was passed on 26. 6. 88.

14. The petitioner company challenged the said order before this Hon'ble court and the order was set aside, directing the Tribunal to hear the matter afresh. Before the learned Tribunal both the parties adduced evidence and on the basis of the pleadings the Tribunal was of the view that the order of termination of service of the workman by the second party company, through the letter dated 31.1.72 is illegal, against natural justice, unjust, and void, and an issue of the violation of provisions of section 260 of the Industrial Dispute Act 1947, and such termination is retrenchment per se, accordingly held that the first party should be deemed to be in service on and from 1.2.72 and the workman is entitled to be reinstated in service with his full pay from the date onwards, at the rate, drawn by him on 31.1.72 and all other financial benefits from the company as entitled to from that period onward till reinstatement in his service. Direction was given to the first party company to comply with such within a period of one month from the date on which the award became enforceable.

15. The company did not accept the award and filed writ petition against the same before this Hon'ble Court. The said writ petition was admitted for hearing and directions were given for filing Affidavits however an order of stay of the operation of the award was passed with an interim direction to pay the Opposite Party a sum of Rs 240/- per month that was the last drawn salary, On 29th June, 1995 the writ petition got dismissed for default followed by an application to recall the said order on 15th September, 1995.

16. According to the petitioner the said petition was never heard as it got misplaced and then filed another application being C.A.N 4863 of 2006 for recalling such order of dismiss for default. Therefore from the factual scenario it can be said that, the award passed by the Tribunal was not acted upon on the plea of pendency of the appeal filed by the company. It is evident that firstly the petitioner allowed the writ petition to be dismissed for default then filed restoration application after 2 and 1/2 months, which was said to be misplaced. Interestingly without pursuing the said application for long 11 years suddenly the petitioner company thought it prudent to file another application for restoration of said order of 29th June, 1995.

17. The dispute originally pertained to reinstatement of service and payment of the salary of an employee which was a paltry sum of Rs. 240/- , his last drawn salary but the company, instead of taking any step to comply with the order only tried to cause delay so as to disentitled the employee to be reinstated. Though before this Court the dispute is about the scope and power of Labour Court as per Section 33-C (2) of the Industrial Disputes Act This Court finds considering chequered history certain facts raised before the Tribunal should be discussed in order to understand the plight of the Opposite Party for long 5 years.

18. The respondent before the Tribunal i:e the petitioner herein M/S Bloom Field Tea company had four sister concern and it was asserted before the Tribunal by the present opposite party that he was asked to work in BK Tushar, one of the sister concern apart from doing his work without any extra remuneration or facility for such extra work. The employee when demanded in the year 1971 extra remunerations for the service as accorded to him on 31.1.72, he was given his usual pay for the month of January, 1972, and was also served with the letter of termination, without giving any letter of show cause or intimation that he was surplus in the establishment of the company. It was the specific case of the opposite party that he verbally protested on 2nd and 3rd February 1972 regarding his termination of service and refused to accept the cheque of ₹720 sent to him by the company. The company took the stand that the service of the employee was never confirmed in writing and was appointed on probation for a period of six months. He was never given any confirmation letter; rather, he was given warning letters on account of habitual absence. The company took the specific stand that in the year 1972, the workload relating to export decreased and the company was not in a position to allow Chatterjee to continue to work and he was found surplus and hence his service was terminated with effect from 1st February, 1972. The learned Tribunal did not accept the argument of the company and observed that the confirmation was explicit by the conduct of the company as he continued in service, given an incentive of ₹10 per annum with effect from 1 April 1960 by letter dated 1.8.69, in consideration of the workman's, satisfactory performance of the duty in the company in the past year.

19. The Learned Tribunal did not find any proof presented by the company to establish that the workmen became surplus to the establishment at the material time. The most important point raised was that in terms of the relevant provision of industrial disputes act, 1947, the workman was not given one month's notice in writing, indicating the reasons for termination. Furthermore the tribunal considered the termination as retrenchment and accordingly held that at the time of retrenchment, the workman is to be paid compensation equivalent to 15 days average pay for every completed year of continuous service or any part of in excess of six months and notice in the prescribed manner on the appropriate government regarding retrenchment. The award also explicit that the letter of termination was conspicuously silent about the reason for the termination of service. More so no evidence brought on record by the company to show that the notice in the prescribed form was served on the appropriate government about the termination of service of this workman. The company also vide its letter dated 1.2.72, asked the workman to collect ₹720 as his dues, including retrenchment compensation, therefore, the said amount was offered after date of termination of service of the workman. The Tribunal was therefore of the opinion that the mandatory provisions of section 25 C of the Industrial Disputes Act 1947 was not complied with, before such order of the retrenchment .

20. This court is unable to appreciate the stand taken by the petitioner company for long pendency of the application for recalling the order of dismissal of the appeal .The company made no effort to expedite the hearing of such application which is still pending and so far miming of application no document was filed. The entire facts would suggests that probably the petitioner company intended to kept the matter pending in order to restrain the Opposite Party to put the Award in execution and also to disentitle him from reinstatement of service. It is undisputed that the opposite party was aged about 35 when he joined but in the whirl of litigation he grew older.However meantime, the opposite party filed the application under Section 33-C (2) of the Industrial Disputes Act, 1947 for computation of monetary benefits in terms of award dated 7th September, 1990 and in the said application he stated about the exact rate of increment he was entitled to from the company which was all along denied .He further claimed the 15 days privilege leave on the basis of such rate.

21. The company left no- stone unturned before the labour Court to refute the claim and even took a peculiar stand before the labour court that the increment of Rs. 8 per month as mentioned in the letter of appointment was erroneous and a typographical mistake. This fact was never raised before the Tribunal nor was intimated to the opposite party. The workman/ Opposite Party claimed an amount of ₹8, 23, 402, calculating the increment at the rate of Rs. 8 per month in terms of the letter of employment which according to the company was beyond his entitlement as he abandoned the said rate of increment by accepting the rate of Rs.10 per annum. It was highly contested as the company filed the written objection to the same, taking the further point of maintainability that the Labour court had no jurisdiction to determine anything beyond the scope of Award. The company took the point regarding pendency of the appeal before the Hon'ble court and prayed no computation can be calculated during pendency of the same.

22. The learned labour court after hearing the parties duly considered the point regarding abandonment of the claim of getting ₹8 per month as his increment, and also that it was not the subject matter of the award as assailed by the company. After considering the evidences and the objections raised by the company allowed the prayer of the applicant with the direction that he is entitled to get ₹5, 16, 431 from the opposite party company. The bone of contention of the petitioner company before this Court is about the scope and authority of the learned labour Court while implementing the award. In this regard, the learned advocate has relied upon a decision reported in[1] (Municipal Corporation of Delhi vs Ganesh Razak and another) where it was specifically observed by the Hon'ble Supreme Court that the labour court cannot adjudicate dispute of entitlement or basis of claim of workman. It can only interpret the award or settlement on which the claim

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[1] (1995) 1 SCC 235

is based. Its jurisdiction is like that of executing court's power to interpret the decree for the purpose of its execution.

23. On careful perusal, of the said case it transpires that the challenge before the Hon'ble Supreme Court was the refusal of the Labour Court followed by an order of affirmation by the High Court about the maintainability of the application under section 33-C (2) of the Act on the claim that workmen to be paid at the same rate as the regular workmen. Admittedly no earlier adjudication was there by any forum regarding such entitlement and therefore the question was whether in such circumstances without prior adjudication or recognition of the disputed claim, the payment of wages to the workmen at the same rate with the regular employees can be considered for computation under section 33-c (2) of The Industrial Act of 1947.

24. *'The Hon'ble court considered the various judicial pronouncement and ratio of those decisions and observed " The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore clearly outside the scope of a proceeding under Section 33-C(2) of the Act. The labour court has no jurisdiction to first decide the Workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) Of the act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the labour court's power under* *section 33-C (2) like that of the executing court's power to interpret the decree for the purpose of execution'*

So from the above observation it is clear that there must be an earlier adjudication of the claim raised in the application filed under section 33-C (2) of the Act of 1947,The labour court has no jurisdiction to first decide the entitlement and then to proceed to compute .In case of previous adjudication of the entitlement or recognition by the employer the labour court can interpret for the purpose of implementation if any ambiguity requires interpretation which will be treated as incidental to the labour court's power .

25. In the instant case in terms of the letter of appointment the opposite party was to be paid the increment at the rate of Rs. 8 per month when he was paid Rs.10 per annum, which he accepted without raising objection in writing but never took any other advantages in order to keep silent. So by any means it cannot be said that the opposite party was not legally entitled to the increment at the rate of Rs.8 per month but fact remains that entitlement was denied without any reason. It can very well be said that refusal to accept the amount paid by the employer even if it was lessor would have been considered as insubordination and could have been fatal and therefore it was not one easy thing to do against the employee. Furthermore the order of termination against the opposite party was set aside directing the company to reinstate and to pay all the back wages on the basis of his entitlement of last drawn salary and filed the application under Section 33-C (2) of the Act disclosing the rate of increment as per month As per letter of appointment for the purpose of computation and the labour court also considered the same refuting the stand taken by the company that it was a typographical error.

26. The learned advocate of company further relied on a decision reported in[2] (Kalparaj Dharamshi and another vs Kotak Investment Advisors Limited and another) where it was held that a waiver cannot always in every case be inferred merely from the failure of the party to take the objection. Waiver can be inferred only if, after it is shown, that the party knew about the relevant facts and was aware of right to take the objection in question. The waiver or acquiescence, like election, pre suppose, that the person to be bound is fully cogent of his rights, and that being so, he neglects to enforce them or chooses one benefit instead of another.

27. In Paragraph 123 of the said decision the case in Krishna Bahadur vs Poorna Theatre was considered .In that case the Industrial Tribunal set aside the dismissal order with full back wages and compensation, which was not paid and a petition under Section 33C-2 of the Industrial Disputes Act was initiated and was ended in amicable settlement, The workman agreed to receive said amount of ₹39,000 as full and final settlement. The matter came up before the Supreme Court, where it was held that.' The principle of waiver, although is akin to the principle of estoppel, the difference between the two, however, is that whereas the estoppel is not a cause of action; it is a rule of evidence; waiver is contractual and may constitute a cause of action; it is an agreement between the parties and a party fully knowing of its rights has agreed not to assert right for a consideration.

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[2] 2021(10) SCC401

28. The facts and circumstances of the above case were very different than that of the instant case where there was no settlement between the workman and no consideration was extended to the employee rather it is the petitioner Company who denied the agreed amount as per letter of appointment. In the above decision it was further observed that 'A right can be waived by the party for whose benefit certain requirements or conditions had been provided for by a statute, subject to the condition that no public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waving the right in consideration of some compromise came into being. Statutory right, however, may also be waived by his conduct.'

29. This court cannot be oblivion of the unrest situation prevailing in the state of West Bengal in the year 1969/70 as the State's economy was affected on account of huge influx of refugees after partition and there was a surge of socialism and anti-establishment ideology .At that crucial time a young man was given an appointment by a company with the terms and condition as stipulated in the letter of appointment. Subsequently, the company deviated from the amount agreed in the appointment letter and paid lessor amount and the person accepted the same without raising any voice against the mighty employer and this continued till 1972 with an enhancement of salary from Rs. 200 /- to Rs. 240/- with the rate of increment at ₹10 per annum in lieu of Rs. 8/- per month. Then all on a sudden the said employee was served with notice of termination on the score that he has become surplus.

30. In such backdrop this court is likely to consider the factors as to; Whether the employee's acceptance of the lessor amount was voluntary or under duress, Whether The employee's silence can be interpreted as a waiver of their right to claim the full amount, Whether the company's deviation from the agreed -upon terms constitute a breach of contract. In the instant case, the Award passed by the Tribunal and the order passed by the labour court unequivocally established that the opposite party was no more a temporary employee since he completed his probation period successfully and was continued with yearly increment. Therefore his termination without given a notice to show cause or in non-compliance of the mandatory provisions of the industrial disputes act pertaining to termination of employee was arbitrary. No clear and transparent procedure was adopted at any point of time or any attempt was made on behalf of the petitioner company to withdraw the letter of appointment or to modify the terms of the appointment, but taking advantage of the silence of the employee, continued to pay much lesser amount than what was agreed between them. The award was passed considering that the first party workman, should be deemed to be in service on and from 1st February 1972, and he is entitled to reinstatement in service and to get his full pay from that date onwards at the rate drawn by him on 31st, January 1972 and all other financial benefits from the company he is entitled to from that period onward till reinstatement in the service. Admittedly, his last drawn pay was Rs. 240/- in the year 1972 after having four increment on the basis of the increment given at the rate of ₹10 per annum instead of ₹8 per month as agreed upon by the parties. The award said about the entitlement of the respondent, and accordingly he claimed the compensation at the rate of Rs.8/-per month as an increment. It is pertinent to mention here in that the company did not pay the Opposite Party even as directed to be paid in terms of the said award and paid ₹2 lakhs after the direction was passed by the Hon'ble court in WP 16 793 (w) of 2006, while remanding the matter for hearing afresh of the application filed under section 33C (2). In fact if the service of employee to be considered as permanent the company had to comply with the statutory requirement before retrenchment. The opposite party refused to accept the amount of Rs. 750/- as given to him by issuing a cheque calculated on the basis of the rate of increment of Rs 10/- per annum. Therefore it will not be proper to say that the opposite party never raised protest.

31. Therefore in this peculiar facts and circumstances the order of the learned labour court can be construed only as an interpretation of the Award for the purpose of proper computation and can no way be said to be a new adjudication of the claim of the opposite party. In the above facts and circumstances, this court is unable to accept the contention of the learned advocate of the petitioner that the Opposite Party waived his right to have the increment at the rate of Rs. ₹8/- per month by accepting the increment at the rate of ₹10 per annum. Furthermore I do not find any illegality or impropriety in the order of the learned labour court who, while computing the quantum of compensation considered such increment at the rate of ₹8 per month even though it was not so specifically discussed by the learned Tribunal. This court is unable to agree with the petitioner that the learned labour court exceeded his jurisdiction by considering ₹8 per month while calculating the quantum of compensation in place of ₹ 10 per annum in view of the fact that the letter of appointment was very specific about the said increment at the rate of ₹8 per month and the opposite party was entitled to have the said amount which was denied but certainly the said denial cannot become the right of the employer to deny perpetually.

32. Section 33 C (2) of the Act deals with the jurisdiction of the labour court which is subject to fulfilment of two requirements.

A) workman must be entitled to receive from the employer, any money or benefit, which is capable of being computed in terms of money and

B) a question should have a reason about the amount of money due, or as to the amount at which such benefit should be computed.

These questions may be decided by the labour court as may be specified by the appropriate government within a period of not three months; did that where the presiding officer of a labour court consider it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

33. Therefore, the labour court has jurisdiction to decide not only the right of a work man to receive from the employer any money, but also the exact amount of to be paid by the employer. In this case, certainly, the workmen claimed his compensation in respect of an existing right as entered into or, agreed upon between the employer and the workman in the letter of appointment.

34. Therefore, the question of equity certainly goes with the workman and the company cannot take advantage of the silence of the workman in not claiming his lawful dues and entitlement and take the point of waiver and estoppel. In a decision reported in[3] Central bank of India Ltd. versus P. S Raja Gopalan, where it was observed as taken note of by the Hon'ble Supreme Court in Municipal Corporation of Delhi versus Ganesh Rajak and another. (Supra), which is as follows.

' besides, there can be no doubt that when the labour court is given the power to allow an individual workmen to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the executing court to interpret the decree for the purpose of execution. It is, of course true that the executing court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the labour court but like the executing court, the labour court would also be competent to interpret the award or settlement, on which a work man base his claim under Section 33-C2, it would, inappropriate cases be open to the labour court to interpret the award or settlement on which the work man's right rests'

35. It must be keep in mind that it is an entitlement as agreed upon and promised to pay by the company and not a mercy grant to the petitioner, in fact the conduct of the company amounts to breach of contract. The supervisory jurisdiction of the High court under Article 227 of the constitution of India was discussed by the Hon'ble Supreme court in Mohd Yunus vs Mohd Mustaquim[4] whereby it was observed in exercising the supervisor power under article 227; the High Court does not act as an appellate Court or tribunal. It will not review or reweigh upon which the

[3] AIR 1964 SC 743
[4] 1983 4 SCC 566

determination of the inferior court or tribunal to be based or to correct errors of law in the decision.

Conclusion

36. Therefore in view of the entire facts and circumstances this court finds no merit in the submissions of the petitioner and hence this revisional application is liable to be dismissed. At this stage this court considering the mode and manner how the company dealt with the matter, express displeasure. The company fixed the increment at the rate of Rs. 8/- per month but denied the same and continue to pay at the rate of Rs. 10/- per annum and never informed the workman that such rate was a typographical error or mistake. As no objection was raised on behalf of the employee he was paid with that amount. The company challenged the award on the score that the workman was given warning letter and he is engaged in other company etc. and allowed the said writ petition to be dismissed. He filed restoration application and on account of lack of supervision the same was not traced out.

37. The company waited for long 11 years and filed second application but it is still pending since the Company did not take any step. The company strongly contested the application under 33 -C (2) filed by the Opposite Party and then first time said about the error committed in the letter of appointment and that the employee waived his right to claim since he never claimed the agreed amount .The learned Court did not consider the said plea and allowed the compensation against which this revisional application has been filed. In the meantime only 53 years have passed since 1972 and the employee grew older and is now aged about 92 years but still have the tenacity to continue with this proceeding in order to receive his legitimate claim. This is a classic example of justice delayed justice denied but the cannons of justice as enshrined in the constitution empowers the Court to ensure that justice must be done on the principles of justice equity and good conscience .Accordingly this Court direct the company to pay the amount as commutated by the labour court within a period of fortnight .The company is further directed to pay the said amount with interest at the rate of 10 % per annum since 29.12.12 when the order of computation was passed and the entire amount is to be paid within a period of fortnight from the date of server copy of the order in default the company will pay a further interest of 6%. Per annum till such payment is made.

38. Accordingly this revisional application is dismissed.

39. Let a copy of this order be sent to the learned Trial Court for information.

Urgent Photostat copy of the order be supplied upon compliance of all formalities.

(CHAITALI CHATTERJEE DAS,J.)