

18.06.2025
Item No.10
Ct. No. 30
Aloke

WPA 25219 of 2024

Samir Bhattacharya
Vs
The State of West Bengal & Ors.
WITH
WPA 25192 of 2024

Sushil Kuamr Saraf
Vs
The State of West Bengal & Ors.

Mr. Dipayan Pal
... for the petitioner
Mr. Susanta Pal
Mr. Amrita Tiwari
... for the State in
WPA 25219 of 2024
Mr. Sudipto Panda
Ms. Ananya Neogi
... for the State in
WPA 25192 of 2024

Affidavit-of-service filed be kept with the
record.

The writ application has been preferred
praying for setting aside of the award dated February
24, 2022 passed by the respondent no. 2 being the 1st
Labour Court, West Bengal.

It is submitted by the learned counsel for the
petitioner that the order challenged being not in
accordance with law is liable to be set aside.

On perusal of the materials on record and on
hearing the learned counsels appearing for the parties
and considering the relevant provisions of the Act, it
appears that the learned Judge, 1st Labour Court vide
his order dated 24.02.2022 held as follows :-

“Voluntary Retirement Scheme as stated by the applicant is not forth coming before this court.

In my opinion suspension of work and closure are not synonymous terms.

Closure is defined in Section 2CC and suspension of work/Lock out is defined in Section 2L of the Industrial Disputes Act.

The Instant case does not come within the provisions of Section 33-C(2) of Industrial Dispute Act. Nothing cogent and convincing is forthcoming to establish that the applicant is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money, due or as to the amount at which such benefit should be computed.

In view of the evidence on record this court is of consider opinion that the instant case is a speculative one.

The instant case is bereft of substance and devoid of merit.

Accordingly, the application under Section 33-C(2) of Industrial Dispute Act ends up in a fiasco.

Hence, it is

ORDERED

that the instant case being Computation Case No. 20 of 2018 be and the same stands dismissed ex-parte. No order as to cost is passed.

Let a copy of this order be sent to the concerned department of Government of West Bengal.

**Sd/-
Judge
1st Labour Court”**

Learned counsel appearing for the respondent submits that a proceeding under Section 33C of the Industrial Disputes Act arises when there is a settlement or award.

Section 33C of the Industrial Disputes Act

1947 lays down:-

“33C. [Recovery of money due from an employer.-

(1)Where any money is due to a workman from an employer under a settlement or an award or under the provisions of [Chapter V-

A or Chapter V-B], 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 an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2)Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government [within a period not exceeding three months]:

[Provided that where the presiding officer of a Labour Court considers 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.]

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

(4)The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).

(5)Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Explanation .-In this section "Labour Court"includes any Court constituted under any law relating to investigation and settlement of industrial disputes in force in any State.]”

Admittedly, there is no settlement or award in the present case nor has the document showing voluntary retirement of the petitioner been filed either before the Labour Court or before this Court.

But admittedly the workman was not allowed to work either due to closure/lock out or suspension of work whatever may be the reason and when termination is for such reasons, the dues if any from the employer is to be calculated/computed as per Section 33-C (2) of the Industrial Disputes Act.

The Labour Court was duty bound to give reasons on specific findings as to the nature of termination and then decided whether the petitioner was entitled to any dues, even if on “suspension of work” and if entitled the calculation would be as per Section 33-C (2) of the I.D. Act.

Documents marked exhibits 1 to 4 and 6 have been not discussed nor mentioned. Only exhibit 5 has been discussed stating that petitioner could not prove his case of voluntary retirement.

If not, then the Court was bound to consider the other exhibited documents including materials on record and come to a reasoned finding.

Thus the order/award dated February 24, 2022 passed by the respondent no. 2 being the 1st Labour Court, West Bengal, being not in accordance with law is set aside.

Computation case no. 20/2018 is restored to its file and number. The Labour Court is directed to write a fresh reasoned order in accordance with law on the basis of materials on record including the evidence before it, both oral and documentary, keeping in mind the observations made in this order, within 30 days from the date of communication of this order.

WPA No. 25219 of 2024 along with WPA 25192 of 2024 stand disposed of.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Let a copy of this order be sent to the 1st Labour Court, West Bengal.

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

(Shampa Dutt (Paul), J.)