

Vinod Kumar Begwani Vs. Labour Court, Ranchi and Ors

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Court : Jharkhand

Decided On : Aug-02-2017

Appellant : Vinod Kumar Begwani

Respondent : Labour Court, Ranchi and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(L) No.- 1407 of 2010
Vinod Kumar Begwani Son of Late Ashkaran Begwani, resident of House no.213,
Road No.2, Basant Vihar, Harmu Housing Colony, PO- Harmu, PS- Argora,
District- Ranchi Petitioner -V e r s u s- 1. The Director, East India Transport
Agency, 20B, Abdul Hamid Street, Fourth Floor, Kolkatta-700069 2. Manager,
East India Trading Agency, Goshala Compound, Harmu Road Ranchi, PS-
Kotwali, District-Ranchi . Respondents CORAM: - HONBLE MR. JUSTICE
RAJESH SHANKAR For the Petitioner : - Mr. B.V. Kumar, Advocate For the
Respondents :- Mr. Prabhat Kumar Sinha, Advocate 12/02.08.2017 Heard learned
counsel for the parties.

2. The present writ petition has been filed for quashing the order dated 18.04.2009
passed by the Presiding Officer, Labour Court, Ranchi in M.J.

Case no. 07 of 2007 whereby the application filed by the petitioner under Section
33-C(2) of the Industrial Disputes Act, 1947 (in short to be referred as the Act) for
payment of arrears of salary for the period from June, 2006 to October, 2006,
difference of salary, bonus and payment of gratuity etc. besides interest over the

said amount, was found not maintainable.

3. Learned counsel for the petitioner submits that the learned Labour Court while rejecting the application of the petitioner filed under Section 33-C(2) of the Act has erroneously held that the petitioner cannot be treated as workman as he has already resigned from the service of East India Transport Agency. The learned Labour Court also committed error in holding that the claim made by the petitioner is not an admitted claim. 2 4. On the other hand, learned counsel for the respondents submits that the order dated 18.04.2009 passed by the learned Labour Court, Ranchi is completely justified and legal. The learned Labour Court has rightly held that the application filed by the petitioner under Section 33-C(2) of the Act is not maintainable 5. Having heard the learned counsel for the parties and on going through the relevant documents placed on record, it appears that the petitioner filed an application under Section 33-C(2) of the Act claiming the amount under various heads such as salary dues, difference of salary for the period from June, 2001 to October, 2006, gratuity, bonus, leave wages, annual increment etc. However, learned Labour Court by the impugned order dated 18.04.2009 came to a finding that since the petitioner had already resigned from the service of East India Transport Agency, which was duly accepted by the employer, before filing of the said application, the petitioner cannot be termed as workman as per Section 2(s) of the Act. It has further been held that since the monetary claim made by the petitioner has not been admitted by the respondents and there has been no award or settlement between the parties for the said amount, the application under Section 33-C(2) of the Act filed by the petitioner is not maintainable.

6. It is well settled that the scope of Section 33-C(2) of the Act is quite limited and the court has to act as an executing court. There has to be a pre-existing right or determination of any monetary claim of a person before invoking Section 33-C(2) of the Act. In the case of Central Inland Water Transport Corpn. Ltd. Vs. Workmen reported in (1974) 4 SCC696 the Honble Supreme Court while discussing the scope of Section 33-C(2) of the Act has held as under:

3. /p>

12. It is now well-settled that a proceeding under Section 33-C(2) is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudged, or, otherwise, duly provided for. In *Chief Mining Engineer East India Coal Co. Ltd. v. Rameshwar* (AIR 1968 SC218, it was reiterated that proceedings under Section 33-C(2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the benefit claimed by workmen is in such cases in the position of an executing court. It was also reiterated that the right to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an industrial workman and his employer.

7. Dealing with the same issue, the Honble Supreme Court in the case of *Chief Supdt. Govt. Livestock Farm, Hissar Vs. Ramesh Kumar* reported in (1997) 11 SCC363 at paragraph-2, has held as under:

2. We are unable to appreciate how the application of the respondent could be entertained under Section 33-C(2) of the Act. The remedy of Section 33-C(2) is available only in those cases where there is no dispute about entitlement of the workman. The remedy of Section 33-C(2) cannot be invoked in a case where the entitlement is disputed. In the instant case, the entitlement of the respondent to regular scale was disputed by the appellant and, therefore, it was not a case in which the remedy of Section 33-C(2) could be invoked. The proper course for the respondent was to have his entitlement to regular scale determined by a competent court or tribunal and in the event of non-payment of the amount payable to him as per his entitlement under such determination he could invoke the remedy under Section 33-C(2).

8. In the case of *State Bank of India Vs. Ram Chandra Dubey* reported in (2001) 1 SCC73 the Honble Supreme Court has held as follows:

8. Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33- C(2) of the Act. The benefit sought to be enforced under Section 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not

9. In the present case, the respondents have not admitted the claim made by the petitioner. There had been no prior adjudication or settlement for the amount, which was claimed by the petitioner through an application filed under Section 33-C(2) of the Act. Thus, it cannot be said that the petitioner was having pre-existing right to claim the said amount by invoking the provisions of Section 33-C(2) of the Act.

10. Under the aforesaid facts and circumstances of the case, I find no reason to interfere with the impugned order dated 18.04.2009 passed by the Presiding Officer, Labour Court, Ranchi in M.J.

Case no. 07 of 2007.

11. The writ petition being devoid of merit is, accordingly, dismissed. (Rajesh Shankar, J.) Ritesh/A.F.R.

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