

Lic of India Vs. Union of India (Uoi) and ors.

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Court : Delhi

Decided On : Nov-03-2003

Reported in : 108(2003)DLT191; 2004(72)DRJ168; 2004(3)SLJ389(Delhi)

Judge : Mukul Mudgal, J.

Acts : Industrial Disputes Act - Sections 2 and 33C(2); [Constitution of India](#) - Article 226

Appeal No. : C.W. 1543 of 1989

Appellant : Lic of India

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : D.K. Kapoor, Senior Adv. and ; R.P. Singh, Adv. for respondent No. 3

Advocate for Pet/Ap. : Ravinder Sethi, Senior Adv. and; Nandini Sahni and; Rajiv K

Judgement :

Mukul Mudgal, J.

1.This writ petition challenges the order of the Central Government Labour Court, passed in LCA No.180/88 dated 8th May 1989 by which interest along with costs

of proceedings and telephone charges in all totalling Rs.1,81,857.86 paise was directed to be paid to the workman, who is the respondent No.3-herein.

2.The proceedings arose from an award dated 10.2.1984 by which the CGIT directed the reinstatement of respondent No.3 with the petitioner in the following terms:

'In the result the punishment imposed on the workman of dismissal from service is set aside, on the charge framed against him by the management being held not proved. Mr.Verma will be entitled to all the back wages and shall be reinstated in service by the LIC of India. He shall also have other benefits due to him on the basis that he continued to be in service of the LIC of India and his services were never terminated. The L.I.C. Shall pay him as cost Rs.1000/- of this reference and shall refund all charges recovered from Mr.S.K.Verma.'

3.The above dispute arose on account of the termination of service of Respondent No.3 by the Petitioner/LIC in 1969 which on a question of whether a 'Development Officer' of LIC could be a workman as per the definition of Section 2(s) of the Industrial Disputes Act (hereinafter referred to as the 'Act') was decided against the LIC by the Hon'ble Supreme Court in a judgment in S.K. Verma Vs Mahesh Chandra & Others reported as : (1983)IILLJ429SC . Eventually the respondent No.3 was reinstated as per the award dated 10.2.1984 and on 31.7.1984 back wages amounting to Rs.2,46,188/- were paid from 8.2.1969 to 31.7.1983.The application under Section 33-C(2) of the Act claimed interest on the aforesaid back wages. The Labour Court for granting interest inter alias relied upon the judgments of the Hon'ble Supreme Court in Gamon India versus Niranjana Das 310 FLR 223 and Sudhir Chander versus Tata Iron & Steel Co. : (1984)IILLJ223SC .

4. In the application under Section 33C(2), filed by the respondent No.3, the following dues were claimed:

'1. Interest @ 18% on back wages of Rs.246,188/- Rs. 2,84,000/-2. Interest to be credited to the P.F. Account Rs. 21,400/-3. Refund of Telephone Charges along with interest Rs. 400/-4. Cost of proceeding with interest Rs. 630/-Total Rs. 3,06,430/-

5. The Labour Court did not award interest claimed @ 18% but awarded interest @ 12%, leading to the impugned order of payment of Rs.1,81,857.86 paise. Learned Senior counsel for the petitioner, Shri Ravinder Sethi has challenged the order on the ground that the computation of interest could not have been done when the original award did not grant any interest. He has submitted, by relying on 1988 Lab. I.C. 700 The Management of Nahan's Press, Madras Vs K.Krishnan and others and 1964 (2) LLJ 88 Krishnamurthi (A.) & others and The' Mail'that the Labour Court is not a civil court and can not grant interest under section 33-C(2) of the Act. Mr.Sethi has also relied upon the judgment of the Hon'ble Supreme Court in the case of Municipal Corporation of Delhi Vs Ganesh Razak & Another : (1995)ILLJ395SC and in particular has relied upon paragraph 12 of the said judgment, which reads as under:

12. The High Court has referred to some of these decisions but missed the true import thereof. 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, thereforee, clearly outside the scope of the 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 recognized 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 its execution.

6. A question which arises is as to whether interest can be considered to be incidental to the amount granted as per the original award so as to fall within the Labour Court's power under Section 33-C(2) particularly when a long period has elapsed between the date of termination and reinstatement? Mr. D.K. Kapur, learned Senior Counsel for the respondent No.3 has submitted that without prejudice to his pleas that impugned order granting interest was lawful and valid,

even an order which was erroneous did not warrant interference in the present facts and circumstances. He has further submitted that the award of interest was implicit in and certainly incidental to the award of back wages and was certainly computable under Section 33-C(2) of the Act. The respondent No.3 has relied upon the following observations of the Hon'ble Supreme Court in Gamon India's case (supra):

'Back wages should be calculated as if the respondent continued in service uninterrupted. He is also entitled to leave encashment and bonus if other workman in the same category were paid the same. If appears that the respondent has been unlawfully kept out of service, therefore, it is just that the appellant company shall pay all the arrears as calculated according to the directions herein given with 12% interest from the date the amount became due and payable till realization. Appellant shall also pay costs which are quantified at Rs.5,000.00.'

Thus according to the above decision, I am of the view that interest would have been payable to a workman Along with arrears of wages upon a wrongful termination founds in the original award dated 10th February, 1984, but the only question which arises in these proceedings is whether such amount could be computed under Section 33-C(2) when the original award dated 10th February, 1984 did not grant this interest. In my view, without going into the merits of this plea and legality of the award of interest, the following order would meet the ends of justice.

7.It is not in dispute that the writ jurisdiction of High Court is a discretionary jurisdiction and it is to be exercised on equitable considerations. The conduct of the parties is a vital circumstance to be taken into account for judging the equity of the matter. I have today already allowed a companion Writ Petition No.2005 of 1993 of the Petitioner-LIC setting aside the order of the CGIT granting reinstatement to the Respondent No.3 for a termination subsequent to his reinstatement by the award dated 10.2.1984 which has led to Section 33-C(2) order challenged in this writ petition. The history of the litigation between the parties to the present writ petition has been noticed in that judgment. Considering the findings in the impugned order and CWP No.2005 of 1993, which shows that

there was bitter litigation between the parties on every conceivable count, even leading to a separate reference at the behest of respondent No.3 for seeking promotion which was granted by the Tribunal and without going into the merits of the question as to whether interest could have been awarded under Section 33-C(2), I am of the view that whether or not a Labour Court could have awarded interest of Rs.1,81,857.86 paise under Section 33-C(2). I am satisfied that in the interest of justice this Court could have directed the payment of interest as per the law laid down in Gamon India's case (supra) even though such a claim may or may not have been tenable under Section 33-C(2) of the said Act. In any case even if such amount of interest is not warranted by Section 33-C(2) but payable under a direction under Article 226, interference in the writ jurisdiction against an order granting such interest is not warranted. Considering the fact that respondent No.3's services were first terminated in 1969 and he was reinstated only in 1984 after a prolonged battle and was paid back wages only after a period of about 15 years and the fact that the respondent No.3 was unsuccessfully dragged up to the Hon'ble Supreme Court by the LIC on a preliminary plea of the respondent No.3 not being a workman under Section 2(s) of the Act, the above order shall meet the ends of substantial justice.

8. Accordingly, without going into the merits of the relief, prayed by the petitioner, I am satisfied that the award does not warrant interference and since the petitioner has enjoyed an interim order from this Court, I direct that a sum of Rs.1,81,857.86 paise be paid by the Petitioner to respondent No.3 on or before 15th of December 2003, failing which the said amount shall carry interest @ 12% p.a.

9. The writ petition stands disposed of accordingly.