

Lala Ram Vs. Executive Engineer Etc.

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Court : Rajasthan

Decided On : May-06-1988

Reported in : [1989(58)FLR217]; (1994)IIILLJ922Raj

Judge : A.K. Mathur and; M. Chandra, JJ.

Acts : [Industrial Disputes Act, 1947](#) - Sections 33C(1) and 33C(2)

Appeal No. : D.B.C.W.P. No. 2582 of 1985

Appellant : Lala Ram

Respondent : Executive Engineer Etc.

Disposition : Petition allowed

Judgement :

Milan Chandra, J.

1. This writ petition has been filed under Article 226 of the Constitution of India with the prayers that the order (Annexure-II) of the learned Industrial Tribunal-cum-Labour Court, Jodhpur, dated August 3, 1985 be quashed and the respondent No. 1 be directed to make payment of Rs. 4,561.60 P, with interest to the petitioner. The facts of the case giving rise to this writ petition may be summarised thus.

2. The petitioner was Junior Filter Attendant, Filter House, Jodhpur in the year 1965. He had prolonged illness during the years 1965, 1966 and 1967. He reported on duty on January 1, 1968. He was not taken back in service. At the instance, the State Government made a reference under Section 10, Industrial Disputes Act (hereinafter to be called the Act). It was decided by the Industrial Tribunal No. 2, Rajasthan, Jaipur on January 22, 1975, directing that the petitioner would be taken back in the service on his production of a medical fitness certificate. It was also ordered that the period of absence from duty from July , 1965 to the date of production of the fitness certificate would be counted as extra ordinary leave without pay. The State Government filed writ petition No. 105 of 1976 against this award and it was dismissed by this Court on January 11, 1985 with the direction that the State Government will give effect to the order of the Tribunal. Immediately after the publication of the award, petitioner reported on duty on May 21, 1975. The respondent directed him to appear before the Medical Board, M.C. Hospital, Jodhpur on July 21, 1975 for his medical examination. The Superintendent, Associated Groups of Hospitals, Jodhpur intimated the respondent No. 1 that the petitioner had been found fit to resume his duty vide his letter dated August 22, 1975 (Annexure-4). Meanwhile, this Court granted stay on July 21, 1976 and it was vacated on August 31, 1976. Thereafter, the petitioner again reported on duty on September 4, 1976 and he was taken on duty with effect from September 10, 1976. He claimed wages for the period from May 21, 1975 to September 9, 1976 but the respondent refused to pay the same. Thereafter, he moved application (Annexure-9) under Section 33C(2) of the Act before the Industrial Tribunal-cum-Labour Court, Jodhpur. The respondent No. 1 filed his reply (Annexure-10). During the hearing of this application, the learned counsel for the respondent No. 1 raised an objection before the learned Industrial Tribunal-cum-Labour Court, Jodhpur that the petitioner's application is not maintainable under Section 33C(2) of the Act and he could move an application under Section 33C(1) of the Act for the recovery of the amount which has been awarded to him under the said award. After hearing the parties, the learned Labour Court, Jodhpur accepted the preliminary objection and dismissed the petitioner's application by his order (Annexure-11).

3. It has been contended by the learned counsel for the petitioner that the learned Labour Court has seriously erred to hold that the petitioner's application moved under Section 33C(2) of the Act is not maintainable as he can get the necessary amount by moving an application under Section 33C(1) of the Act. He further contended that no amount has been awarded to the petitioner under the award (Annexure-1), as such there was no question of recovery of any amount and the claim has been made in respect of the period subsequent to the award. He also contended that it is clear from the claim petition (Annexure-9) and the reply (Annexure-10) that the petitioner has claimed his wages for the period from May 21, 1975 to September 9, 1976 the same have seriously been contested by the respondent No. 1 in his reply and they could be determined under Section 33C(2) of the Act.

4. The learned Government Advocate tried his best to support the impugned order (Annexure-11)

5. It is clear from the award (Annexure-I) that no amount has been awarded under it to the petitioner. It has simply given direction for the reinstatement of the petitioner. The State of Rajasthan filed the said writ petition against this award and it was dismissed with the direction that the State Government will give effect to the order of the Tribunal. After the publication of the award (Annexure-1), the petitioner reported on duty on May 21, 1975 before the respondent No. 1, he issued letter (Annexure-3) for medical examination of the petitioner, it was held on July 21, 1975 and the petitioner was found fit to 'resume his duty (vide Annexure-4). The petitioner moved an application (Annexure-5) before the respondent No. 1 for making payment of his wages, giving reference of his six earlier applications moved from June, 1975 to October, 1975. After the vacation of the stay order dated July 21, 1976, the petitioner again moved application (Annexure-6) for taking him on duty. Admittedly, he was taken on duty with effect from September 10, 1976. It is apparent from the application (Annexure-9) moved under Section 33C(2) of the Act and its accompanying chart that the petitioner has claimed his wages of the period from May 21, 1975 to September 9, 1976. Respondent No. 1 has seriously opposed it in his reply on the ground that he was not on duty during this period. Obviously, it is a subject matter for the determination under Section

33C(2) of the Act. Only after the determination of amount, it can be said to be due within the meaning of Section 33C(1) of the Act. Sub-Section (1) of Section 33C of the Act deals with the recovery of the ascertained or due amount and its Sub-section (2) deals with the determination of the disputed amount. Only after the determination of an amount under Section 33C(2) of the Act, the provisions of Section 33C(1) of the Act can be invoked for the recovery of the determined amount. It has been observed in *Nityanand M. Joshi v. Life Insurance Corporation* 1970 (20) F.L.R. 153 : 1969 (2) LLJ 711 (S.C) as follows:

'It is plain from the wording of Sub-section (1) and Sub-section (2) of Section 33C that 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, while the latter sub-section 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. In the present case applications were filed by the employees against the respondent for computing in terms of money the benefit of holidays and for recovering the amount. This case falls squarely within Sub-section (2) of Section 33C. There is no award or settlement under which the benefit of holidays had already been computed'.

It is, therefore difficult to sustain the order Annexure-11 of the learned Industrial Tribunal-cum-Labour Court, Jodhpur.

6. Consequently, the writ petition is allowed, Order Annexure 11 of the learned Industrial Tribunal-cum-Labour Court, Jodhpur dated August 3, 1985 is quashed and the application Annexure-9 of the petitioner will be decided on merits, in accordance with law. The parties will appear before the learned Industrial Tribunal-cum-Labour Court, Jodhpur on June 6, 1988.

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