

Anant Ram Ramdeo Vs. Assistant Engineer (Rec) and anr.

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Court : Rajasthan

Decided On : Nov-17-1994

Reported in : [1995(71)FLR599]; (1996)ILLJ149Raj; 1995(3)WLC596

Judge : N.K. Jain, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 33C, 33C(2); [Payment of Wages Act, 1936](#) - Sections 15 and 22

Appeal No. : S.B.C.W.P. No. 1227/1985

Appellant : Anant Ram Ramdeo

Respondent : Assistant Engineer (Rec) and anr.

Advocate for Def. : G.M. Bhandari, A.G.A.

Advocate for Pet/Ap. : D.K. Parihar, Adv.

Disposition : Petition allowed

Judgement :

ORDER

N.K. Jain, J.

1. By this writ petition, the petitioner seeks to quash the order dated December 18, 1984 (Ex.11) passed by the learned Judge, Labour Court, Jodhpur whereby he

has dismissed the claim application as not maintainable. It has been prayed that the respondent No. 1 may be directed to pay the wages which was deducted on the ground of petitioner's absence from duty. The petitioner has further prayed in the alternative that the case of the petitioner may be remanded to the respondent No. 2 Judge, Labour Court, Jodhpur to decide the case on merits.

2. Briefly stated the facts of the case as alleged by the petitioner are that he is working as Peon under the respondent No. 1 the Assistant Engineer (REC), Rajasthan State Electricity Board, Pali. It is alleged that the respondent No. 1 deducted the salary of the petitioner amounting to Rs 1855-95 due to alleged absence from duty from December, 1977 to February, 1979. The petitioner moved an application under Section 15(2) of the [Payment of Wages Act, 1936](#) before the Payment of Wages Authority but the learned Authority dismissed the application on the ground that the claim application is time barred vide order dated February 16, 1983 (Ex.1). Thereafter, the petitioner moved an application under Section 33C(2) of the [Industrial Disputes Act, 1947](#) before the learned Judge, Labour Court. The learned Judge after considering the material on record dismissed the application. Hence, this writ petition.

3. This writ petition is pending since July 6, 1985. Notice to show cause was issued on July 25, 1985 and the petition was admitted on March 17, 1986. It has come up before me today. As agreed by the learned counsel for the parties, the matter is heard finally.

4. Mr. Parihar, learned counsel for the petitioner has submitted that the respondent No. 2 has erred in dismissing the claim application on the ground that the remedy can be sought under the [Payment of Wages Act, 1936](#) as there is no bar in Section 33C(2) of the [Industrial Disputes Act, 1947](#) for such claim application. He has submitted that it is the choice of the Suitor to elect either of the remedies. He has submitted that the petitioner was on casual leave. He has relied on a Full Bench decision of Madhya Pradesh High Court rendered in Mohd. Ismail v. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court Jabalpur 1980 LIC 112 and also on Full Bench decision of Andhra Pradesh High Court rendered in Mandegam Radhakrishna Reddy v. Sri Bharathi Velu Bus

Service (1986 -I-LLJ-336).

5. Mr. Bhandari, learned counsel for the non-petitioner has opposed the submission of the counsel for the petitioner and submitted that when the petitioner failed to avail the remedy under the Payment of Wages Act in time and his application was dismissed as time barred, he has moved application under Section 33C(2) of the I.D. Act which has been rightly dismissed by the Labour Judge as not maintainable and no interference is called for.

6. In Mohd. Ismail v. Presiding Officer, Central Government Industrial Tribunal-cum-La-bour Court Jabalpur (supra), the Full Bench of Madhya Pradesh High .Court has considered various decisions of the Supreme Court including the decisions of their Lordships of the Supreme Court rendered in Shri Ambika Mills Co. v. S.B. Bhatt (1961-I-LLJ-1) wherein it has been held that at p.7 it is clear that the only claims which can be entertained by the authority are claims arising out of deductions or delay made in payment of wages. The Full Bench was called upon by a Division Bench to answer the following question:-

'Whether an application under Section 33C(2) of the Industrial Disputes act, 1947, is barred by virtue of Section 22 of the Payment of Wages Act where an application lies also under Section 15 of the Payment of Wages Act for recovery of that amount?'

The Full Bench 'after considering the decisions as stated above has answered the said question in following terms: -

'We therefore, answer the question in the negative by saying that an application under Section 33C(2) of the I.D. Act 1947, is not barred by virtue of Section 22 of [Payment of Wages Act, 1936](#), in respect of claims that could be preferred under Section 15 of the Payment of Wages Act and that the two Division Bench decision of this Court referred to above did not lay down the correct law.'

7. In Mandegam Radhakrishna Reddy v. Shri Bharathi Velu Bus Service (supra), question referred before the Full Bench was that whether the remedy under Section 33C(2) of the I.D. Act is barred by the provisions of Section 15 of the

Payment of wages Act. The Full Bench has held as under at Page 342.

'The remedy provided under Section 33C(2) of I.D. Act is far wider than the one provided under Section 15(1) of the Payment of Wages Act. Apart from that whereas a period of twelve months limitation is prescribed for filing of an application under Section 15 of the Payment of Wages Act the remedy under Section 33C(2) of the Industrial Disputes Act is not circumscribed by any such period of limitation. Both the provisions are intended for the benefit of the workmen and both the enactments are welfare legislations. Whereas the Payment of Wages Act regulates the payment of wages, the Industrial Disputes Act deals with the adjudication or industrial disputes and the enforcement of the existing rights of the workmen. Thus both the Acts can be characterised as special enactments each in its own way. The Parliament having been well aware of the provisions of Section 15 of the Payment of Wages Act inserted Section 33C in the Industrial Disputes Act in the year 1956 conferring a right on the workmen to prefer a claim for money or money equivalent of a benefit due to him. It was not as if the Parliament was not aware that the same workman may be governed by the provisions of both the acts. The two remedies are independent and alternative. One does not exclude the other. In such a situation the principle '*generalia specialibus non derogant*' will not be applicable as each one of the Acts is a special enactment in its own sphere and one cannot be said to be general in nature vis-a-vis the other.'

The Full Bench has further held at Page 351

'When a workman is governed by the provisions of both the Payment of Wages Act as well as Industrial Disputes Act, it is open to him to avail either of the remedies provided under those Acts. A claim barred by time under Section 15 of the Payment of wages Act can be entertained under Section 33C(2) of the Industrial Disputes Act.'

8. In view of the above, it is clear that the Labour Court has got jurisdiction to entertain claims arising out of deductions from wages or delay in payment of wages as the application filed under Section 33C(2) is not a suit. On the contrary the remedy to recover the amount due under Section 33C is an independent remedy. After insertion 33C(2) of the Act w.e.f. August 21, 1964, the Presiding Officer for

the reasons to be recorded in writing, may extend such period in the circumstances of the given case. The Labour Court is not barred from entertaining such claims in spite of Sections 15 and 22 of the Payment of Wages Act. Section 33C is comprehensive and covers a case for computation of arrears of wages not paid to the workman by the employer for one reason or the other. Similar view has been expressed by Division Bench of this Court in J.D. A. Jaipur v. Judge, Labour Court (1991-II- LLJ-133) wherein it has been held that the jurisdiction of Labour Court to entertain an application under Section 33C(2) of the I.D. Act for payment of wages to a workman is not barred by virtue of the provisions of the Payment of Wages Act.

9. The said legal position leaves no room of doubt in holding that the learned Judge, Labour Court has erred in dismissing the application of the petitioner filed under Section 33C(2), as there is no bar for entertaining such claim. In view of this, the impugned order dated December 18, 1984, (Ex. 11) is set aside and the case is remanded back to the learned Judge, Labour Court, Jodhpur to decide the matter afresh after hearing both the parties expeditiously according to law as the matter is old one. The parties are directed to appear before the respondent No. 2 on January 9, 1995.

10. With the above observations, the writ petition is allowed. No order as to costs.

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