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Narayanan P. Vs. Presiding Officer, li Additional Labour Court and anr.

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Court : Chennai

Decided On : Aug-02-2000

Reported in : [2000(87)FLR972]; (2001)ILLJ616Mad

Judge : R. Jayasimha Babu and ;F.M. Ibrahim Kalifulla, JJ.

Acts : [Industrial Disputes Act, 1947](#) - Sections 33C(2); [Constitution of India](#) - Articles 12 and 14

Appeal No. : W.A. Nos. 283 and 284/2000 and C.M.P. No. 2749/2000

Appellant : Narayanan P.

Respondent : Presiding Officer, li Additional Labour Court and anr.

Advocate for Def. : N. Balasubramanian, Adv.

Disposition : Appeal dismissed

Judgement :

F.M. Ibrahim Kalifulla, J.

1. The above two appeals have been preferred against common order of the learned single Judge dated January 7, 2000 passed in W.P. Nos. 3626 and 8550 of 1998.

2. The appellant earlier had one round of litigation relating to his non-employment which was ultimately concluded by the order of Division Bench of this Court in W.A. Nos. 345 and 246 of 1992 wherein, while directing the second respondent herein to disburse the provident fund and gratuity to the appellant, the Court allowed the appellant to agitate his claim for his salary for a period of fifteen years from June, 1977 in lieu of reinstatement by filing necessary application under Section 33-C(2) of the Industrial Disputes Act. C.P. No. 2089 of 1992 claiming a sum of Rs. 2,30,953 after deducting the amount already paid by the respondent was one such claim petition filed under Section 33-C(2) of the Industrial Disputes Act by the appellant. He also filed another application in C.P. No. 131 of 1993 for a sum of Rs. 24,200 which was claimed for payment of Seva Samman. The Labour Court by its order dated May 23, 1997 in C.P. No. 131 of 1995, while rejecting the contention of the second respondent that payment of Seva Samman was dependant upon the discretion of the management and that the same was not payable to all the employees, computed the relief payable to the appellant only at a sum of Rs. 4,950. Aggrieved against the said order of the Labour Court, both the appellant as well as the second respondent filed writ petitions in W.P. Nos. 8550 of 1998 and 3626 of 1998 respectively.

3. The learned single Judge by relying upon the judgment of the Hon'ble Supreme Court reported in Municipal Corporation of Delhi v. Ganesh Razack, 1991 (1) SCC 235 : 1995-I-LLJ-395 allowed W.P.No. 3626 of 1998 and dismissed W.P.No. 8550 of 1998. The appellant has come forward with these two appeals against the said common order of the learned single Judge.

4. The appellant appeared in person and contended that the judgment of the Hon'ble Supreme Court reported in Municipal Corporation of Delhi v. Ganesh Razack (supra), was not applicable to the facts of this case and that the second respondent being Central Government organization would fall within the definition of State under Article 12 of the [Constitution of India](#) and therefore Article 14 of the [Constitution of India](#) will get attracted, and in such circumstances, the second respondent should not discriminate the petitioner from the other employees for whom Seva Samman was paid. We find no substance in either of the contentions raised by the appellant.

5. In the first place, it should be noted that the Court was concerned with a claim petition filed by the appellant before the first respondent under Section 33-C(2) of the [Industrial Disputes Act, 1947](#) seeking for computation of the monetary relief payable to him. The jurisdiction of Labour Court under Section 33-C(2) of the Industrial Disputes Act has been well defined and unless there was a pre-existing right available to the workmen, Labour Court exercising its powers under Section 33-C(2) of the Industrial Disputes Act cannot arrogate to itself the functions of adjudication of disputed claims. It has been repeatedly held that proceedings under Section 33-C(2) being in the nature of execution proceedings investigation into the alleged right of an employee to claim the very benefit would be outside the scope of power exercisable under that section. Therefore, there is no scope for invoking Article 12 or 14 of the Constitution in such proceedings.

6. Further the claim of the appellant before the first respondent was based on the rules relating to grant of Seva Samman as formulated on February 26, 1989. The said rules stated to have come into effect from June 1, 1988 and Rule 3 of the said Rules is to the following effect:

'Seva Samman is given at the pleasure of the management only for such employees who in the opinion of the management deserve such additional retirement benefit. The management have the right to withdraw the Seva Samman already granted by it at any time later if the management feel that concerned employee does not deserve it any more.

Seva Samman cannot be claimed by any employee as a matter of right'.

One another sub-para under para 6 which may be of some relevance reads as under:

'..... the above Rules shall be applicable to those who have joined the permanent service of the Central Sabha before March 31, 1985. In respect of those who joined after first April, 1985, the option is left open to them either to join Provident Fund Scheme or this Seva Samman Scheme'

7. A reading of the rules relating to grant of Seva Samman makes it abundantly clear that the same would become payable at the pleasure of the management to such of those employees who in the opinion of the management deserve such additional retirement benefit, meaning thereby that it was at the discretion of the management either to grant or not to grant Seva Samman depending upon the satisfaction of the management on the services rendered by the concerned employee. The subsequent sub-rule also makes it very clear that no employee can claim it as a matter of right.

8. The appellant by referring to sub-para 6 relating to option exercisable by an employee who joined after first April, 1985 would contend that the same would disclose that it was an alternative to Provident Fund and therefore payable to all employees. Here again, the said rule is not applicable to the petitioner inasmuch as the applicant joined service as early in the year 1963. Therefore there is no scope for applying the said paragraph to the petitioner. Further as far as Provident Fund was concerned, by virtue of the order of the Division Bench, the second respondent was directed to pay gratuity and provident fund payable to the appellant within a specified period and it is not the case of the appellant that the said direction was not complied with by the second respondent. Further Rule 5 cannot also be read in isolation. On a reading of the entire rules relating to payment of Seva Samman it is crystal clear that no employee can claim payment of Seva Samman as a matter of right. Therefore there is no scope for considering the contention of the petitioner on that score.

9. The only other question that remains to be considered is as to whether the appellants claim towards Seva Samman could be validly considered in an application under Section 33-C(2) of the Industrial Disputes Act by the first respondent. Having regard to the nature of payment governed by the rules relating to payment of Seva Samman formulated by the second respondent, it is clear that the same was not automatic but dependant on the exercise of discretion by the management either to grant or not to grant the payment of Seva Samman to an employee. The case of the second respondent was that the payment of Seva Samman was not sanctioned to the petitioner inasmuch as he was dismissed from service pursuant to initiation of disciplinary proceedings. Such being the factual

position, it can be safely concluded that the appellant had no pre-existing right to claim payment of Seva Samman from the second respondent. The discretionary rules relating to sanction of Seva Samman as contained in the Seva Samman Rules dated February 26, 1989 was never challenged by the appellant at any point of time. Further there was no prior adjudication about the rights of the appellant to claim payment of Seva Samman nullifying the discretionary power exercised by the management not to grant Seva Samman to the appellant. Therefore the learned Judge has rightly rejected the claim of the appellant by applying the law laid down by the Hon'ble Supreme Court reported in Municipal Corporation of Delhi v. Ganesh Razack (supra). We find no reason to interfere with the same. The appeals fail and the same are dismissed. No Costs. Consequently, C.M.P. No. 2749 of 2000 is closed.

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