

Divisional Controller Vs. Mohd. Khan S/O Jabbar Khan

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Court : Mumbai Nagpur

Decided On : Aug-16-2011

Judge : R. K.Deshpande, J.

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

Appeal No. : WRIT PETITION NO.4666 OF 2010

Appellant : Divisional Controller

Respondent : Mohd. Khan S/O Jabbar Khan

Advocate for Pet/Ap. : Shri V.G.Wankhede, Adv.

Judgement :

01) Rule made returnable forthwith. Heard Shri V.G.Wankhede, the learned Counsel appearing for the petitioner and Shri Pathak, Advocate h/f Shri S.N.Dandekar, the learned Counsel appearing for the respondent.

02) This petition challenges the order dated 3.3.2008 passed by the Second Labour Court, Nagpur in IDA Case No.265 of 2005 filed under Section 33C(2) of the [Industrial Disputes Act, 1947](#).

03) The petitioner is directed to pay an amount of Rs.1,93,775/- along with interest @ 7% per annum from the date of order till its realization to the respondent/applicant, within a period of two months from the date of order. The amount directed to be paid, is towards arrears of the difference arising out grant of regular time-scale. It is for the period from 1994 to 2005.

04) The contention of Shri V.G.Wankhede, the learned Counsel appearing for the petitioner/non- applicant, is that on 16.10.1999 the settlement has been arrived at and as per the said settlement, the earlier regular time-scale has been superseded and hence w.e.f.16.10.1999, the respondent/applicant was not entitled to arrears arising out the payment of regular time-scale. He concedes to the position that the fact that there was a settlement arrived at on 16.10.1999 in supersession of earlier settlement, was not pleaded in the written statement filed before the Labour Court. He has relied upon the decision of this Court delivered in Writ Petition No.1459 of 2010 on 12.7.2011. This Court has remanded the matter back to the Labour Court to consider the said issue.

05) Shri Pathak, Advocate h/f Shri S.N.Dandekar, the learned Counsel appearing for the respondent/applicant, opposes the claim made in this petition and he submits that the point was not raised before the Labour Court, hence the same should not be permitted to be raised here.

06) This Court has by judgment and order dated 12.7.2011 passed in Writ Petition No.1459 of 2010 has remanded the matter back to the Labour Court to consider the question of the effect of settlement dated 16.10.1999 on the entitlement of the respondent/applicant to regular time-scale w.e.f.16.10.1999. The same question is raised in this petition. Hence, in order to maintain consistency, in the orders passed by this Court, this matter will also have to be sent back to the Labour Court by permitting the petitioner/non-applicant to raise the said question, which shall be decided by the Labour Court.

07) In view of above, the writ petition is allowed. The order dated 3.3.2008 passed by the Second Labour Court, Nagpur in IDA Case No.265 of 2005, is hereby quashed and set aside. The Labour Court shall permit the petitioner/non-applicant

to amend the written statement and raise the point, which has been raised in this writ petition. The respondent/applicant shall also be permitted to make consequential amendment in his pleadings, if required. Shri V.G.Wankhede, the learned Counsel appearing for the petitioner/non-applicant, makes a statement that the amount which is payable to the respondent/applicant upto 15.10.1999, shall be paid within a period of four weeks from today. In view of this, the Labour Court shall not reopen the question of payment upto 15.10.1999. The Labour Court shall decide the matter within a period of six months from the date of completion of pleadings. No order as to costs.

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