

(2011) 01 P&H CK 0454

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 13477 of 1989

Din Bandhu

APPELLANT

Vs

Presiding Officer, Labour Court,
Bathinda and Another

RESPONDENT

Date of Decision: Jan. 10, 2011

Acts Referred:

- Industrial Disputes Act, 1947 - Section 32, 33C(2)
- Payment of Bonus Act, 1965 - Section 10

Citation: (2011) 162 PLR 790

Hon'ble Judges: Kamvaljit Singh Ahluwalia, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Kamvaljit Singh Ahluwalia, J.

Petitioner was employed as a driver with Indian Railways in the year 1951. He was retired by the employer with effect from 31st October, 1985. Earlier thereto, he was transferred from Bathinda to Ghaziabad in the month of October 1980. To assail that order, he filed a civil suit and the same was decided by the Court of Sub-Judge, First Class, Bathinda vide his judgment dated 22nd February, 1985. An appeal was filed by the Union of India, aggrieved against the judgment and decree of the Civil Court. During the pendency of the appeal, Central Administrative Tribunal (hereinafter referred to as, "the Tribunal") was constituted and the appeal was transferred to the same. All matters between the employer and the employee were settled before the Tribunal. The judgment of the Tribunal is annexed with the present writ petition as Annexure R-1.

2. The Petitioner filed four execution applications, three before the decision of the appeal and one thereafter, in the Civil Court. All four were decided. Thereafter, the Petitioner filed an application u/s 33-C(2) of the Industrial Disputes Act, 1949

(hereinafter referred to as, "the Act") claiming various dues. The said application has been dismissed by the Labour Court on the following grounds:

(a) The jurisdiction of the Labour Court u/s 33-C(2) of the Act is barred, as the workman has availed alternative remedy by filing execution applications before the Civil Court for enforcement of the decree.

(b) The judgment of the Tribunal records that a settlement has been arrived at and the relief sought has been granted to the Petitioner-workman.

(c) The payment of minimum bonus cannot be entertained, as u/s 33-C(2) of the Act No. enquiry can be held and the claim cannot be determined.

3. Giving above said reasons, the application filed by the Petitioner-workman u/s 33-C(2) of the Act was not entertained and was dismissed by the Labour Court, Bathinda vide its order (Annexure P-2) dated 20th June, 1988. In the present writ petition, the order (Annexure P-2), has been assailed.

4. The Petitioner has prayed that a writ in the nature of certiorari be issued and the order (Annexure P-2) passed by the Labour Court be quashed. It has been further prayed that a writ in the nature of mandamus be issued and Respondent No. 2-General Manager, Northern Railway, Baroda House, New Delhi be directed to make payment of the amount, specified in the application u/s 33-C(2) of the Act, to the Petitioner.

5. Having given the broad overview of the facts and the prayer made in the present writ petition, it is necessary to notice the operative portion of the judgment rendered by the Sub Judge (1st Class), Bathinda on 22nd February, 1985 in the civil suit between the Petitioner-workman and the employer Respondent No. 2-General Manager, Northern Railway, Baroda House, New Delhi. The same reads as under:

14. In view of the above discussion, I decree the suit of the Plaintiff for declaration that quarter No. 427-C in Type II Quarter and I also decree the suit of the Plaintiff for permanent injunction restraining the Defendants from charging penal rent of the quarter in question and the suit of the Plaintiff for declaration that his transfer is illegal and void is also decreed. Plaintiff is also held entitled to all benefits of service, arrears of pay, bonus, increments and seniority etc. Permanent injunction is also granted in favour of the Plaintiff restraining the Defendants from relieving the Plaintiff from Bhatinda Station on the ground that the Plaintiff is entitled to occupy the above-said quarter. Decree sheet be prepared. Suit of the Plaintiff is decreed with costs of the suit, File be consigned.

6. The Tribunal, while deciding the appeal against the above said decision of the Civil Court, vide its judgment (Annexure R-1) dated 31st July, 1986 observed as under:

6. The learned Counsel for the applicant has informed this Court that the Respondent retired from service w.e.f. 31st October, 1985 and he has No. right to

occupy the Government quarter after his retirement. The learned Counsel has further informed that the claim of the Respondent has almost been settled in the light of the decree date 22-2-1985 which was, in fact, got executed by the Respondent.

7. The learned Counsel for the applicant states at the bar that whatever is permissible to the Respondent as per eligibility, shall be paid to the Respondent in accordance with the rules by 31st October, 1986 and the period during which he remained absent from duty shall be treated as the leave of kind due as per rules.

8. Mr. Surya Kant, the learned Counsel for the Respondent states at the bar that the Respondent shall be vacating the Government Quarter No. 427-C, by 31st.

9. The applicant and the Respondent are directed to strictly comply with the aforesaid terms of settlement arrived at between them. The Respondent shall be paying the rent to the applicant in respect of the aforesaid Govt. quarter, which he is occupying even after his retirement as per rules.

10. In view of the position explained above, the appeal of the Union of India is disposed of accordingly and the parties are left to bear their own costs.

7. As has been noticed earlier, the Petitioner-workman filed four execution applications, three before the decision of the Tribunal and one thereafter. The judgment (Annexure R-1) rendered by the Tribunal particularly noticed the fact that claim of the Petitioner has been settled in the light of decree dated 22nd February, 1985, as the same was got executed by the Petitioner. However, the Petitioner-workman was still dissatisfied. He filed an application u/s 33-C(2) of the Act and demanded the following amounts:

"(a) Difference of pay from October 1980 to 31-10-86. The Petitioner is entitled to the enhanced allowance given to other employees of same category @ Rs. 400/- (72 months x 400)	= Rs. 28,800/-
(b) Bonus for the years of 1980-81, 81-82, 82-83, 83-84, 84-85, 85-86 @ Rs. 1500/-per year for six years	= Rs. 9,000/-
(c) Pension from 1-4-86 to 31-10-86 @ Rs. 1500/- per month for 7 months	= Rs. 10,500/-
	Total = Rs. 48,300/-

8. Since the Tribunal held that claim of the workman had been satisfied in execution filed before the Civil Court, the Labour Court held that the claim of the workman regarding pension is barred, as he had already availed alternative remedy by filing execution applications before the Civil Court for satisfaction of the decree and in appeal, it has been recorded that a settlement has been arrived at and claim of the Petitioner workman stands satisfied. So far as the claim of the Petitioner regarding entitlement of minimum bonus was concerned, the Labour Court observed as under:

As regards the claim of bonus, the workman did not state in the application under what provision of law or rule of service it was claimed. The employer pleaded that No. such claim was available to him. The workman in the witness box deposed that bonus @ 8.33% of pay had not been paid to him. The claim has apparently been made under the Payment of Bonus Act. Section 32(iv) of that Act provides that the *ibid* act would not apply to employees, employed by an establishment engaged in any industry carried on by any department of the Central Govt. The Indian Railways is such an establishment. So, the Payment of Bonus Act is not applicable. It appears from the evidence of the Respondent's witness T.C. Bhat that some kind of productivity linked bonus is payable to the Railway employees. The witness however also deposed that such bonus is available only to those employees who actually work and not those who have absented from duty. The workman's period of absence as per the judgment of the CAT has to be treated as the leave of the kind due as per rules, According to Sh.T.C. Bhat only 259 days half pay leave was due to the workman and that such bonus due to, him for year 1980-81 and 1981-82 has already been adjusted. This Court has limited jurisdiction as regards claim of bonus only minimum bonus u/s 10 of the Payment of Bonus Act is computable (vide *Bawa Singh v. The State of Punjab* 1974 Lab. IC 425 P&H; [Major D. Aranha Vs. Universal Radiators and Others](#),). The claim of bonus therefore is beyond the jurisdiction of this Court.

9. I find No. infirmity in the above said finding. It has been rightly held by the Labour Court that for the period of absence from duty, which according to the judgment (Annexure R-1) of the Tribunal was to be considered for leave of kind due, the Petitioner is not entitled to the bonus. Furthermore, this claim cannot be adjudicated upon in an application u/s 33-C(2) of the Act. Regarding claim of the Petitioner-workman for grant of pension for seven months, the Tribunal held that the Petitioner has ceased to be an employee of the Respondent-management and therefore, the same cannot be determined u/s 33-C(2) of the Act, when a definite stand has been taken by the Labour Court that the Petitioner-workman was not entitled to pension as he had not opted for the same before the cut-off date and he had obtained alternative benefit of Contributory Provident Fund. The argument of the workman that he is ready to opt for pension and willing to refund the employer's contribution to his provident fund, was not entertained by the Labour Court, as the same was beyond its jurisdiction. It was held that the Tribunal cannot

enlarge its scope by involving itself to a detailed enquiry into the disputed questions of fact requiring the parties to lead complex evidence.

10. In the written statement filed to the writ petition, Respondent No. 2-management has raised the following plea:

c) He was not pension optee, so question of pension does not arise and whatever was due such as PF, Bonus has already been correctly paid to him. However stated here that the said application u/s 33-C was not maintainable since all the claims of the Petitioner after his retirement has been settled as is evident from Annexure R-I.

11. After hearing counsel for the parties, this Court is of the opinion that the Labour Court has committed No. error and has rightly said that the issue as to whether the workman is entitled to pension or not, cannot be adjudicated upon in an application u/s 33-C(2) of the Act.

12. In [Gulabdevi Memorial Hospital Trust Vs. Presiding Officer, Labour Court and Another](#), a Single Bench of this Court observed as under:

3. It is well settled that the scope of Section 33-Cn (2) of the Act is indeed limited in that the right or the benefit which is sought be computed in proceedings thereunder must be an existing right, that is to say, a right already adjudicated upon or provided for. In other words, it is only an existing right that can constitute the foundation of a claim u/s 33-C(2) of the Act. This was so held by this Court in *State of Punjab v. Paramjit Kaur*, 1992 (1) ILR P&H 312 which in turn was founded upon the judgments of the Supreme Court in *Central Inland Water Transport Corporation Ltd. v. The Workmen*, AIR 1974 1604 (S.C.) and *Chief Mining Engineer, East India Coal Company Ltd v. Rameshwar*, AIR 1968 218 S.C.

13. Furthermore, in [Municipal Corporation of Delhi Vs. Ganesh Razak and Another](#), it has been held by Hon'ble the Apex Court that in the proceedings u/s 33-C(2) of the Act, the Labour Court has No. jurisdiction to adjudicate the dispute of entitlement or basis of the claim of workman. It further held that where the 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, therefore, clearly outside the scope of a proceeding u/s 33- C(2) of the Act.

14. The approach of the Labour Court is in consonance with the settled legal position and thus, No. fault can be found with the same. Hence, there is No. infirmity in the order passed by the Labour Court and the present writ petition is hereby dismissed, being devoid of any merit.

No costs.