(2006) 12 GAU CK 0027

Gauhati High Court

Case No: Writ Petition (Civil) No. 6109 of 2999

Indian Potash Ltd.		APPELLANT
	Vs	
Sapan Kumar Bhattacharjee		RESPONDENT

Date of Decision: Dec. 8, 2006

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2(R), 2(R)

Citation: (2008) 1 GLR 53

Hon'ble Judges: H.N.Sarma, J

Bench: Single Bench

Advocate: H.Sarma, L.P.Sharma, S.N.Sarma, Advocates appearing for Parties

Judgement

1. The order dated 6.9.1999 passed in Misc. Case No. 5/97 by the learned Presiding Officer, Labour court, Guwahati in an application under section 33C(2) of the Industrial Disputes Act allowing the prayer of the workman/respondent is the subject matter of challenge in this writ petition, which is filed by the Management.

2. A short resume of the facts necessary for disposal of this writ petition may be stated as follows:

The respondent/workman while was serving as Driver under the Management terminated from service and in a reference made to the labour court in reference case No. 37/87 questioning the said termination, the learned labour court answered the issues in favour of the workman vide award dated 19.9.1989. The issues that were referred to the Tribunal for adjudication were as follows:

(a) whether the Management of Indian Potash Ltd., are justified in refusing Shri S.K. Bhattacharjee, Driver A.V. Unit, Indian Potash Ltd., Rehabari to resume duties on expiry of his leave ?

(b) If not, is the said workman entitled to reinstatement with full back wages or any other relief in lieu thereof ?

The learned labour court answered the issue No. 2 in the following manner:

"Issue 2

For such unjustified termination of service, relief normally granted to a workman is reimbursement with back wages unless circumstances exist to deprive the workman of such relief. In this case I find that no such circumstances exist. The workman Shri S.K. Bhattacharjee is entitled to reinstatement with all the back wages from July 1985 till the date of reinstatement. If the workman has been paid wages by the management for any period after July 1985 that amount will be deducted from his total back wages."

3. The Management though approached the High Court against the aforesaid award in Civil Rule No. 259/1990, the same was dismissed vide judgment and order dated 12.3.1996 upholding the award of the labour court.

4. Thereafter the workman though was reinstated by the Management with effect from 2.4.1996 but not having paid the back wages as directed by the Labour Court, the workman filed an application under section 33C(2) of the Industrial Disputes Act, 1947 before the labour court for computation of the amount due to the applicant with a direction to pay the same. The said application was registered as Misc. Case No. 5/97. In the said application, the workman contended that he was entitled to get the following amount that constituted the back wages and wages (basic) plus D.A. plus HRA plus A.B. Allowances Rs. 2,50,461. Leave Salary Rs. 35,716.21, Bonus for 11 years Rs. 5 6.709.24. LTC Rs. 4,000.00 totaling Rs. 3,46,886.45. However, after deducting the amount already paid by the Management, the workman rested his claim on the balance amount of Rs. 1,49,424.73 only along with interest.

5. The learned labour court, upon consideration of the rival claim of the parties and on perusal of the materials available on records allowed the claim of the workman, as follows:

(a) Bonus

Rs. 66,709.24

(b) Leave Salary

Rs. 27,629.35

(c) LTC

Rs. 4,000.00

(d) Interest at the rate of 12% for 15 months

Rs. 12,650.78

(e) Cost

Rs. 3,000.00

Totalling

Rs. 1,13,989,37

Computing the back wages in the aforesaid manner, the learned labour court allowed the claim of the workman to the extent as indicated above and forwarded the order to the Govt. under section 33C(4) for issuing necessary certificate vide impugned judgment and order dated 6.9.1999.

Challenging the aforesaid order, the present writ petition has been filed by the Management.

7. I have heard Mr. L.P. Sarma, the learned counsel for the Management/petitioner and Mr. S.N. Sarma, learned senior counsel assisted by Mr. H. Sarma for the workman/respondent.

8. Mr. L.P. Sarma, in support of the Management contends that the workman is not entitled to get any bonus or LTC as back wages, in as much as the original award of the labour court is very specific in granting the relief only to the extent of "back wages" to the workman. The learned counsel contends that the bonus to an employee is paid only on actual

work, so also leave salary, entitled by a workman only if he works for the required number of period under the relevant service condition. Further contention is that under no circumstances the LTC can form part of the back wages as it is a leave travel concession which is to be given only on availing such leave; but not as any fixed amount.

It is further contended by the learned counsel that in order to get the aforesaid amount, there must be a prior adjudication regarding the entitlement of the aforesaid amount by a court of competent jurisdiction under the Act and the labour court exceeded its jurisdiction by deciding such entitlement of the workman while dealing with an application under section 33C(2).

9. Per contra Mr. S.N. Sarma, the learned senior counsel submits that entitlement of both the amount, bonus and leave salary is not required to be separately adjudicated in view of the fact that such being is a statutory one and the amount being is also fixed as per settlement and the workman has been paid the same amount what was paid to the other workman under the Management. Similarly, the workman having been reinstated with

back wages, he is entitled to leave salary due to him which is also a part of the award. Regarding the entitlement of the LTC, it is submitted by the learned senior counsel that such LTC cannot be denied of to the workman in view of the fact that had the petitioner been allowed to continue in his service allotting reinstatement, he would have certainly entitled to the said amount.

Following decisions were cited at the bar by the learned counsel for the parties:

(1) 1997 (11) SCC 363

(2) 2001(1) SCC 73

(3) 1975 (1) LLJ 254

(4) 1974 LIC 1018

(5) AIR 1968 SC 218

(6) AIR 1984 SC 500

(7) 19841 SCC 144

(8) 19971 LLJ 170

10. I have considered the rival submissions made by the learned counsel for the parties. I have also perused the materials available before me.

The broad facts relating to the termination of the workman, reference of the dispute to the labour court and award of the labour court as well as the dismissal of the writ petition filed by the Management challenging the award are not disputed. It is also not disputed that the Management paid in the meantime the amount of Rs. 1,97,521 while it was pending before the labour court.

10. The bone of contention between the parties raised on the entitlement of the workman to get the amount of bonus, leave salary and LTC as back wages, or alternatively whether the term "wage" includes the amount under the aforesaid category. It is to he noted herein that in terms of the order dated 20.9.2000 passed by this court, the Management paid a further amount of Rs. 50,000 to the workman out of the awarded sum. On perusal of the award, it is seen that the learned labour court did not accept the contention of the workman that the term wage as defined in section 2(rr) of the Act does not include bonus without giving any reasons. The learned labour court found that after reinstatement of the workman, he is deemed to have been working and accordingly he is entitled to all the benefits which was allowed to his other colleagues who actually physically worked. On the aforesaid reason, the learned labour court also granted LTC to the workman.

11. The payment of bonus to a workman stands on a different footing than that of wages as defined under the Act. Such payment of bonus is regulated by the payment of bonus Act. For the purpose of adjudication of any dispute under the Industrial Disputes Act we are to go by the definition contained in the Act. Section 2(rr) specifically provides that wages do not include, amongst other things, any bonus. The learned labour court having specifically passed the award reinstating the workman with back wages, the term back wage, is to be confined within the meaning as defined under the Act. As indicated above, the bonus not having included within "wages" under the Act, the same cannot be treated as a wage and for that purpose as any back wages. The learned labour court thus committed an error apparent on the face of the record in directing to pay the bonus amounting to Rs. 66,709.24 holding it as back wages and computation to that extent cannot be approved of under the law.

12. Similarly, so far the LTC is concerned, no reason whatsoever showing the entitlement of the workman such LTC as part of the back wages has been discussed. Under the standing order binding the parties, the LTC is calculated to the same equivalent to the basic pay of the employees in the month in which leave commences plus Rs. 750 that too subject to the condition that:

"(a) The employee should have minimum of 10 days leave (P.L.) to his/her credit and leave avail at a time for minimum 10 days;

(b) L.T.C. is payable for completed year of confirmed services once in a year before proceeding on leave. The applicable rate with reference to the basic pay for the month in which the leave commences ?

(c) In the event of the employees not availaing leave for at least 10 days after the same has been sanctioned, the LTC paid will be recovered."

The aforesaid provision of the standing order binding the parties clearly demonstrates that in order to claim leave travel concession, one must actually take such leave for the purpose of travelling, in the event of not making any such travel, the claim of LTC as part of the wages cannot be approved of. That apart, the definition of wages under section 2(rr) also do not include such amount entitled to be claimed as LTC. On such consideration I find that the learned labour court acted illegally and committed an error apparent on the face of the record in computing the amount of Rs. 4,000 on account of LTC.

12. So far Leave Salary is concerned, Mr. L.P. Sarma, the learned counsel for the workman, has not seriously pressed the same and accordingly, no adjudication thereon is called for.

13. Considering the aforesaid discussion what emerges is that it is manifest and clear that the conclusion recorded by the learned labour court is based on an obvious misinterpretation of the relevant provisions of law as well as ignorance of such provision.

The amount awarded so far the aforesaid amount relating to bonus and LTC are concerned, is based on reasons which are wrong in law and is laible to be corrected in the certiorari jurisdiction of this court.

In view of the aforesaid discussion, I hold that the learned labour court was not justified in interpreting the bonus and LTC to be part of back wages as awarded by the learned labour court without there having an adjudication by a competent court of law regarding the entitlement of the workman on the aforesaid 2 accounts and accordingly the same are set aside.

In the result, the writ petition is allowed to the extent indicated above, leaving, however the parties to bear their own cost.