Calcutta State Transport Corporation Vs Santi Ranjan Sengupta and Others

Court: Calcutta High Court

Date of Decision: Feb. 28, 2001

Acts Referred: Industrial Disputes Act, 1947 â€" Section 33C(2)

Citation: (2001) 2 CALLT 107 : (2001) 2 CHN 558 : (2001) 90 FLR 342 : (2001) 2 LLJ 693

Hon'ble Judges: Tarun Chatterjee, J; Hrishikesh Banerji, J

Bench: Division Bench

Advocate: L.C. Behani and N.C. Behani, for the Appellant;Rajat Datta and Nabanita Roy, for the Respondent

Final Decision: Partly Allowed

Judgement

Tarun Chatterjee, J.
This appeal is preferred by the Calcutta State Transport Corporation (in short "Corporation") against the Judgment

and/or Order passed by a learned Judge of this Court in a writ application filed by the Corporation for setting aside the order passed by the 1st

Labour Court, West Bengal, dated January 30, 1997 in Computation Case being No. Comp. 52/94 being Annexure "N" to the writ application

and for other incidental reliefs.

2. It is not in dispute that in the aforesaid Computation Case the 1st Labour Court, while considering an application of the "Corporation" u/s 33-

C(2) of the Industrial Disputes Act (hereinafter referred to as "the Act) directed the "Corporation" to pay a sum of Rs. 92,920/- being the

computation amount of the workman by March 31, 1997 after coming to a finding on the basis of an order of a Division Bench of this Court that

the workman was entitled to get monetary benefit upto March 31, 1990. The matter comes in this fashion. The workman who was a driver of the

"Corporation" was dismissed from service by an order dated March 1, 1976. A dispute was raised by the workman against the said order of

dismissal which was referred to the Labour Court for adjudication. The learned Judge, 3rd Labour Court after adjudicating the dispute between

the parties had set aside the order of dismissal and directed the "Corporation" to reinstate the workman in service and pay all his salaries and

service benefits. The workman thereafter applied u/s 33-C(2) of the Act for computation of the monetary benefits in which an Order was passed

holding that the workman was entitled to get a sum of Rs. 73,931/- towards his back wages, Rs. 52,000/- towards the incentive and Rs. 6,016/-

towards bonus for the period from March, 1976 to December, 1986. The ''Corporation'' in the meantime challenged the aforesaid award passed

by the Labour Court in this Court and MAHITOSH MAJUMDER J. (as His Lordship then was) disposed of the writ application by directing the

''Corporation'' to allow the workman to join his service without any back wages for the period from March 1, 1976 to January 27, 1989. In

appeal, a Division Bench of this Court allowed the appeal of the workman. While allowing the appeal, the Division Bench of this Court by its

judgment and order directed that after passing of the award by the Labour Court, the workman was not allowed to join by the ""Corporation"" and

for which the workman did not join upto March 31, 1990 when he attained the age of superannuation. In the said judgment the Division Bench

held that the workman would be entitled to all the benefits from January 27, 1989 till March 31, 1990. In the aforesaid Judgment of the Division

Bench of this Court it was further directed that on computation of the amount for the aforesaid period, the same should be paid to the workman. It

was further held that the Corporation within a period of three months from the date of the judgment was directed to send down a computation to

the workman as to the amount of money payable to the workman for the period from January 27, 1989 till March 31, 1990. A review application

was also filed by the ""Corporation"" before a Division Bench of this Court pointing out that the date of superannuation on the basis of which the

Division Bench had directed computation was on the face of the record not correct as the workman was superannuated on and from May 31,

1987. Unfortunately the application for review was rejected by the Division Bench on a finding that even if the date of superannuation was wrongly

quoted by the Division Bench even then that was not a ground for review of the aforesaid order. After the rejection of the application for review

the workman proceeded with an application for computation u/s 33-C(2) of the Act. In the said application an objection was taken by the

Corporation that the workman was not entitled to get any salary or other emoluments treating, his date of superannuation as on March 31, 1990 as

fixed by the Division Bench of this Court in the aforesaid order as noted herein earlier when his date of superannuation from the records of the

Corporation appeared to be on May 31, 1987. The Labour Court by the order dated January 30, 1997 rejected the objection of the Corporation

and passed an award in terms of direction given by the Division Bench holding, inter alia, that although from the records it was evident that the date

of superannuation of the workman was May 31, 1987 but in view of the order passed by the Division Bench, the Labour Court cannot have any

jurisdiction to vary the date of superannuation of the workman. This award and/or order passed by the Labour Court was challenged in the writ

jurisdiction of this Court. A learned Judge of this Court rejected the writ application, inter alia, holding that since the Division Bench had already

fixed the date of superannuation of the workman as on March 31, 1990, a Single Bench of this Court cannot have any Jurisdiction to vary the said

order particularly when an application for review to correct the date of superannuation of the workman was rejected by the Division Bench itself.

However, the learned Judge in the impugned order observed the following: ""Even assuming for argument''s sake that the aforesaid finding of the

Division Bench in its judgment and order dated September 11, 1990 was not correct as the workman was due to retire earlier, such question

certainly cannot be reopened as the same having not been modified by a subsequent Division Bench and not having been set aside by the Hon''ble

Supreme Court"". It is true that against the aforesaid order of the Division Bench and also against the order of the rejection of the review

application, Corporation did not take this matter in the higher forum. Under these circumstances we are to consider whether a subsequent Division

Bench can modify or vary an order passed by the Division Bench earlier fixing the date of superannuation which, on the face of the record, appears

to be incorrect. Before we take up this issue for consideration, let us remind ourselves of the concurrent findings arrived at by the Tribunal as well

as by the learned trial Judge that the date of superannuation of the workman from the records was found by the two fora as noted hereinabove to

be May 31, 1987 and not March 31, 1990. Keeping this in mind, let us now consider the question in hand.

3. Mr. Bihani appearing for the Corporation submitted before us that the date of superannuation being apparent from such finding of the Labour

Court, the trial Court as well as the Labour Court could not have passed an order for payment till March 31, 1990 inasmuch as the workman had

no right to continue beyond the date of superannuation. In support of this contention Mr. Bihani relied on a decision of the Supreme Court in the

case of Radha Kishan v. Union of India 1997-I-LLJ-1165 in which the Supreme Court held, inter alia, that even if an employee works beyond the

date of superannuation, he has no right to receive salary in respect of such period. Mr. Bihani further contended that even assuming that the earlier

Division Bench directed to compute the arrear salaries upto March 31, 1990 although service records of the workman clearly indicated that the

date of superannuation was May 31, 1987 which was never challenged by the workman before any appropriate forum, it was open to this Bench

to correct the error committed by the earlier Division Bench in saying that the date of superannuation of the workman was March 31, 1990. These

submissions of Mr. Bihani were, however, disputed by the learned counsel appearing for the workman before us. She contended that the question

of maintainability of the claim of the workman in a proceeding u/s 33-C(2) of the Act for the purpose of varying the date of superannuation cannot

arise at all in view of the fact that in the exercise of the jurisdiction of the Labour Court u/s 33-C(2) of the Act it cannot adjudicate any dispute in

respect of entitlement and basis of claim of the workman. It can only interpret the award or settlement on which the claim is based. It was

contended by the learned counsel for the workman-respondent that u/s 33-C(2) of the Act the jurisdiction of the Labour Court is like that of an

executing Court. Therefore, the trial Court as well as the Labour Court had no jurisdiction to vary the order of the Division Bench of this Court in a

proceeding u/s 33-C(2) of the Act and, therefore, no interference can be made with the order impugned in this appeal. In support of this

contention the learned counsel for the workman relied on a decision of the Supreme Court in the case of Municipal Corporation of Delhi Vs.

Ganesh Razak and Another, .

4. Having heard the learned counsel I appearing for the parties and after giving our anxious consideration to the submissions made on behalf of the

parties, we are of the view in the facts and circumstances of the case the error that was made by the earlier Division Bench in the aforesaid

judgment fixing the date of superannuation as on March 31, 1990 instead of May 31, 1987 must be corrected as there was an apparent error now

noticed by us in respect of the same. From the order of the Division Bench passed earlier as noted herein earlier it does not appear that the date of

superannuation of the workman was accepted to be March 31, 1990. It is true that the Division Bench in the earlier decision between the same

parties observed that the date of superannuation of the workman was March 31, 1990. It is also true that the learned counsel appearing for the

Corporation did not dispute the date of superannuation before the earlier Division Bench decision of this Court. We have carefully perused the

orders passed by the trial Court as well as by the Labour Court against which the earlier appeal was taken before the Appellate Court. After a

careful perusal of the same, we do not find any date having been fixed either by the trial Court or by the Labour Court saying that the date of

superannuation of the workman was found to be March 31, 1990 and not May 31, 1987. It is a concurrent finding of fact arrived at by the trial

Court and also the Labour Court that although the records relating to the case of the workman-respondent clearly indicated that the date of

superannuation of the workman-respondent was May 31, 1987 but in view of the order passed by the Division Bench it was not. possible for them

to hold that the workman was only entitled to computation of the monetary benefit upto May 31, 1987. The trial Court as well as the Labour

Court had shown their helplessness to hold that although the date of superannuation of the workman-respondent was May 31, 1987 even then the

workman was entitled to receive compensation taking his date of superannuation upto March 31, 1990. Therefore, it cannot be disputed before us

that the date of superannuation of the workman would be May 31, 1987 and not March 31, 1990 which was found by the appellate Court for the

first time in appeal. Now the question is whether we can correct such a date fixing the date of superannuation of the workman-respondent sitting in

a concurrent jurisdiction. We need not dwell in this matter in detail in view of a recent decision of the Supreme Court in the case of M.M. Thomas

Vs. State of Kerala and Another, in which the Supreme Court clearly laid down the principle that when an earlier judgment of the High Court was

vitiated by error apparent on the face of the record the subsequent Bench of the High Court would be at liberty to correct the said error which was

apparent on the face of the record. In paragraph 13 of the aforesaid judgment of the Supreme Court, it is observed as follows:

Does it mean that the High Court has no power to correct its own orders, even if the High Court is satisfied that there is error apparent on the

face of the record?

5. In paragraph 14 of the said decision, answer was given by the Supreme Court in the following fashion:

""High Court as a Court of Record, as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records. A Court of

Record envelopes all such powers whose acts and proceedings are to be enrolled in a perpetual, memorial and testimony. A Court of Record is

undoubtedly a Superior Court which is itself competent to determine the scope of its jurisdiction. The High Court, as a Court of Record, has a duty

to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by (he High Court in respect of any

orders passed by it the High Court has not only power, but a duty to correct it. The High Court''s power in that regard is plenary. In Naresh

Shridhar Mirajkar and Others Vs. State of Maharashtra and Another, a nine Judges Bench of this Court has recognised the aforesaid superior

status of the High Court as a Court of plenary jurisdiction being a Court of Record.

6. From the aforesaid principle as laid down by the Supreme Court in its recent decision, we feel it necessary and our duty to keep all its records

correctly and in accordance with law, We have already noticed that the Division Bench had made an apparent error on record regarding the date

of superannuation of the workman as we find from the records as well as from the findings of the trial Court as well as of the Labour Court that the

record had shown that the date of superannuation of the workman was May 31, 1987. As the Supreme Court has held that the High Court being a

Court of records when an error apparent on the record is noticed by the High Court it has not only the power to correct the said error but it has a

duty to correct itself. Therefore, in the present case admittedly the Division Bench was in error on the face of it by fixing the date of superannuation

of the workman-respondent as on March 31, 1990 instead of May 31, 1987. Finding this, therefore, we are of the view that it is our duty to

correct the error apparent from the record and we hold that the workman is/was entitled to compute his claim upto May 31, 1987 and not upto

March 31, 1990, The decision of the Supreme Court in the case of Radha Kishan v. Union of India, (supra) has clearly laid down the principle that

even if an employee works beyond the date of superannuation, then also he has no right to receive salary in respect of such period. Admittedly in

this case the record shows that the date of retirement of the workman was May 31, 1987, therefore, the workman after his reinstatement was

entitled to salaries and other benefits only upto the date of superannuation i.e., May 31, 1987. Before we conclude, a decision cited by the learned

counsel for the workman before us may be considered. The learned counsel for the workman relying on the decision of the Supreme Court In the

case of Municipal Corporation of Delhi v. Ganesh Razak and Anr., (supra) submitted that in a proceeding u/s 33-C(2) of the Act, the Court has

no power to correct the date of superannuation of a workman as the proceeding u/s 33-C(2) of the Act was in the nature of execution. In view of

the aforesaid discussions as made hereinbefore that when an error apparent on the face of the record was made by an earlier Division Bench of

this Court it can be corrected even by a subsequent Division Bench of the Court treating the date of superannuation as on May 31, 1987 and not

March 31, 1990 and since we have corrected the date shown in the earlier Division Bench of this Court in the exercise of our power for the

purpose of correcting the records of this case we do not think that the aforesaid decision of the Supreme Court as cited by learned counsel for the

respondent can be of any help to the workman-respondent. That being the position, we are of the view that the date fixed by the earlier Division

Bench for superannuation of the workman-respondent was incorrectly found and accordingly we correct the said date and find that the date of

superannuation of workman-respondent must be found to be May 31, 1987 instead of March 31, 1990. Since we have only corrected the order

of the Division Bench passed earlier and in a computation case the Labour Court would be entitled to compute only upto the date of May 31,

1987, the award that would be passed by the Labour Court would stand varied to the said extent.

7. For the reasons aforesaid, this appeal is allowed to the extent indicated above and the award of the Labour Court passed in the proceeding u/s

33-C(2) of the Act is varied to the extent stated above. The order of the trial Court is set aside to the extent indicated above.

There will be no order as to costs.

H. Banerji, J.

I agree.