(1999) 03 BOM CK 0115

Bombay High Court (Goa Bench)

Case No: Letters Patent Appeals No"s. 2 and 3 of 1999

Shri Sakharam Parab	APPELLANT
Vs	
M/s. Kadamba Transport Corporation Ltd. and another	RESPONDENT

Date of Decision: March 22, 1999

Acts Referred:

- Industrial Disputes Act, 1947 - Section 33

Citation: (1999) 4 ALLMR 700 : (1999) 3 BomCR 659

Hon'ble Judges: R.K. Batta, J; N.P. Chapalgaonkar, J

Bench: Division Bench

Advocate: L.V. Talaulikar and Anand Kundaikar, for the Appellant; S.G. Dessai, S.A. and D. Ambekar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

N.P. Chapalgaonkar, J.
These Appeals are filed under Clause 15 of the Letters Patent of this Court challenging the order of the learned Single Judge passed on 9th September, 1998, in Writ Petitions No. 415/97 and 417/97. Appellants herein are workers employed with the respondent Kadamba Transport Corporation Ltd., a Government Company incorporated under the Companies Act, 1956 and operating bus service in the State of Goa. Both the appellants were put under suspension and after the enquiry was completed, they were reinstated. Both were found guilty, but minor punishments were imposed. These appellants filed an application u/s 33-C(2) of the Industrial Disputes Act, 1947, praying that full salary for the period of suspension be paid to them. The claim was based on their interpretation of Clause 29 of the Standing Orders applicable. The learned Presiding Officer of the Labour Court had allowed both the applications and directed the Corporation to pay all the wages for the suspension period deducting the suspension allowance already paid, alongwith

12% interest from the date of the application. These orders in Labour Case No. L.C.C. /18/96 and L.C.C./34/95 were challenged before the learned Single Judge of this Court. The learned Single Judge disposed of both these Writ Petitions No. 415/97 and 417/97 allowing them by quashing and setting aside the orders of the Presiding Officer of the Labour Court and holding that the applications were not maintainable u/s 33-C(2) of the Industrial Disputes Act, 1947. This order of the learned Single Judge is challenged in these Letters Patent Appeals.

2. We have heard both learned Counsel on the point of maintainability of such an application u/s 33-C(2) and also on the point whether the Corporation was bound to pay full wages of the suspension period in the absence of determination of the nature of the suspension period by the authority concerned. Shri L.V. Talaulikar, learned Counsel for the appellants relied on the judgment of the Supreme Court in The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., to contend that the Labour Court can interpret the award or the settlement on which the workman''s right is based while exercising jurisdiction u/s 33-C(2) of the Industrial Disputes Act. Shri Talaulikar contends that the relief which was prayed for by the appellants was based on the interpretation of Standing Orders and if clauses of the Standing Orders are correctly interpreted, the relief has to be granted, as it was the benefit which was capable of being computed in terms of money. Therefore, the application was very much maintainable. In the case cited by the learned Counsel, the Supreme Court observed:

"The claim u/s 33-C(2) dearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by Sub-section (2).

For the purpose of making the necessary determination u/s 33-C(2) , it would, in appropriate cases, be open to the Labour Court to interpret the award of settlement on which the workman''s right rests."

Relying on these observations, Shri Talaulikar contends that the learned Single Judge was in error in holding that application u/s 33-C(2) of the Industrial Disputes Act, was not maintainable. To consider the question whether the application of the appellants/ applicants was maintainable u/s 33-C(2) of the Industrial Disputes Act, it is necessary to take into account the relevant provisions of Standing Orders. Clause 29 of the Standing Orders relates to the punishment for misconduct. Sub-clause (F) of Clause 29 permits the Corporation to dismiss or inflict other punishments like fine, stoppage of annual increment, or reduction in rank. A proviso to this Sub-clause is sought to be pressed into service by the appellants. It reads:

"Provided that when an order of dismissal is passed under this clause, the workman shall be deemed to have been absent from duty during the period of suspension and shall not

be entitled to any remuneration for such period, and the subsistence allowance already paid to him shall not be recovered."

It is contended by the appellants that this proviso should be read to mean that in all cases wherein any punishment other than dismissal is inflicted, an employee who was put under suspension is entitled for full wages. We do not see that such an interpretation is possible. Normal rule of service jurisprudence is that after completion of the domestic enquiry or a criminal proceedings, the employer will be at liberty to determine the nature of the suspension period by a separate order, if not already decided in the enquiry itself. This power which the employer has may be restricted by the specific rules, one of the examples is the above-quoted proviso. It lays down that if the employee is dismissed, then his suspension cannot be treated otherwise, but will have to be treated as absence from duty.

3. We also find that there is one more Sub-clause, sub-clause (G) in the said Standing Orders, which will have to be read to understand the submissions of the appellants. Sub-clause (G) reads as under:-

"G. If on the conclusion of the inquiry, or as the case may be, of the criminal proceedings, the workman has been found to be not guilty of the charges framed against him, he shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been placed under suspension after deducting the subsistence allowance paid to him for such period."

Sub-clause (G) takes away the discretion of the Corporation in the matters wherein an employee is found not guilty. It lays down that his suspension period in such cases will have to be treated as a period on duty and he will have to be paid full wages for that period. A plain reading of the proviso to sub clause (F) and sub-clause (G) together makes the situation clear. In case of dismissal the employee cannot get any wages at all, In case of finding that he is not guilty, he is entitled to full wages. In cases not falling in these two categories, the Standing Orders are silent, leaving it to the discretion of the authorities. Therefore, the employer will have authority to consider the question about the regularization of the suspension period. Such an order will have to be separately passed, after hearing the employee concerned. This is really a matter for decision which has not yet been decided. If a matter is not finally decided and requires consideration by some authority, or is still to be adjudicated, it cannot be said that the matter is ripe for approaching the Court u/s 33-C(2) of the Industrial Disputes Act, 1947. It is not a mere interpretation of the award or settlement on which the workman''s rights rests. In a proper case it would be open for the Labour Court to interpret the award or settlement for this purpose, but the matter which was before the learned Presiding Officer of the Labour Court was not dependent on mere interpretation. It required adjudication or decision by the concerned authority of the Corporation. Unless it is done, the employee''s right to get a benefit capable of being computed in terms of money does not arise.

4. Where daily rated/casual workers prayed for wages at the same rates as regular workers were getting and their entitlement had not earlier been settled by adjudication or recognition by the employer, the Supreme Court in Municipal Corporation of Delhi Vs. Ganesh Razak and Another, , held that there was no occasion for computation of the benefit on the basis to attract section 33-C(2) . In the instant case, the appellants were found guilty but punishments inflicted were other than dismissal. Therefore, they are neither covered by the proviso to sub-clause (F), nor by sub-clause (G). The nature of their suspension period is still to be decided by the authorities. Therefore, an application u/s 33-C(2) was totally incompetent.

5. We do not see any reason to interfere with the orders passed by the learned Single Judge of this Court, which considers the scope of the enquiry u/s 33-C(2) properly. The Letters Patent Appeals are summarily dismissed. We direct the Corporation to proceed with the determination of the nature of the suspension period of both these appellants and after giving them due hearing and considering the service which the appellants had with the Corporation, pass suitable orders expeditiously and preferably within a period of six weeks from today.

6. Letters Patent Appeals dismissed.