2023 SCC OnLine J&K 521 : 2023 Lab IC 3984

In the High Court of Jammu and Kashmir and Ladakh[†]

(BEFORE SANJAY DHAR, J.)

Cadila Health Care Ltd. ... Petitioner(s);

*Versus*

Presiding Officer and Another ... Respondent(s).

WP(C) No. 2382/2021

Decided on August 18, 2023, [Reserved on : 09.08.2023]

Advocates who appeared in this case :

Mr. Anurag Lakhotia, Advocate, with Mr. Saqib Shabir, Advocate.

Mr. Adil Asmi, Advocate.

The Judgment of the Court was delivered by

SANJAY DHAR, J.:— The petitioner has challenged order dated 22.09.2021 passed by J&K Industrial Tribunal-cum-Labour Court, whereby order of dismissal dated 30.01.2019 passed by the petitioner against respondent No. 2 has been kept in abeyance till the disposal of the main petition.

2. It appears that respondent No. 2, who was working as an Area Manager in the Sales and Marketing Department of the petitioner company, has filed a petition before respondent No. 1/Tribunal. In his petition, respondent No. 2 has sought the following reliefs:

*(i) An order directing the OPs to pay salary and other emoluments/benefits in arrears in favour of the petitioner/complainant together with the interests @18% from the date it fell due till its final realization.*

*(ii) An order directing the OPS not to harass or change the service conditions or deprive the complainant/petitioner from his employment against the mandate of ID Act, Perks and expenses and allowances and other privileges for which he qualifies.*

*(iii) An order directing the OPs to release salary and expenses already in arrears with the OPS in favour of petitioner/complainant forthwith.*

*(iv) An any other order/s hereon as it may deem fit and proper*

3. The petitioner company has filed its reply to the petition filed by respondent No. 2, in which it has disputed the status of respondent No. 2 as a Workman and has also disputed his entitlement to the dues claimed by him.

4. It appears that the petition filed by respondent No. 2 before respondent No. 1/Tribunal was dismissed for non-prosecution on

20.12.2017 and thereafter it was restored to its original number on 14.03.2019. During the interregnum, the petitioner company passed order dated 30.01.2019, whereby services of respondent No. 2 were terminated. An interim application came to be filed by respondent No. 2 before the Tribunal for quashment of order dated 30.01.2019. Reply to the said application was filed by the petitioner whereafter the impugned order came to be passed by the Tribunal whereby the order of dismissal dated 30.01.2019 was kept in abeyance.

5. The petitioner has challenged the impugned order, primarily, on the ground that the petition that was filed by respondent No. 2 before the Tribunal was in the nature of an application under Section 33C(2) of the Industrial Disputes Act (hereinafter referred to as "the Act") as such, the impugned order could not have been passed by the Tribunal in such proceedings. It has been contended that the order passed by the learned Tribunal is without jurisdiction. It has also been contended that the impugned order does not disclose any reasons and, as such, the same is bad in law. The petitioner has also contended that without deciding as to whether status of respondent No. 2 is that of a Workman as defined under the provisions of the Act, no relief could have been granted by the Tribunal in favour of the said respondent.

6. Respondent No. 2 has resisted the writ petition mainly on the ground that the impugned order passed by the Tribunal is an interim order and the same cannot be challenged by way of writ proceedings. It has been further contended that respondent No. 2 has a prima facie case in his favour and, as such, the learned Tribunal was well within its powers to pass the impugned order so as to save respondent No. 2 from the vagrancy on account of withholding of his dues by the petitioner company.

7. I have heard learned counsel for the parties and perused the record of the case.

8. The moot question that falls for determination in this case is whether the Tribunal had the jurisdiction to stay the dismissal of respondent No. 2 in the proceeding that was pending before it. As is clear from the nature of reliefs prayed by respondent No. 2 before the Tribunal, the petition filed by the said respondent is in the nature of an application under Section 33C(2) of the Act. This is clear from the fact that respondent No. 2 is seeking recovery of alleged dues from the petitioner company. The matter regarding the nature of proceedings pending before the Tribunal gets further clarified from the issues framed by the Tribunal in the proceedings before it. The same are reproduced as under:

1. *Whether the petitioner is not a workman u/section 2(s) of Industrial Disputes Act? OPR*

2. *If issue No. 1 is decided in the negative, whether the respondents have committed unfair labour practices and victimization against the petitioner? If so, what is its effect to the present case? OPP*
3. *Whether the petitioner is entitled to Delta incentives to the tune of Rs. 1.80 lacs instead of Rs. 50,000/- OPP*
4. *Whether the salary of the petitioner for the months of August and September, 2015 is unpaid to the petitioner on the basis of 'No work no wages'? OPR*
5. *Whether the petitioner has been transferred to Jammu as per the terms of his appointment? OPP*
6. *Whether the claim made by the petitioner including the ones with respect to trave to Jammu, do not come within the scope of Section 33-C(2) of Industrial Dispute Act, and this Tribunal does not have jurisdiction to adjudicate the same? OPR*
7. *Relief. OPP*

9. From a perusal of the afore-quoted issues, it is clear that the proceedings pending before the Tribunal are under Section 33C(2) of the Act.

10. The next question that falls for determination is as to whether in a proceeding under Section 33C(2) of the Act, an order relating to dismissal of a Workman can be assailed and an interim order can be passed to stay the order of dismissal. In order to find an answer to this question, it would be apt to notice the provisions contained in Section 33C of the Act, which reads as under:

> *33C. Recovery of money due from an employer.—(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA or Chapter VB, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:*
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> *Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:*
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> *Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.*

> *(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government; within a period not exceeding three months:*
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> *Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.*

11. From a perusal of the aforesaid provision, it is clear that scope of proceedings under Section 33C of the Act is limited to issue of orders regarding recovery of money due to a Workman from the employer. There is no provision in Section 33C of the Act which gives jurisdiction to a Tribunal to pass an interim order during pendency of the proceedings before it. The scope of provisions contained in Section 33C of the Act has remained subject matter of discussion before the Supreme Court in a number of cases, some of which are required to be noticed.

12. In *Central Inland Water Transport Corporation Limited* v. *The Workmen*, (1974) 4 SCC 696, the Supreme Court has, while discussing the nature of proceedings under Section 33C (2) of the Act, observed as under:

> *12. It is now well-settled that a proceeding under Section 33-C(2) is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudged, or, otherwise, duly provided for. In* Chief Mining Engineer East India Coal Co. Ltd. *v.* Rameshwar, *it was reiterated that proceedings under Section 33-C(2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the benefit claimed by workmen is in such cases in the position of an executing court. It was also reiterated that the right to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an industrial workman and his employer.*

13. Again, in the case of *Municipal Corporation of Delhi* v. *Ganesh*

*Razak*, (1995) 1 SCC 235, the Supreme Court has, while considering this aspect of the matter, observed as under:

> *12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very 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 under Section 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.*
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> *13. In these matters, the claim of the respondent-workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of "equal pay for equal work" being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in the writ petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made under Section 33-C(2) of the Act by these respondents.*

14. From the aforesaid analysis of the law on the subject, it is clear that the proceedings under Section 33C(2) are in the nature of execution proceedings where the Labour Court only computes the money due to a Workman from the employer and thereafter issues order of recovery in favour of the Workman. The Labour Court is also competent to adjudicate the issues which are incidental to the computation of amount due to the Workman.

15. The principal issue which is pending adjudication before the Tribunal in the instant case is as regards the computation of alleged dues which respondent No. 2 claims against the petitioner company. The justification or otherwise of dismissal of respondent No. 2 cannot be termed as an issue incidental to the computation of dues. The legality and validity of dismissal order of respondent No. 2 is in fact the principal issue which has to be decided by the Tribunal in a separate reference and it is not an issue incidental to the computation of dues.

16. To support my aforesaid view, it would be apt to notice the following observations of the Supreme Court the case of *Central Inland Water Transport Corporation Limited* (supra):

> *15. It is, however, interesting to note that in the same case the Court at p. 156 gave illustrations as to what kinds of claim of a workman would fall outside the scope of Section 33-C(2). It was pointed out that a workman who is dismissed by his employer would not be entitled to seek relief under Section 33-C(2) by merely alleging that, his dismissal being wrongful, benefit should be computed on the basis that he had continued in service. It was observed:*
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> > *"His……dismissal may give rise to an industrial dispute which may be appropriately tried, but once it is shown that the employer has dismissed…….him, a claim that the dismissal……..is unlawful and, therefore, the employee continues to be the workman of the employer and is entitled to the benefits due to him under a pre-existing contract, cannot be made under Section 33-C(2)."*
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> > *By merely making a claim in a loaded form the workmen cannot give the Labour Court jurisdiction under Section 33-C(2). The workman who has been dismissed would no longer be in the employment of the employer. It may be that an Industrial Tribunal may find on an investigation into the circumstances of the dismissal that the dismissal was unjustified. But when he comes before the Labour Court with his claim for computation of his wages under Section 33-C(2) he cannot ask the Labour Court to disregard his dismissal as wrongful and on that basis compute his wages. In such cases, a determination as to whether the dismissal was unjustified would be the principal matter for*

*adjudication, and computation of wages just consequential upon such adjudication. It would be wrong to consider the principal adjudication as "incidental" to the computation. Moreover, if we assume that the Labour Court had jurisdiction to make the investigation into the circumstances of the dismissal, a very anomalous situation would arise. The Labour Court after holding that the dismissal was wrongful would have no jurisdiction to direct reinstatement under Section 33-C(2). And yet if its jurisdiction to compute the benefit is conceded it will be like conceding it authority to pass orders awarding wages as many times as the workman comes before it without being reinstated. Therefore, the Labour Court exercising jurisdiction under Section 33-C(2) has got to be circumspect before it undertakes an investigation, reminding itself that any investigation it undertakes is, in a real sense, incidental to its computation of a benefit under an existing right, which is its principal concern.*

17. In the case of *English Electric Company of India* v. *V. Manohara Rao*, (2001) 9 SCC 739, the Supreme Court set aside the order of reinstatement of a Workman directed by the Labour Court in proceedings under Section 33C(2) of the Act. The order of the Supreme Court is reproduced as under:

1. *The respondents filed a claim petition under Section 33-C(2) of the Industrial Disputes Act claiming difference in the wages paid to the permanent workmen and to the respondents. During pendency of the said claim petition the services of the respondents were terminated on 16-10-1991. A complaint is made under Section 33-A of the Industrial Disputes Act ("the Act" for short) on the ground that during pendency of the proceedings filed under Section 33-C(2) of the Act the appellant has effected termination of services which amounts to unfair labour practice. On that basis the Labour Court held that the services of the respondents could not have been terminated and they were directed to be reinstated till the disposal of the claim petitions with back wages and other benefits. Against this order these appeals are preferred.*
2. *A plain reading of Sections 33 and 33-A of the Act will make it clear that it is only during the pendency of any proceeding in respect of an industrial dispute the provisions of Section 33-A would be attracted and not otherwise. There was no industrial dispute but a claim petition under Section 33-C(2) of the Act was pending. This aspect was totally lost sight of by the Labour Court in dealing with this matter and, therefore, we allow this appeal and set aside the order made by the Labour Court. The appeals are allowed accordingly.*

18. From the foregoing analysis of the law on the subject, it is clear that unless there is a reference of a dispute regarding validity of a dismissal order before the Labour Court, it cannot adjudicate upon the said issue in a proceeding under Section 33C(2) of the Act. The issue relating to validity of a dismissal order can by no stretch of imagination be termed as incidental to the proceedings under Section 33C(2) of the Act.

19. In the instant case, the issue that was pending adjudication before the Labour Court was with regard to the entitlement and recovery of alleged dues by respondent No. 2 against his employer, the petitioner herein. The dismissal of respondent No. 2 during pendency of the proceedings before the Labour Court was a separate cause of action for which a separate reference was required to be made to the Labour Court for adjudicating its validity or in the alternative respondent No. 2 could have invoked the provisions of Section 10A of the Act. The impugned order passed by the Labour Court is, therefore, without jurisdiction.

20. Learned counsel for respondent No. 2 has vehemently argued that an interim order passed by the Labour Court cannot be challenged by way of a writ petition. In this regard, the learned counsel has placed heavy reliance upon judgment of the Supreme Court in the case of *Dena Bank* v. *D.V. Kundadia*, (2011) 15 SCC 690. In the said case it has been held that an interim order passed by the Tribunal which does not decide the reference finally cannot be interfered with by the Writ Court.

21. There can be no dispute with the proposition of law propounded by learned counsel for respondent No. 2 but then in the instant case, the impugned order passed by the Labour Court is wholly without jurisdiction. Thus, when the Labour Court had no jurisdiction to set aside the termination of respondent No. 2 in a proceeding under Section 33C(2) of the Act, it could not have passed the impugned ad-interim order. It is a settled law that a writ petition can be entertained against an order passed by a quasi-judicial authority if the said order is without jurisdiction. In the case that was subject matter of decision before the Supreme Court in *Dena Bank* v. *D.V. Kundadia* (supra), the question whether an interim order passed without jurisdiction is amenable to writ jurisdiction has not been considered. Therefore, the ratio laid down in the said case is not applicable to the facts of the instant case.

22. Apart from the above, the impugned order passed by the learned Labour Court is cryptic in nature as it does not assign any reasons. In this regard it would be apt to reproduce the operative portion of the said order:

*Considered respective submissions. Perused material on record. I*

*have carefully perused interim orders formulated by this court also.*

*Since in the present case issues were settled by this court on 17.02.2021, subsequently petitioner was asked to lead evidence but till date not even a single witness has been examined, hence petitioner is directed to file evidence on affidavit positively as already there is much delay caused in the present case, in the meanwhile order dated 30.01.2019 is kept in abeyance till disposal of main petition in order to arrive at just decision of the case. Let file come up on 08.11.2021.*

23. From a perusal of the afore-quoted order, it is clear that no reason, much less a plausible reason, has been given by the learned Labour Court-cum-Industrial Tribunal while passing the impugned order. The same is patently arbitrary in nature and, as such, unsustainable in law.

24. For the foregoing discussion, the writ petition is allowed and the impugned order passed by respondent No. 1/Labour Court-cum-Tribunal is set aside.

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† Principal Bench at Srinagar