

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
S. RAVINDRA BHAT; J., ARAVIND KUMAR; J.
28 AUGUST, 2023

CIVIL APPEAL NO.5730/2023 (@Petition for Special Leave to Appeal (C) No.4268/2022)

PHOOL MOHAMMAD

versus

EXECUTIVE ENGINEER, ELECTRICITY URBAN DISTRIBUTION & ANR.

Industrial Disputes Act, 1947; S.33C(2) - U.P. Industrial Disputes Act, 1947; S.6H - The appellant–workman claimed unlawful termination of his employment (sometime in 1979) and approached the Labour Court. The Labour Court directed his reinstatement and also directed payment of back wages at the rate of ₹8000/-. The Respondent, U.P. Power Corporation, filed a writ petition which was dismissed after the High Court had kept it pending for 11 long years, on 03.01.2006. The appellant thereafter represented to the employer on several occasions, but unsuccessfully. Ultimately, he approached the Labour Court yet again for calculation of his dues. In this second round, the Labour Court by order dated 31.08.2020 calculated back wages and directed payment of ₹8000/- per month. By the impugned order of High Court those directions were set aside. Held, the High Court could not have done what it in fact did, i.e., to set aside the second order of the Labour Court which merely calculated the amounts due and made consequential directions. The adjudication between the parties having crystallized with the award dated 22.12.1995, which was confirmed by the High Court, there was no occasion for any intervention, much less by the High Court. In these circumstances, the second award of the Labour Court is hereby restored. The respondent–U.P. Power Corporation Limited is hereby directed to pay to the appellant the sum indicated, i.e., ₹10,54,311/-, with interest @ 11% p.a. calculable from 21.09.2006 and shall also pay ₹2,00,000/- as costs. The appeal is allowed. (Para 3, 6)

(Arising out of impugned final judgment and order dated 25-10-2021 in WC No. 5944/2021 passed by the High Court of Judicature at Allahabad)

For Petitioner(s) Ms. Preetika Dwivedi, AOR Mr. Abhisek Mohanty, Adv.

For Respondent(s) Mr. Rakesh Uttamchandra Upadhyay, AOR Ms. Aarti U. Mishra, Adv. Mr. Harsh Som, Adv.

ORDER

1. Leave granted.

2. The appellant – workman is aggrieved by the impugned order of the High Court which set aside a determination by the Labour Court, Agra, Uttar Pradesh dated 31-08-2020. The operative portion of the Labour Court’s order reads as follows:-

“15. After the foregoing discussion and analysis, I find that the commutation of legal dues (as described in the chart annexed with application 3A) which the claimant workman has received as entitlement by means of the Award no. 159/87 is liable to be allowed and the Respondent employer is directed to ensure paying the lumpsum claim amount of ₹8000 as mentioned in para 8 of his application 3A plus ₹10,44,811/- as arrears of pay for the period from 22.12.1995 to 21.9.2006 and 1500 as litigation cost (totaling to ₹10,54,311/- to the claimant workman Phool Mohammed s/o late Allah Bakhsh within two months from the date of passing of this order, failing

which the claimant workman shall be entitled to get interest at the rate of 8% from the date of this order till actual realization.”

3. The background of the case is that the appellant claimed unlawful termination of his employment (sometime in 1979) and approached the Labour Court. The reference was answered in his favour by an award dated 22-12-1995; the Labour Court directed his reinstatement and also directed payment of back wages at the rate of ₹8000/-. The Respondent (U.P. Power Corporation limited, i.e, hereinafter referred to as ‘U.P. Power’) filed a writ petition which was dismissed after the High Court had kept it pending for 11 long years, on 03-01-2006. It appears that during the interregnum, the operation of the award had been stayed. The appellant thereafter represented to the employer on several occasions, but unsuccessful. Ultimately he approached the Labour Court yet again for calculation of his dues. (In this second round, so to say, the Labour Court (by order dated 31-08-2020 made under Section 6H of the U.P. Industrial Disputes Act (which corresponds to Section 33 C(2) of the Industrial Disputes Act, 1947) calculated back wages and directed payment of ₹8000/- per month in terms indicated in the earlier part of the order. By the impugned order those directions were set aside. In the meanwhile, on 04-10-2012 intriguingly U.P. Power issued an Office Memorandum indicating that the appellant would be treated as a muster roll employee. This Court, however, is not drawn into the correctness of that order since the focus of the present dispute pertains to the period upto 31-09-2006, i.e, in terms of the Labour Court’s second order dated 31-08-2020.

4. It is argued on behalf of the appellant that the High Court fell into error in setting aside the Labour Court’s order since the directions contained in the original award had crystallized and the second proceedings were really in the nature of an execution proceeding. On the other hand, it is contended on behalf of the U.P. Power that the appellant sought equation with regular employees – a condition which could not have been claimed by him and that the analogy of what was given of other employees (who were similarly circumstanced) is no longer valid as their writ petitions were subsequently dismissed.

5. In the ruling of five-Judge Bench of this Court in “**Central Bank of India vs. P.S. Rajagopalan Etc.**” (1963) 3 SCR 140, the scope of proceeding under Section 33C, have been broadly described. Referring to that decision and having regard to later judgments, this Court, subsequently in “**M/s Voltas Ltd. vs. J.M. Demello & Anr.**” (1971) 2 SCC 479 held as follows:-

“The question as to the scope of jurisdiction of a Labour Court under Section 33C(2) has been a subject-matter of several decisions of this Court. It is not necessary to go into those decisions once again as in the Chief Mining Engineer, East India Coal Co. Ltd., v. Rameshwar (1968) 1 SCR 140 all those decisions were examined and the propositions deducible from them were formulated. As stated in propositions (5) and (8), proceedings under Section 33-C(2) are analogous to execution proceedings and a Labour Court called upon to compute benefits claimed by a workmen is in the position of an executing court and as such competent to interpret an award where there is a dispute as to the rights thereunder or as to its correct interpretation. Obviously, if the award is unambiguous, the Labour Court is bound to enforce it, and under the guise of interpreting it, it cannot make a new award by adding to or subtracting anything therefrom. Although it cannot go behind the award, it is nevertheless competent to construe the award where it is ambiguous and to ascertain its precise meaning, for, unless that is done, it cannot enforce the award when it is called upon to do so by an application under Section 33-C. As held in The Central Bank of India v. Rajagopalan, a claim under Section 33-C (2) postulates that the determination of the question about computing in terms of money may in some cases have to be preceded by an inquiry into the existence of the right. Such an inquiry is incidental to the main determination assigned to the Labour Court by that sub-section. While inquiring into the question

as to the existence of such a right, and construing the award, the Labour Court can look into the demand by the workmen in order to ascertain whether the award under which the right is claimed was, or was not beyond the scope of the demand; in other words, whether the award was within jurisdiction. (cf. also Bombay Gas Co. Ltd. v. Gopal-Bhiva (1964) 3 SCR 709, 715-716. This position was conceded by Mr. Tarkunde.”

6. Having regard to the clear legal position, the High Court could not have done what it in fact did, i.e., to set aside the second order of the Labour Court which merely calculated the amounts dues and made consequential directions. The adjudication between the parties having crystallized with the award dated 22-12-1995 - which was confirmed by the High Court, there was no occasion for any intervention much less by the High Court.

7. In these circumstances, the second award of the Labour Court, Agra in Miscellaneous Dispute No.96/2006 under Section 6H read with Section 33 C(2), is hereby restored.

8. The respondent – U.P. Power Corporation Limited is hereby directed to pay to the appellant the sum indicated, i.e., ₹10,54,311/-, with interest @ 11% p.a. calculable from 21-09-2006. The U.P. Power Corporation Limited shall also pay ₹2,00,000/- as costs. The amount shall be paid to the appellant within four weeks from today.

9. The appeal is allowed in the above-terms.
