

HIGH COURT OF JAMMU & KASHMIR AT JAMMU.

OWP No. 923/2004

CMP Nos. 978/2004 & 932/2008

Date of decision: 29.09.2009

Management of Hindustan Lever Ltd. Vs. *State & Ors.*

Coram:

MR.JUSTICE J.P.SINGH, JUDGE

Appearing Counsel:

For Petitioner(s) : Mr. S.C. Aggarwal, Sr. Advocate with Mr. Sandeep Prabakar, & C.S. Gupta, Advocates.

For Respondent(s) : Mr. Sunil Sethi, Sr. Advocate with Ms. Veenu Gupta, Advocate.

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| i) | Whether approved for reporting in Press/Journal/Media | : | Yes |
| ii) | Whether to be reported in Digest/Journal | : | Yes |
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The Management of Hindustan Lever Limited, a Company registered with the Registrar of Companies under the Companies Act, 1956, has filed this Writ Petition seeking issuance of a writ of certiorari for quashing the Labour Court, Jammu and Kashmir, Jammu's Award of August 11, 2003 made in file no. 664/LC, whereby relying on its earlier Judgment and Award of February 28, 2003, delivered in file no. 654/LC, holding that the payment made by the petitioner-Company, to its workers, pursuant to their proceeding on voluntary retirement, was illegal and bad in law, and the workers were entitled to compensation equal to the highest, paid to similarly placed workers, on the basis of their status, length of service and Grade, it allowed respondent nos. 3 to 22's application filed under Section 33-C(2) of the Industrial Disputes Act, 1947, appointing a Commissioner to assess the amount of additional compensation due to the respondents.

The only point urged by the petitioner-Company's learned counsel, to question the Labour Court's Award, impugned in this petition, is that the Labour Court had erred in exercising adjudicatory jurisdiction in determining contentious issues, arising out of the respondents' claim and the petitioner-Company's response thereto, which, according to the learned Senior Advocate, was beyond the jurisdiction of the Labour Court, seized of an application under Section 33-C(2) of the Industrial Disputes Act, 1947, hereinafter to be referred as the "Act" for short. Reliance is placed by the learned counsel on *Municipal Corporation of Delhi vs. Ganesh Razak and anr.* reported as 1995(1) SCC 235, *Central Inland Water Transport Corporation Ltd. vs. The workmen and anr.* reported as AIR 1974 SC 1604, to support his submission.

Mr. Sethi, appearing for the respondents-workers, on the other hand, submitted that action of the petitioner-Company, having been found unsustainable by the Labour Court, on facts proved before it, the Labour Court was within its jurisdiction to issue the impugned Award exercising jurisdiction under Section 33-C(2) of the Act particularly when no contentious issue, inter se parties, survived for its adjudication, in view of the Labour Court's earlier verdict reflected in its Award made in file no.654/LC.

I have considered the submissions of learned counsel for the parties.

To determine the issue which arises for consideration in this Writ Petition as to whether or not the Labour Court was jurisdictionally competent to

adjudicate upon the claims projected by the respondents-workers, regard needs to be had to the issues which were framed by the Labour Court, and the decision rendered thereon, besides the Claim projected by the respondents under Section 33-C(2) of the Act.

The Claim projected by the respondents-workers, before the Labour Court through their application under Section 33-C(2) of the Act, reads thus:-

- “1) That the petitioners had been working in the Respondents factory at Jammu as permanent workers since long. The petitioners were doing their respective duties faithfully and to the best satisfaction of their employers.
- 2) That in the year 1989 the respondents introduced a scheme known as Voluntary Separation Scheme at Bombay Factory offering monetary benefits in Lumpsum to the tune of Rs.2.25 lacs and pensionary benefits also to those persons who voluntarily accept this scheme. A copy of the scheme is filed as Annexure-I in the list of Documents.
- 3) That the Respondents introduced the same voluntarily Separation Scheme at the Bari Brahmana Unit and didn't put this Scheme into black and white deliberately concealed this scheme from the employees including the Members of the petitioner No.1 Association. This Unit did not disclose the real contents of the said scheme to the employees rather in the garb of the said scheme started victimization and harassment of the employees individually and started bargaining with the workers using threats, compulsion, coercion and undue influence.
- 4) That in the process of bargaining with the individual workers the Management of Bari Brahmana has been able to give very nominal benefits to the members of the petitioners Association with the result that the Members of the petitioners Association were given very less benefits than provided under the voluntary separation scheme.
- 5) That at the same time contents of the Voluntary Separation Scheme introduced by the Head Office at Bombay Factory were never disclosed to the workers Union nor any negotiations were done at the Union level.
- It was done individually with a result that the most of the members of the Petitioners Association were victimized and were harassed as well. In fact some of the petitioners were suspended/terminated through vague allegations and victimization and were ultimately compelled to accept voluntary separation scheme.
- 6) That the Respondents told each of the aggrieved Members that they will extend benefits of the Actual contents of the scheme to each of them as soon as they receive clarifications regarding the actual benefits under the voluntary separation scheme from Head Office.
- 7) That it is further submitted that aggrieved workers being powerless and innocent had blind faith in the Management. But the Management never extended actual benefits available to them under the scheme up to this time.
- 8) That the respondents with malafide intention to close down their unit at Bari Brahmana forcefully retrenched/terminated the workers through un-fair Labour practices and no workers accepted the scheme with his own consent.
- 9) That in May' 96 the Management extended full benefits of this scheme to the remaining 232 workers and paid Rs. 3 to 5 lacs under the scheme plus other benefits.
- 10) That the respondents paid additional amounts to our colleagues Lal Chand Token No. 361 and Harish Chander Pant, Accounts

- Assistant but we have not been paid any additional amounts by the Management.
- 11) That the Management transferred some of our Co-employees to other units and some are yet working at Bari Brahmna Unit but we have been deprived of our livelihood.
- 12) That the petitioners have already submitted our actual amount variation claim to the Hon'ble Court without interest and have prayed for suitable interest on the same.
- 13) That the Management has deducted income tax on the meager amounts paid to the petitioners whereas, it has not deducted any income tax on the highest amounts of Rs.5 to 7 lacs paid to 234 workers in May, 1996.
- 14) That Company has paid additional service gratuity benefits to 234 workers which are to the tune of Rs.40 to 60 thousands.
- In the light of the facts mentioned above and those other submissions to be made at the time of the arguments, the petitioners most humbly pray that the dispute may kindly be settled and the benefits of voluntary separation scheme may be extended to the petitioners including differences of voluntary separation scheme, service gratuity and refund of Income tax deducted at source. Claim for litigation and mental agony may also be considered.

Any other relief which this Hon'ble Court may deem just and proper in the light of facts and circumstances of the case be also passed in favour of the petitioners.

Affidavit in support of this petition is annexed herewith.

Petitioners
through
Sd/-
(Charanjit Singh Saini)"

Dated:28.12.1999"

The issues, which the Labour Court framed in the case, are as follows:-

- "(i) Whether the respondents Management in the garb of V.S.Scheme victimized and harassed all the workers individually and started bargaining with the workers using threats, compulsion, coercion and undue influence? OPP
- (ii) Whether the action of the respondent Management as regards the payment of compensation to the petitioners, is illegal and unjustified, if so, how? OPP
- (iii) In case issue No.1 is proved in affirmative whether the petitioners are entitled to further compensation as per details/variation shown in the statement annexed with the application, on account of being not treated at par with other workers of the different Industrial Units including Bari Brahma unit with whom settlement under V.S.Scheme was arrived between the workers and the Management? OPP.
- (iv) Whether the application is beyond the ambit and scope of Sec. 33-C(2) of the I.D.Act, 47 and the claims of the petitioners are liable to be dismissed on this ground alone? OPR
- (v) Whether the petitioners/claimants had opted for voluntary separation scheme and submitted their resignation letters from the services of the respondents-Management, which were accepted and there is no employee and employer relationship between the parties and as such the application is not maintainable under law and is liable to be dismissed? OPR
- (vi) Whether the petitioners/claimants have signed the bilateral settlement with the respondents management by virtue of which they have received compensation fully and were given substantial benefits under V.S.Scheme, as such under Section 18(2) of the I.D.Act. The petitioners are precluded from taking this plea again before this Tribunal, thus their application is not maintainable? OPR
- (vii) Whether the petitioners, having voluntarily retired from services of the respondents management and having accepted the benefits on account of voluntary retirement, have ceased to be workmen under Sec. 2(s) of the I.D.Act and as such the application is not maintainable under law? OPR

- (viii) Whether the application has not been made in the proper form as prescribed under the I.D.Act and the rules made thereunder and thus is not maintainable? OPR
- (ix) Whether the union which has purportedly filed the present application is neither authorized nor has the locus standi to file the present claim as there is no authority/espousal in favour of the said union and the claim is liable to be dismissed on this count also?OPR
- (x) Whether Shri C.S.Saini has no authority/locus standi to sign and plead the case on behalf of other claimants? OPR
- (xi) Whether there is deliberate suppression and concealment of material facts by the claimants/petitioners regarding their having opted for the V.S.Scheme and having voluntarily resigned and having entered into bipartite settlement under the I.D.Act and as such their claims are liable to be rejected on this ground also? OPR"

The Labour Court decided the aforementioned issues, appreciating the evidence which the respondents-claimants and the petitioner-Company had led in the case, additionally relying on its Award of February 28, 2003 made in file No. 654/LC.

There is, therefore, no denial of the fact, that at the time of the respondents' moving the Labour Court under Section 33-C(2) of the Act, there was no adjudication, of any type whatsoever, on the central issues between the parties, as to the entitlement or otherwise of the respondents-workers, to voluntary retirement benefits more than the one given to them by the Company under the prevalent Voluntary Separation Schemes, or as to whether or not the petitioner-Company's act of sanctioning their voluntary retirement was justified and valid in law, besides other similar issues.

The claims which were thus projected by the respondents-workers, and which have been allowed by the Labour Court, were not based on any existing right of the respondents, to the monetary benefits, allowed to them by the Labour Court, or on any pre-judged, right of theirs.

The claims allowed by the Labour Court, in favour of the respondents, on the other hand, are based on the

merits of, its adjudication, made in respect of the issues framed in the case and not on any pre-existing right of the employees.

What therefore emerges, in the backdrop of the aforementioned factual matrix, is as follows:-

- 1) The Labour Court has, while examining the validity or otherwise of the Company's action of sanctioning their voluntary retirement, adjudicated upon contentious issues, raised before it, as to the entitlement or otherwise of the respondents to the benefits, which the petitioner-Company had allowed to other workers.
- 2) The Labour Court has adjudicated upon the claims made by those workers of the petitioner-Company who had proceeded on voluntary retirement, thereby ceasing to be workman under the Act.

The question that, therefore, arises for consideration is as to whether or not such a course was permissible?

Emphatic 'No', is the answer.

This is so because it is no longer res integra that Labour Court's jurisdiction under Section 33-C (2) of the Act is not adjudicatory, but only in the nature of an Execution, pursuant to an earlier adjudicated upon right of the worker(s), or entitlement of theirs, recognized as such, by the employer.

It would be advantageous to refer to what was held by Hon'ble Supreme Court of India in *Municipal*

Corporation of Delhi versus Ganesh Razak, reported as (1995) 1 SCC, 235, in this respect:

“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 recognized 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.

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.”

The Labour Court has thus acted beyond its jurisdiction in adjudicating upon contentious issues, recording its findings thereon and holding that the respondents-workers were entitled to the claims projected before it through their application under Section 33-C (2) of the Act.

The Labour Court has further erred in entertaining the respondents’ claim, made by those workers of the petitioner-Company who had since proceeded on voluntary retirement, in that, having elected to proceed on voluntary retirement, they had ceased to be ‘workman’

as defined under Section 2(s) of the Act and in this view of the matter, the Labour Court had no jurisdiction to entertain their claim.

The Labour Court's Award, even otherwise, becomes unsustainable, in that, its Judgment and Award of February 28, 2003, holding the action of the Management of Hindustan Lever Limited, in making payment of compensation to its workers under the Voluntary Separation Scheme, illegal and bad in law and that the workers were entitled to compensation equal to the highest paid to the similarly placed worker, on the basis of their status, length of service and Grade, on which it has relied on to hold the respondents entitled to similar reliefs, stands quashed by this Court, vide its judgment delivered in Writ Petition OWP No. 864/2003.

For all what has been said above, I do not find any merit in the respondents' counsel's submission that the Labour Court had the jurisdiction to entertain and allow the claims of the respondents under Section 33-C(2) of the Act.

The petitioner-Company's plea that the Labour Court had no jurisdiction to entertain the respondents' claim, therefore, succeeds.

Allowing this Petition, the Labour Court's Award of August 11, 2003 is, accordingly, quashed.

No order as to costs.

**(J.P.Singh)
Judge**

Jammu
29.09.2009
Pawan Chopra