

## **HIGH COURT OF JAMMU & KASHMIR AT JAMMU.**

**OWP No. 863/2003**

CMP Nos. 1037/2007, 156/2006 & 1061/2003

Date of decision: 29.09.2009

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

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### **Coram:**

**MR.JUSTICE J.P.SINGH, JUDGE**

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### ***Appearing Counsel:***

For Petitioner(s) : Mr. S.C.Agarwal, 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 March 31, 2003 made in file no.659/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 39'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, in terms of the judgment passed in its earlier Award made in file no.654/LC.

The short point urged by the petitioner-Company's learned counsel, to question the Labour Court's Award 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, had 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 applicants 36 (List enclosed) were working in the respondent's unit at Pampore for pretty long period. Full particulars of 36 workmen are annexed herewith as Annexure-I.
- 2) That the Pampore Unit was a part of Jammu Unit and was under the control of the Management of Jammu Factory.
- 3) That on 4<sup>th</sup> May, 1990 the Management displayed a notice on the factory Gate expressing their inability to continue normal manufacturing operations at Valley Plant due to prevailing conditions.  
A copy of the notice is annexed herewith as Annexure-II.
- 4) That through this notice, the Management decided to temporarily stop the operations of the factory in its entirety with effect from 5<sup>th</sup> May, 1990 until further notice.
- 5) That all the workmen were laid off on and from that date and the management assured us that the company will resume work as soon as the conditions improve.
- 6) That all the Units in valley resumed work very soon but our company which had an intention to close down the units both at Pampore and Jammu did never visit the valley plant after 4<sup>th</sup> May, 1990.
- 7) The Management transferred some of our Co-employees to other units i.e. Mr. O.J.Raina was transferred to Rajpura Factory and Mr. Ramesh Hakim was transferred to Jammu Factory but we were deprived of our livelihood.
- 8) That they made several trips to Jammu Factory but the Management always compelled us to accept voluntarily separation Schemes. (Affidavit enclosed-Annexure-III).
- 9) That the Management made us an Adhoc payment against voluntary separation scheme saying that they will extend full benefits of the scheme as soon as they receive details of actual contents of the scheme from Head Office.
- 10) That the management did never extend the actual benefits of the voluntary separation schemes to us and gave the same benefits only to 232 workers of Jammu Factory and one worker (Ramesh Hakim) of Pampore factory. The detailed list is enclosed herewith as Annexure-IV.
- 11) That the details of our dues/claims being variations on account of disparities is annexed herewith as Annexure-V.

It is, not out of place to mention here that the workers of Jammu Unit have already filed the case before the court through Labour

Department and is pending in the Hon'ble Court. However, the petitioners could not participate with these workers due to prevailing conditions in the valley.

Petitioners  
through  
Sd/-  
(Charanjit Singh Saini)  
President"

Dated:07.07.99.

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

- " (a) Whether the Pampore unit was a part of Jammu unit and was under the control of Management of Jammu factory, if so, what is its effect on the case? OPP.
- (b) Whether through a notice dated 4.5.90 the respondent management temporarily stopped the operation of the factory in its entirely w.e.f. 5.5.90 until further notice and all the workmen were forcibly laid off on and from that date and the respondent management despite assurance did not resume the work? OPP
- (c) Whether the respondent management compelled the petitioners to accept V.S. Scheme ? OPP
- (d) Whether the respondent management made an adhoc payment to the petitioners against V.S.Scheme assuring them that full benefits of the scheme will be given to them as soon as they receive details of actual contents of the scheme from head office? OPP
- (e) Whether the petitioners were entitled to further compensation as per details/variations shown in annexure-5 to the petition, on account of being not treated at par with other workers of the different industrial units with whom the settlement under voluntary separation scheme was arrived at between the workers and the respondent management? OPP
- (f) Whether the respondent management had not sought permission from the appropriate Govt. U/S 25-M of the I.D.Act, 1947 for alleged laying off the workers? OPP
- (g) 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.
- (h) Whether the petitioners/claimants had opted for Voluntary Separation Scheme and submitted their resignation letters from the services of the respondent 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
- (i) 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 Sec. 18(1) of the I.D.Act the petitioners are pre-cluded from taking this plea again before this Tribunal, thus their application is not maintainable? OPR.
- (j) Whether the petitioners, having voluntarily retired from services of the respondent management and having accepted the benefits on account of voluntary retirement, have ceased to be workmen under Section 2(s) of the I.D.Act and as such the application is not maintainable under law? OPR
- (k) 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/especially in favour of the said union and the claim is liable to be dismissed on this count also?
- (l) Whether Sh. C.S.Saini has no authority/locus standi to sign and plead the case on behalf of other claimants? OPR
- (m) 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?"

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 March 31, 2003 is, accordingly, quashed.

No order as to costs.

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

Jammu  
29.09.2009  
Pawan Chopra