2025:BHC-OS:3680

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3428 OF 2022

Deepak Vallabhdas Intwala …Petitioner

Versus

Casby Logistics Private Limited & Ors. …Respondents

Mr. Vinay Menon a/w Ms. Kirti Shetty i/by Kishorekumar Shetty for the Petitioner.

Mr. Vijay P Vaidya a/w Ms. Shraddha Chavan i/by Mahendra Agvekar for the Respondent No. 1.

CORAM : R.I. CHAGLA J

Reserved on : 28 January 2025

Pronounced on : 6 March 2025

JUDGMENT :

1. By this Writ Petition the Petitioner is impugning the Judgment dated 27th November 2019 passed by the Labour Court, Mumbai rejecting the Application (IDA) No. 171 of 2015 for recovery of money under Section 33 C(2) of the Industrial Disputes Act, 1947.

2. A brief background of facts is necessary.:-

(i) The Petitioner joined M/s. Casby Logistics Private Limited, Respondent No. 1. The Petitioner's duties pertained to all accounts work, wages work and costing work, collection of all the cheques, etc.

(ii) The service conditions of the Petitioner's came to be changed by the Respondents with effect from 10th March 2009, vide transfer communication dated 11th February 2009 and 9th April 2009 transferring the Petitioner from Mumbai to New Delhi, which the Petitioner claims to have been illegally done without following the necessary mandate of Item 9-A of Schedule IV of the Industrial Disputes Act, 1947.

(iii) The Petitioner filed a Complaint bearing Complaint (ULP) No. 212 of 2009 under Items 3, 5 and 9 of Schedule IV of the MRTU and PULP Act, 1971.

(iv) The order dated 5th August 2013 was passed by the Industrial Court in Complaint (ULP) No. 212 of 2009, whereby the Complaint was allowed and it was

declared that the Respondents have engaged in unfair labour practice under Items 3 and 9 of Schedule IV of the MRTU and PULP Act, 1971 and Transfer Orders dated 11th February 2009 and 9th April 2009 were quashed and set aside.

(v) The Advocate for the Petitioner sent notice dated 19th August 2013 to the Respondents asking them to reimburse the Petitioner all the payments due to him that were illegally deducted owing to the wrongful restructuring of his salary.

(vi) The Petitioner addressed a letter dated 13th November 2014 to the Respondent Company to redress the grievances and reimburse him with the outstanding amounts.

(vii) The Petitioner filed an Application on 2nd November 2015 under Section 33 C(2) of the Industrial Disputes Act, 1947, which came to be registered as IDA No. 171 of 2015 for recovery of Rs. 46,07,479/-.

(viii) The Written Statement was filed by the Respondents on 6th October 2016 denying the claim of the Petitioner.

(ix) Evidence of the Petitioner before the Industrial Court, Mumbai was recorded.

(x) The impugned judgment and order dated 27th November 2019 was passed by the Labour Court at Mumbai.

(xi) The present Writ Petition was filed impugning the order dated 27th November 2019 passed by the Labour Court at Mumbai.

3. Mr. Vinay Menon, learned Counsel for the Petitioner has submitted that by the impugned judgment and order, the Labour Court rejected the Application filed by the Petitioner for recovery of money under Section 33 C(2) of the Industrial Disputes Act, 1947. He has submitted that the aspect of entitlement to the claim of the Petitioner to monetary dues, arises from the order dated 5th August

2013 passed by the Industrial Court, Mumbai.

4. Mr. Menon has submitted that the entitlement arises due to a declaration by the Industrial Court, Mumbai vide order dated 5th August 2013 of Unfair Labour Practice. He has relied upon observations as well the operative part of the said Order. He has submitted that there is a specific direction in the operative part of the said Order *"to cease and desist"* which clearly restores the Petitioner to a position prior to the initiation of the said illegality, thus, re-establishing the entitlement of the Petitioner to all the benefits that he was getting and would have got, if not for the illegal action of restriction of wages. He has submitted that this fact has been clearly observed by the Industrial Court.

5. Mr. Menon has submitted that the Petitioner's entitlement arises from the said Order of the Industrial Court and that the said Order being an award itself, the only aspect which fell for consideration by the Labour Court was of quantification of the said benefits pertaining to payment of balance reduced basic Wage from the year 2009 till his date of retirement which the Petitioner is entitled to.

6. Mr. Menon has submitted that the scope of Section 33 C (2) of the Industrial Court is quite wide, to entertain such claims, which require interpretation and quantification of the amounts due. He has referred to the observations of the Industrial Court in the said order dated 5th August 2013, which is based on the evidence given by Petitioner in his examination in chief at paragraph 14 (page 92 of the compilation). He has submitted that this evidence is based on the specific amended pleadings in complaint from paragraphs (dd) to (hh), (pages 9 and 10 of the compilation), relating to illegal restructuring of the Petitioner's wages, due to which, there has been a cascading effect entirely to the detriment of the Petitioner that resulted in reduction in the future emoluments and benefits.

7. Mr. Menon has submitted that the question of there being a specific consequential relief does not arise inasmuch as, the said Order of the Industrial Court has specifically directed the Respondent to cease and desist from unfair labour practice.

8. Mr. Menon has submitted that the Industrial Court has observed *"Thus it is proved by the Complainant that the Respondents have engaged in unfair labour practice under Item 9 of Schedule IV*

of the Act.". This ought to have been appreciated by the Labour Court, as the Labour Court had the right to interpret the said Order of the Industrial Court, which it has not. He has placed reliance upon the Constitution Bench judgment of the Apex Court in the case of **Central Bank of India Vs. P. S. Rajagopalan**[1].

9. Mr. Menon has submitted that the observation by the Industrial Court that no 'Notice of Change' was given, clearly specifies a violation of Section - 9 A of the Industrial Disputes Act, 1947, which makes it a violation of a statute and clearly falls under Item 9 Schedule IV and as such, the argument of the Respondents that the order was only restricted to the issue of transfer is baseless.

10. Mr. Menon has submitted that the arguments of the Respondents that the amendment was only with regard to buttress the argument of illegal transfer is also baseless and that the contention is nothing but an afterthought. He has submitted that the Industrial Court has specifically framed 'Issues' with regard to breaching of the provisions of Section 9A of the Industrial Disputes Act, 1947 at paragraph 3(A) of the said Order and which was

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1 **AIR 1964 SC 743 para 18**

discussed at paragraphs 32 to 35 of the said Order. Moreover, since this Order was never challenged and hence, as on date this cannot be the bone of contention.

11. Mr. Menon has submitted that even the submission of non-reporting of work was due to the fact that the Respondents did not permit the Petitioner to report for duty, owing to the illegal transfer, as such once the transfer order was set aside, the Petitioner automatically became entitled for the salary for the said months, as if he was at work.

12. Mr. Menon has submitted that even assuming the Petitioner is not entitled for any sum as espoused by the Respondents with regard to wages from 2001, he is still entitled to the amount at column 10 of the chart at page 7 of the Writ Petition, which is a sum of Rs. 7,57,005 (i.e. deducted amount of Rs. 5,56,620/- towards basic and Rs. 2,00,385/- towards interest). Apart from the encashment of Privilege leave (Column 6) of the Chart, which is based on the Basic wages which works out to Rs. 18,740/- (i.e. 10,164 plus interest 8,540/-).

13. Mr. Menon has submitted that entire break up and justification of the amounts have been set out in the list of document at the summary at page 11 (sheet 4 and sheet 12).

14. Mr. Menon has submitted that the matter be remanded to the Labour Court for the re-calculation on at least these two aspects.

15. Mr. Vaidya, the learned Counsel for the Respondent No. 1 has submitted that the Respondents have opposed the claim of the Petitioner on the ground that the claims under various head which have been set out at page 7 of the Petition do not arise out of any entitlement either under the statute or under the contract or by way of customary practice. He has submitted that on reading the Application before the Labour Court, it can be noticed that no material particulars have been given under each head. The Labour Court in the order impugned in the present Petition has rightly come to the conclusion that the claims are not supported by an entitlement either under a statute, contract or a Custom and thus, the Labour Court did not have the jurisdiction to entertain the Application or grant any relief. He has submitted that the Labour

Court has rightly dismissed the Petition.

16. Mr. Vaidya has submitted that the Petitioner has relied upon paragraph 35 of the said Order dated 5th August 2013 passed in complaint (ULP) No. 212 of 2009 filed by the Petitioner challenging the transfer of the Petitioner from Mumbai to New Delhi. He has submitted that observations in the said Order do not create a right in the Petitioner as neither the observations are based on any admitted contract nor any statute or custom. He has submitted that if the Complaint is read as a whole, it is clear that the amended paragraphs of the Plaint are added to buttress and support the allegations that the transfer of the Petitioner from Mumbai to New Delhi was malafide and illegal. He has submitted that no separate reliefs were sought by the Petitioner for recovery of money allegedly due to the Petitioner under Section 33 C(2) of the Industrial Disputes Act, 194 in the amended paragraphs. He has submitted that the Industrial Court rightly did not grant any consequential relief after observations in paragraph 35 of the said Order.

17. Mr. Vaidya has submitted that the entire pleadings in the Application supporting the claim would reveal that there is not

even a whisper in the said pleadings justifying or identifying the basis of the claim.

18. Mr. Vaidya has submitted that the Respondents have raised several observations in the Written Statement filed by them in the Labour Court. The Respondents had objected to the claim of the Petitioner on the ground of delay, i.e. claim of the Petitioner for period from 2001 to 2015. It was submitted that the Petitioner was in employment from 1984 and the Application had been filed on 2nd November 2015. Further, the Petitioner retired from employment in 2020. There is no explanation seeking condonation of delay in approaching the Labour Court.

19. Mr. Vaidya has relied upon the judgment of the Supreme Court in **Bharat Heavy Electricals Ltd. Vs. Suresh Narayan Sharma**, wherein, it has been held that on the ground of delay, the Application deserves to be rejected.

20. Mr. Vaidya has submitted that there is no entitlement either under the statute, contract or custom spelled out in the entire pleadings, either in the Application before the Labour

Court or even in the present Writ Petition. The Petitioner had sought an amount of Rs. 4,10,400/- in respect of the alleged illegal deduction from wages. There was not even a protest from 2001, when the alleged recovery was made. He has submitted that there is no denial that the Petitioner had availed a loan of Rs. 2,50,000/-.

21. Mr. Vaidya has submitted that in so far as the claim for increments, the claim is completely untenable as in cross examination, the Petitioner had admitted in paragraph 13 at page 84 of the Petition that he had no document to show that the Respondents had agreed to pay increments. Hence, the claim based on conjecture is rightly rejected by the Labour Court.

22. Mr. Vaidya has submitted that the Petitioner had admitted in paragraph 13 of the cross examination that the Respondents had never agreed to pay or encash towards sick leave or privilege leave. He has submitted that this leaves no doubt there was no valid contract which gives rise to his being entitled to the amounts claimed towards privilege leave or sick leave.

23. Mr. Vaidya has submitted that the claim for salary

from June to September is not tenable, as the Petitioner did not work during that period. Salary is payable only when the employee discharged his obligation by working and not when he is unauthorisedly absent. He has submitted that the Industrial Court had not granted the Petitioner the said relief while passing order in Complaint (ULP) No. 212 of 2009. Even otherwise, it would be a matter of adjudication as to whether the Petitioner is entitled to the said salary for a period, when he did not work. He has submitted that such adjudication is beyond the jurisdiction of the Labour Court in proceedings under Section 33 C(2) of the Industrial Disputes Act, 1947.

24. Mr. Vaidya has submitted that in so far as the claim for medical reimbursement, it is admitted in cross examination of the Petitioner at paragraph 14 on page 85 of the Petition that there was nothing in the contract of employment that he would be entitled to medical reimbursement. He has submitted that this claim is untenable in law.

25. Mr. Vaidya has submitted that the Petitioner is not covered under the Payment of Bonus Act and hence, this claim for

bonus is untenable. He has submitted that in paragraph 14 at page 85 of the Petition, the Petitioner's salary is more than Rs. 20,009/- and thus, not covered under the said Act.

26. Mr. Vaidya has submitted that the amounts claimed, appeared to be inclusive of interest. The claim is exaggerated as the material details are given as to what would be the claim amount without capitalising the interest component. He has submitted that this is impermissible in law, as it would be the discretion of the Court as to whether any case is made out for grant of any interest.

27. Mr. Vaidya has accordingly, submitted that the order impugned in the Petition is legally valid and proper and the Petition be dismissed with costs.

28. Having considered these submissions, I find no infirmity in the impugned order dated 27th November 2019 passed by the Labour Court. It has been rightly observed in the said Order that the relief sought for in the Complaint (ULP) No. 212 of 2009 was for quashing and setting aside the transfer of the Petitioner from

Mumbai to New Delhi vide Transfer Communication dated 11th February 2009 and 9th April 2009. The Petitioner had made the claim for recovery of an amount of Rs. 46,07,479/- under Section 33 C(2) of the Industrial Disputes Act, 1947 before the Labour Court and which upon proper consideration of the claim of the Petitioner, the Labour Court has arrived at the conclusion that the claims are not supported by any entitlement either under a statute, contract or a custom and thus, the Labour Court did not have the jurisdiction to entertain such Application or grant any relief.

29. Further, it is pertinent to note that the Industrial Court did not grant any consequential relief to the Petitioner after observing at paragraph 35 of the said Order dated 5th August 2013 that the Respondents have committed unfair labour practice under Item 9 of Schedule IV of the Act.

30. The Petitioner has been held to have failed to establish in evidence its claims filed before the Labour Court. Objections raised by the Respondents regarding delay in filing the claim from 2001, when the Application was filed on 2nd November 2015, has in my view, been correctly raised. There is no explanation

on the part of the Petitioner seeking condonation of delay in approaching the Labout Court. The decision of the Supreme Court relied upon by the Respondents, namely **Bharat Heavy Electricals Ltd. Vs. Suresh Narayan Sharma** (supra) is apposite. It has been held that the Application is to be rejected on the ground of delay.

31. Further, the Labour Court has gone into each of the claims and found them to be untenable.

32. The Petitioner had sought an amount in respect of alleged illegal deductions from wages, i.e. Rs. 4,10,400/- for the period from 2001 to 2015, when there was not even a protest from 2001, when the alleged recovery was made.

33. The Petitioner has also been unable to establish its claim for increments, as in the evidence, i.e. cross examination of the Petitioner, the Petitioner had admitted that he had documents to show that the Respondents have agreed to pay increments.

34. Further, the Petitioner had admitted in cross examination at paragraph 13 that the Respondents had never agreed

to pay or encash towards the sick leave or privilege leave. Thus, there was no valid contract which gives rise to the Petitioner's entitlement of privilege leave or sick leave.

35. The Labour Court has rightly rejected the claim of the Petitioner for salary from June to September on the ground that the Petitioner as employee had failed to discharge his obligations by working, when he was unauthorisedly absent.

36. The Labour Court has rightly observed that even otherwise, it would be a matter of adjudication as to whether the Petitioner is entitled to the salary for a period when he did not work. The Labour Court has placed reliance on **Union of India and Anr. Vs. Kishan Chand Saini (since deceased) Through Lrs. dated 1st June 2018 (Delhi High Court)** in this context.

37. Further, the Petitioner's claim for medical reimbursement is contrary to the admission of the Petitioner in cross examination that there was nothing in the contract of employment that the Petitioner would be entitled for medical reimbursement. Thus, the claim has been held to be untenable in law.

38. The Petitioner has also made a claim for bonus. The Petitioner is not covered under the Payment of Bonus Act and thus, this claim is also untenable. The Petitioner has in fact, admitted in his cross examination at paragraph 14 that his salary is more than Rs. 20,009/- and thus, not covered under the said Act.

39. The Labour Court has thus, rightly considered the claims of the Petitioner and has found no merit in such claims. This apart from there being no relief for these claims in the original Complaint before the Industrial Court being Complaint (ULP) No. 212 of 2019.

40. Further, the claims which have been sought in the Application under Section 33 C(2) of the Industrial Disputes Act, 1947, they are inclusive of interest and which is impermissible in law, as the Court always has a discretion whether to grant interest or not.

41. I do not find any merit in the submission on behalf of the Petitioner that he is entitled to seek relief of recovery of amount in Application under Section 33 C(2) of the Industrial Disputes Act, 1947 without seeking such relief in the Original

Claimant before the Industrial Court, on the ground that the order of the Industrial Court directed the Respondent to cease and desist from unfair legal practice and this direction itself would have given rise to the claim.

42. I find that the Labour Court has correctly interpreted the said Order of the Industrial Court. The judgment of the Supreme Court in **Central Bank of India Vs. P.S. Rajagopalan** (supra), relied upon by the Petitioner is accordingly inapplicable.

43. I find no merit in the present Writ Petition which seeks quashing and setting aside of the impugned judgment and the Order dated 27th November 2019 passed by the Industrial Court, Mumbai under the Application (IDA) No. 171 of 2015 for recovery of money under Section 33 C(2) of the Industrial Disputes Act, 1947.

44. The Writ Petition is accordingly, dismissed.

45. There shall be no order as to costs.

[R.I. CHAGLA J.]