

CASE NO.:
Appeal (civil) 3053 of 2008

PETITIONER:
A. Satyanarayana Reddy and Ors

RESPONDENT:
The Presiding Officer, Labour Court, Guntur & Ors

DATE OF JUDGMENT: 29/04/2008

BENCH:
S.B. Sinha & V.S. Sirpurkar

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NO. 3053 OF 2008
(Arising out of SLP (C) No.15731 of 2005)

S.B. Sinha, J.

1. Leave granted.
2. Interpretation of the provisions of Section 33C(2) of the Industrial Disputes Act, 1947 vis-à-vis a Voluntary Retirement Scheme framed by the State of Andhra Pradesh is in question in this appeal which arises out of a judgment and order dated 13.4.2005 passed by a Division Bench of the Andhra Pradesh High Court in Writ Appeal No. 820 of 2005 dismissing the appeal from a judgment and order dated 21.3.2005 passed by a learned single judge of the said Court in Writ Petition No. 4196 of 2005.
3. Appellants were the employees of Nagarjuna Cooperative Sugars Limited, a Government of Andhra Pradesh Undertaking. It was declared to be a 'relief undertaking' in terms of Andhra Pradesh Relief Undertaking (Special Provisions) Act, 1971. The management of the industrial undertaking declared lay off wherefor compensation was to be paid. The Employees' Union of the said industrial undertaking filed a Writ Petition in the High Court of Andhra Pradesh questioning a Memo dated 5.1.1998 whereby and whereunder lay off compensation was denied to the workmen. According to the workmen, that lay off compensation was paid only for the months of June and July 1995. They claimed existing legal right for obtaining lay off compensation for the period 1.8.1995 to 6.9.2002.
4. Before, however, we embark upon the said question, we may place on record that the State of Andhra Pradesh sold the said factory to one SCM Sugars Limited. Some of the workmen were absorbed by the transferee Company. Out of the said absorbed employees, some of them were paid lay off compensation and some were not. At one point of time, all the workmen had shown their willingness to continue to work under the new management. Later, however, the Government of Andhra Pradesh permitted the said SCM Sugars Limited to shift the factory to the State of Karnataka, as a result whereof, the workmen lost the opportunity to continue to be employed.
5. The Government of Andhra Pradesh issued G.O. Ms. No. 25 dated 21.5.2001 providing for a special compensation package for the employees. The said amount of compensation was to be paid to the workmen only in the event they had not opted for employment with the new owner.
6. The benefits provided for under the said Voluntary Retirement Scheme were stated as under:

"Terminal benefits

The following benefits as statutorily due will be paid as per eligibility.

- i. The balance in the P.F. Account payable as per the CPF regulation.

- ii. Cash equivalent of accumulated earned leave as per the rules of the enterprise.
- iii. Gratuity as per the provisions of the Payment of Gratuity Act or other applicable Rules of the Organization.

EXGRATIA BENEFITS

i) An employee who is regular or permanent, whose request for VRS is accepted would be entitled to an Ex-gratia payment equivalent to One and Half months emoluments (Pay + DA) last drawn, for each completed year of service or the monthly emoluments at the time of retirement multiplied by the balance months of service left before normal date of retirement whichever is less, subject to a minimum of Rs.30,000/- (Rupees Thirty Thousand only). One month/three months notice pay, as per the service conditions applicable."

7. Appellants opted for voluntary retirement. Indisputably, they were paid the amount of special compensation in terms of the said G.O. Contending, however, that the said Voluntary Retirement Scheme did not provide for payment of lay off compensation, a writ petition was filed by the Union, which was marked as Writ Petition No. 16916 of 1998. Before the High Court, a contention was raised by the respondents herein that the workmen having taken voluntary retirement and the relationship of employer and employee having ceased, the writ petition was not maintainable. A learned single judge of the High Court, however, opined:

"Be that as it may, in the circumstances of this case, I am of the considered opinion that the petitioner should approach the appropriate labour court or the Industrial tribunal and work out its remedies by way of a claim petition and by leading appropriate evidence before the said court. The petitioner can raise all the questions, which are available to it, including those which have been raised in this Writ Petition. Therefore, the Writ Petition is disposed of giving liberty to the petitioner to approach the appropriate labour Court or Industrial tribunal by filing an appropriate claim petition. On filing such a claim petition, the labour court/industrial tribunal shall entertain the same and decide on merits within a period of six months from the date of filing of such a petition."

8. Pursuant to or in furtherance of the said observations, the workmen filed applications under Section 33C(2) of the Industrial Disputes Act, 1947 (for short "the Act") claiming lay off compensation for the period between 1.8.1995 to 6.9.2002. The Labour Court, Guntur, did not entertain the said applications holding that the same were not maintainable in view of a decision of this Court in A.K. Bindal and Another v. Union of India and Others [(2003) 5 SCC 163] holding:

"The workman under Sec. 33C(2) must be a workman under Sec. 2(s) of the I.D. Act. Under Sec. 2 (s) of the I.D. Act, there are four categories of workmen, 1) persons presently employed, 2) persons dismissed from service, 3) persons discharged from service and 4) persons retrenched from service.

All other persons do not come under Sec. 2(s) of the I.D. Act.

Persons retired from service, whether voluntarily or due to superannuation, persons left the service voluntarily and persons resigned from

the service do not come under Sec. 2(s) of the I.D. Act. Those persons, even though they have got any right to receive any amount or any benefit from the employer for the work done by them are not entitled to file petition under Section 33-C(2) of the I.D. Act. Because they are not workmen under Section 2(s) of the I.D. Act."

A writ petition was preferred thereagainst, which was dismissed by a learned single judge of the Andhra Pradesh High Court by an order dated 21.3.2005.

9. Mr. A. Subba Rao, learned counsel appearing on behalf of the petitioner would contend that the Labour Court and consequently the High Court committed a manifest error in passing the impugned orders insofar as they failed to take into consideration that the existing right of the workmen for obtaining the lay off compensation payable to them under the Industrial Disputes Act, 1947 having nothing to do with the Voluntary Retirement Scheme and furthermore having regard to the directions of the High Court in the earlier Writ Petition, the proceedings under Section 33C(2) was maintainable. Strong reliance in this behalf has been pressed on National Buildings Construction Corporation v. Pritam Singh Gill & Ors. [(1973) 1 S.C.R. 40].

10. Mr. R. Sundravardhan, learned Senior Counsel appearing on behalf of the respondents, on the other hand, would contend that in view of the definition of workman as contained in Section 2(s) of the Industrial Disputes Act, 1947, the workman having opted for voluntary retirement ceased to be the workman of the State and thus the proceedings under Section 33C(2) of the Act was rightly held to be not maintainable.

Apart from relying on A.K. Bindal (supra), reliance has also been placed by Mr. Sundravardhan on a decision of the Bombay High Court in Premier Automobiles Ltd. v. PAL VRS Employees Welfare Association & Anr. [2002 (1) LLJ 527].

11. Section 2(s) of the Act defines a workman to mean :

"2(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
(ii) who is employed in the police service or as an officer or other employee of a prison; or
(iii) who is employed mainly in a managerial or administrative capacity; or
(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

12. A literal meaning given to the said provision would indicate that the workmen have ceased to enjoy the protection conferred upon them under the said Act.

13. Would the workmen continue to be workmen for the purpose of filing an application under Section 33C(2) of the Act is the question.

14. Before embarking on the said question, we may notice that the

contention of Mr. Sundravardhan before us was that all the legal dues have been paid to the workmen. We are not concerned with the merit of the matter; maintainability of the application under Section 33C(2) being in issue.

15. There cannot be any doubt whatsoever that ordinarily upon opting for a voluntary retirement under a Scheme framed in that behalf, the workmen would cease to have any claim against the management. However, the same prima facie in our opinion would not mean that a statutory right of opting for lay off compensation, unless expressly waived, may continue to remain within the realm of legal right, so as to enforce the same before a forum constituted under the Act. The Bombay High Court in Premier Automobiles Ltd. (supra) as also this Court in A.K. Bindal (supra) proceeded on the basis that an employee having received the amount of compensation without any demur whatsoever would be estopped and precluded from raising any other or further claim stating:

"The employees accepted VRS with their eyes open without making any kind of protest regarding their past rights based upon revision of pay scale from 1.1.1992."

The said decision moreover proceeded on the basis that when the parties enter into a transaction known as "golden handshake", the jural relationship between the employer and the employee comes to an end. It was opined:

"After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated."

The claim of the appellants in A.K. Bindal (supra) was based on the revision in the scale of pay. It was in that context, the aforementioned observations were made.

16. The question which fell for consideration before the Bombay High Court was as to whether the employees having opted for the Voluntary Retirement Scheme can still ask for benefits under a settlement which were overlapping with each other.

What was sought to be enforced in the said proceeding was the terms of a settlement. The Bombay High Court held:

"The terms and conditions of the said Scheme are clear enough which show that the employees who opted for Voluntary Retirement Scheme were to be considered as relieved from services of the Company within a week from the date of their letter of acceptance. According to the said Scheme, it would come into force with effect from December 20, 1991 and stood open till January 27, 1992."

The said decision, thus, was rendered in different fact situation.

In Vijay Kumar & Ors. v. Whirlpool of India Ltd. & Ors. [(2008) 1 SCC 199], the Division Bench, inter alia, followed A.K. Bindal (supra).

17. The decision of this Court in National Buildings Construction Corporation (supra) was not noticed in the aforementioned decision. The question which arose for consideration therein was as to whether a workman even after an order of discharge could maintain an application under Section

33C(2) of the Act claiming lay off compensation, in response where to this Court held:

"In U.P. Electric Supply Co. v. R.K. Shukla [AIR 1970 SC 237] this Court approvingly referred to a passage from the judgment in Chief Mining Engineer, East India Coal Co. Ltd. (supra), already reproduced by us, in which, inter alia, it was emphasized that Labour Court had jurisdiction to entertain a claim in respect of an existing right arising from the relationship of an industrial workman and his employer. Again in R.B. Bansilal Abhirchand Mills Co. (P) Ltd. v. The Labour Court, Nagpur [AIR 1972 S.C. 451] this Court, after a review of its previous decisions, upheld the jurisdiction of the Labour Court to entertain application for lay-off compensation under s. 33C observing that such jurisdiction could not be ousted by a mere plea denying the workman's claim to computation of the benefit in terms of money, adding that the Labour Court had to go into the question and determine whether on the facts it had jurisdiction to make the computation."

Noticing a large number of decisions of the High Courts on the said subject, this Court held:

"In order to remove this repugnancy s. 33C(2) must be so construed as to take within its fold a workman, who was employed during the period in respect of which he claims relief, even though he is no longer employed at the time of the application. In other words the term "workman" as used in s. 33C(2) includes all persons whose claim, requiring computation under this sub-section, is in respect of an existing right arising from his relationship as an industrial workman with his employer. By adopting this construction alone can we advance the remedy and suppress the mischief in accordance with the purpose and object of inserting s. 33C in the Act."

18. The right of the workman to claim payment of lay off compensation is not denied or disputed. If the said claim has no nexus with the Voluntary Retirement Scheme, in our opinion, in a given case, like the present one, it is possible to hold that a proceeding under Section 33C(2) of the Act would be maintainable. We are, therefore, of the opinion that the question being one of some importance should be considered by the larger Bench as there exists an apparent conflict in the said decisions of National Buildings Construction Corporation (supra) and A.K. Bindal (supra). We direct accordingly. Let the records be placed before the Hon'ble the Chief Justice of India for passing appropriate orders.