

MANU/MH/0763/2001

Equivalent Citation: 2002(1)ALLMR983, [2002(92)FLR1009], (2002)IVLLJ61Bom

IN THE HIGH COURT OF BOMBAY

A.S. W.P. No. 871/1995

Decided On: 06.12.2001

Appellants: **Anil Fabrics**

Vs.

Respondent: **Abdul Salam Gulam Rasul Momin**

Hon'ble Judges/Coram:

N.N. Mhatre, J.

Case Note:

Labour and Industrial - Payment of wages - Order allowing the application under Section 33-C(2) of the Industrial Disputes Act, 1947 (the Act) and entitling Respondent-workman to wages for the period between November 21, 1992 to May 28, 1993 under challenge in present petition - Held, in the present case, amount claimed was only Rs. 21,875/- for a period of six months - No grave prejudice would be caused to the Petitioner if that amount was paid over to the workman without deciding the legality of the issue involved - Hence, Petitioner was directed to pay the amount of Rs. 21,875/- awarded by the Labour Court.

JUDGMENT

N.N. Mhatre, J.

1. This Writ Petition challenges the order of the Labour Court passed under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the "said Act").

2. Facts giving rise to the present petition are as under:

Respondent workman was working with the Petitioner since 1988 as a Mukadam. It appears that on November 21, 1992, he was removed from service without giving any prior notice or intimation. The Respondent, therefore, lodged a complaint with the Government Labour Officer regarding his termination of service. The matter then proceeded before the Conciliation Officer. The Petitioner appeared before the Conciliation Officer and denied that they had terminated the services of the Respondent and contended that the Respondent had stopped reporting for duty. The Petitioner contended that it was ready and willing to permit the Respondent workman to resume duty. The Conciliation Officer, therefore, closed the case and the Respondent workman resumed duty with the Petitioner. However, as regards the wages for the period during November 21, 1992 and May 28, 1993 when he was out of work, the Petitioner did not pay him the wages on the ground that the Respondent had not worked and, therefore, was not entitled to the wages. Aggrieved by this, the Respondent filed an application under Section 33-C(2) of the said Act. The Labour Court after considering the pleadings and the evidence led before it, came to the conclusion that the Respondent workman

was entitled to wages for the period between November 21, 1992 to May 28, 1993 amounting to Rs. 21,875/-.

3. Mr. Naidu, learned advocate for the Petitioner, strenuously urged that the Labour Court had erred in allowing the application in view of the fact that the same was not maintainable under Section 33-C(2) of the said Act. He submits that there was no existing right in the workman to claim this amount as wages from the employer for the period he did not work. He further urged that the Labour Court has usurped the jurisdiction granted to the Industrial Tribunal and has also assumed the jurisdiction of the Industrial Tribunal or of the Labour Court under Section 10(1) of the said Act. Mr. Naidu placed reliance on several judgments of the Supreme Court and has submitted that there is a difference between claim of a workman to get benefit and the right of a workman to get benefit under Section 33-C(2) of the said Act. He submits that this is a case where what is demanded under Section 33-C(2) of the said Act is a claim which has to be adjudicated by the Labour Court and the same cannot be granted without the workman proving an existing right to it.

4. Having given a thoughtful consideration to the submissions of Mr. Naidu, I find that no interference is called for in this case under Articles 226 and 227 of the Constitution of India. The amount claimed is only Rs. 21,875/- for a period of six months. No grave prejudice would be caused to the Petitioner if this amount is paid over to the workman without deciding the legality of the issue involved.

5. Hence, I pass the following order:

(a) Petitioner is directed to pay the amount of Rs. 21,875/- awarded by the Labour Court.

(b) I am informed that the amount of Rs. 21,875/- has been deposited in this Court and the Respondent Workman has already withdrawn an amount of Rs. 10,000 from the said amount and the balance amount has been invested. The Respondent workman is at liberty to withdraw the balance amount deposited, together with interest accrued, if any.

6. Accordingly, Rule discharged with no order as to costs.

7. Issuance of certified copy expedited.

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