MANU/MH/0541/2001

Equivalent Citation: 2002(2)BomCR514, [2002(93)FLR951], 2002(1)MhLj606

IN THE HIGH COURT OF BOMBAY

W.P. No. 839 of 1999

Decided On: 27.11.2001

Decided On: 28.11.2001

Appellants: **Jasbir Kaur Dhaliwal**
Vs.
Respondent: **NEPC Airlines and Ors.**

Hon'ble Judges/Coram:
N.N. Mhatre, J.

Counsels:
For Appellant/Petitioner/Plaintiff: S.C. Naidu and Manish Desai, Advs., i/b., C.R. Naidu & Co.

For Respondents/Defendant: Kiran Bapat and Samir Samant, Advs.

Case Note:

A writ petition was filed in the Labour Court by the petitioner claiming lay-off compensation on account of forced unemployment by the employer - It was alleged that the permission of the appropriate government authority was not taken before the lay-off - It was adjudged that the Labour Court under Section 33-C(2) of the Industrial Dispute Act, 1947 had the jurisdiction to determine payment of lay-off compensation and the respondent was directed to pay the entire amount claimed by the petitioner

JUDGMENT

1. The short question involved in this writ petition is whether the Labour Court under Section 33-C(2) of the Industrial Disputes Act (hereinafter referred to as the said Act) has jurisdiction to determine whether lay-off compensation is payable to the workmen.

2. A few facts of the case are as follows: The petitioner was appointed as a Trainee Air-Hostess by respondent No. 1 on 16-6-1994. In October, 1994, she was promoted and appointed as a Line Hostess and was confirmed in the said post in Grade V on 1-9-1995. Later, the petitioner was promoted as Check Cabin Crew. Till May, 1997, the petitioner performed her duties as roistered .The petitioner continued to report for duty till June, 1997, however, no job was allotted to her as the aircraft were grounded due to shortage of fuel. On 10-11-1997, the petitioner was given a letter of termination of service. The reason mentioned in the said letter for terminating the service of the petitioner was that she had refused to report for work at Chennai by 3-11-1997, despite being told to do so by respondent No. 1.

3. The petitioner preferred an application under Section 33-C(2) of the Industrial Disputes Act being application No. LC-2/502 of 1997 claiming certain amounts from

respondent No. 1. These benefits included kit allowance, flying allowance for the months of March, April and May, 1997, salary for the months of April and May, 1997 and retrenchment compensation from 1-6-1997 to 10-11-1997 on account of forced unemployment along with bonus, medical entitlement and refund of amounts deducted and retained by Respondent No. 1. The total amount claimed by the petitioner was Rs. 1,49,300/-. The course of the petitioner in the application was that from 1-6-1997 to the date on which her services were terminated, that is, on 11-11-1997, she was entitled to lay-off compensation payable under the Industrial Disputes Act due to her forced unemployment.

4. In their written statement, respondent No. 1 admitted that some of the pilots of the company were laid off as the aircraft of the company were impounded by the customs authorities and because Indian Oil Corporation had stopped fuelling their aircraft. The respondents have pleaded in the written statement that their Bombay and other units were closed down from 30-6-1997. A memorandum of understanding was reached between the union recognised in the Bombay unit and respondent No. 1, whereby the workmen employed in the Bombay unit were retrenched and retrenchment compensation was to be paid in three equal installments. Respondent No. 1 has then pleaded that due to the undisciplined attitude of the union representing the workmen and its members, records were destroyed and the non-union staff did not report for work. Respondent No. 1 then mentioned that a notice was put up that the management did not want the services of the employees from 15-8-1997 since all aircraft's of the company have been grounded and there was no possibility of reviving them in the near future. Respondent No. 1 then stated that the petitioner was transferred to their Madras Office, however, she failed to carry out the instructions and her services have been terminated. Respondent No. 1 has pleaded that the Labour Court under Section 33-C(2) of the said Act had no jurisdiction to determine whether there was a lay-off or termination of the petitioner's services and, therefore, the claim of the petitioner was required to be rejected.

5. Oral evidence was led by the petitioner by examining herself before the Labour Court. The respondents did not think it fit to examine anybody on their behalf and, therefore, the testimony of the petitioner has gone unchallenged. The Labour Court by an order dated 21-12-1998 granted all the claims of the petitioner except the claim for salary and benefits for the period 1-6-1997 to 10-11-1997 at the rate of Rs. 15,000/- per month being the amount of compensation payable on account of forced unemployment. The Labour Court directed the respondents to pay the amount of Rs. 69,300/- on account of other heads claimed by the petitioner. The Labour Court was of the view that the lay-off compensation claimed by the petitioner could not be granted under Section 33-C(2) as it was not an existing right and the amount payable to the petitioner was disputed. The Labour Court did not accept the contention raised by the petitioner that as it had already come to the conclusion that lay-off had been declared by the respondents in its establishment in Bombay in Application No. LC-2/162 of 1997 which had been confirmed by the judgment of this Court in writ petition No. 172 of 1999.

6. The main contention raised by Mr. Naidu, learned Counsel for the petitioner, is that the lay-off compensation was payable to the workman for forced unemployment. He submits that the definition of lay-off contained in Section 2(kkk) would cover the refusal/failure of the respondents to allot work to the petitioner from 1-6-1997 to 10-11-1997. He further submits that under Section 25-E, the petitioner is entitled to claim compensation since she had been continuously reporting for duty but she was not allotted work by the respondents for no fault of hers. He further urges that the

respondents employed more than 100 workmen in their establishment and were, therefore, required to seek permission under Section 25-M of the Industrial Disputes Act before laying-off the petitioner. No such permission was asked for by the respondents from the appropriate government and, therefore, lay-off of the petitioner is deemed to be illegal and she is entitled to full wages under Section 25-M(8) as an existing right. He further submits that the Labour Court has committed an error in refusing to exercise its jurisdiction under Section 33-C(2) of the said Act to decide whether lay-off compensation is payable to the petitioner. He, therefore, urges that the order of the Labour Court insofar it denies compensation to the petitioner for the period from 1-6-1997 to 10-11-1997, should be set aside and the same be awarded to the petitioner.

7. As against this, Mr. Bapat, learned Counsel for the respondents, strenuously urges that the jurisdiction of the Labour Court under Section 33-C(2) of the said Act is akin to that of the executing Court and hence, no disputed question could be decided by the Labour Court while exercising jurisdiction under Section 33-C(2) of the said Act. He further submits that the petitioner has no existing right to claim lay-off compensation especially when it is disputed by the respondents that there has been a lay-off. He submits that the petitioner was directed to report for duty in Chennai soon after the aircraft of the respondents were grounded in May, 1997. She not having complied with the order, her services were terminated on 11-11-1997 and, therefore, she was not entitled to lay-off compensation. Mr. Bapat submits that there is a disputed question as to whether there was a lay-off during the period when the petitioner had been transferred to Chennai and this dispute could be determined only in a reference under the Industrial Disputes Act and not by the Labour Court under Section 33-C(2) of the said Act. To support his case, Mr. Bapat relied on the judgment of the Apex Court in the case of Municipal Corporation of Delhi v. Ganesh Razak and another reported in 7995 L.I.C. 330 and the judgment of this Court in the case of S. D. Phansekar and Ors. v. National Textile Corporation (South Mah.) Ltd. and Ors., reported in 7997 (2) CLR 801.

8. The term lay-off has been defined in Section 2(kkk) of the Industrial Disputes Act as follows:

> "(kkk) "lay-off" (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery [or natural calamity or for any other connected reason] to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched. Explanation. -- Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause :
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> > Provided that if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment then, he shall be deemed to have been laid-off only for one-half of that day :

> Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid-off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day;"

9. It, therefore, means that if an employer is unable to provide work for the workman on account of shortage of coal, power or accumulation of stocks or break-down of machinery or if there is a failure or refusal on the part of the employer to provide work to a workman whose name is on the muster rolls and he has not been retrenched, such workman would be under lay-off from the employment of the employer. The explanation to the section provides that if the employer does not offer work within 2 hours of the workman presenting himself for work, it shall be deemed that such person is laid-off for the day. In the present case, the petitioner has stated in her application as well as in her testimony that she had been reporting for duty during the period from 1-6-1997 to 10-11-1997 and she was not provided work by the respondents. The reason given by the respondents is due to unavailability of fuel on account of Indian Oil Corporation refusing to fuel their planes as also because of the impounding of their aircraft by the customs authorities. These reasons, in my opinion, would attract the provisions of "lay-off.

10. Section 25-M(8) stipulates that if an employer of an establishment employing more than 100 workmen does not seek permission of the appropriate government for laying off its employees, the lay-off is deemed to be illegal and the workmen are entitled to full wages for that period. In the present case, admittedly, no permission has been sought from the appropriate government and the petitioner has been forced into unemployment for the said period for no fault of hers. In view of this, she is entitled to the compensation for the period claimed.

11. Mr. Bapat's contention is that the Labour Court under Section 33-C(2) could not exercise its jurisdiction as there was a dispute as to whether there was lay-off or the petitioner had refused to report at Madras after the planes were grounded in May, 1997. This submission cannot be accepted. The judgment of the Supreme Court in the case of R. B. Bansilal Abirchand Mills Co. Ltd. v. The Labour Court, Nagpur and Ors. reported in 1097 i L L J 231 squarely covers the present case. The main contention of the appellant in that case was that as there was a dispute as to whether there was a lay-off or closure, such dispute could not be adjudicated by the Labour Court but only by an Industrial Tribunal on a reference under Section 10(l)(d). The Supreme Court negated the contention raised by the appellant and held that the claim for compensation of a workman can be computed under Section 33-C(2) and the question as to whether there was a closure or a lay-off is an incidental question which can be decided by the Labour Court in exercise of its powers under Section 33-C(2). The Supreme Court held that the claim to compensation of every workman who is laid-off is one which arises under the statute itself and Section 25C provides for a benefit to the workmen which is capable of being computed in terms of money under Section 33-C(2) of the Act. The Apex Court, therefore, came to the conclusion that such a claim was maintainable under Section 33-C(2) of the Industrial Disputes Act. The Apex Court in an earlier judgment in the case of Sawatram Ramprasad Mills Company Ltd., Akola v. Baliram Ukandji and Anr., reported in MANU/SC/0242/1965 : (1966)ILLJ41SC has held that the claim under Section 33-C(2) is maintainable for payment of layoff compensation.

12. The judgment cited by Mr. Bapat in the case of Municipal Corporation of Delhi

(supra) was in a case where employees were seeking payment under Section 33-C(2) on the principle of 'equal pay for equal work'. The Supreme Court held that such a claim of the workmen could not be entertained by the Labour Court as it had no jurisdiction to decide whether the workers were in fact doing the work of the same nature as the other workers and were entitled to equal pay for that work. In the present case, the right to claim compensation for illegal lay-off is rooted in the statute itself and, therefore, the question of ousting the jurisdiction of the Labour Court under Section 33-C(2) does not arise. The judgment of the Supreme Court in Municipal Corporation of Delhi (supra) does not have any bearing on the facts before me. The judgment cited by Mr. Bapat in the case of S. D. Phansekar and others (supra) was one in which the workers claimed wages under Section 33-C(2) on the basis that the services had not been terminated after the strike in the mills and, therefore, they continued to be in service and were entitled to wages till such time as the employer terminated their services. The contention of the employer in that case was that under the B.I.R. Act refusal to give work to the employees amounted to termination of service which contention has been accepted by this Court. On this basis, it was held that it was necessary first to adjudicate the dispute regarding the effect of illegal strike, stoppage of work, refusal to give work and the reasons therefore and the termination of the service of the workmen and, therefore, the claim under Section 33-C(2) could not be granted. The present case is not at all similar to the facts in the case of S. D. Phansekar and others (supra). Therefore, that judgment would have no bearing on the present case.

13. In view of this, the writ petition must be allowed. The claim of Rs. 80,000/- being the compensation payable on account of forced unemployment awarded for the period 1-6-1997 to 10-11-1997 is allowed.

14. At the time of admission of this petition, the respondents were directed to pay the amount of Rs. 69,000/-, which has already been granted under the impugned order, within a period of four weeks, i.e., on or before 30-4-1999. However, this amount has not been paid to the petitioner. The respondents are, therefore, directed to pay the entire amount claimed by the petitioner on or before 31-1-2002. In the event the respondents fail to pay the amount within the said period, they shall be liable to pay interest 12% p.a. from today.

15. In the circumstances, Rule is made absolute with costs.

16. Writ petition is disposed of accordingly.

17. Writ petition allowed.