

A U.P. STATE ROAD TRANSPORT CORPORATION

v

SHRI BIRENDRA BHANDARI

SEPTEMBER 28, 2006

B [ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

C *Industrial Disputes Act, 1947—Section 33C(2)—Claim filed under S.33C(2) for arrears of salary arising out of recommendations of Pay Commission—Allowed by Labour Court—Upheld by High Court—On appeal, Held: High Court erred in upholding the order passed by Labour Court as scope and ambit of S.33C(2) was not properly appreciated by the Labour Court.*

D Respondent filed claim petition under Section 33C(2) of the Industrial Disputes Act, 1947 for payment of arrears arising out of implementation of the recommendations of the 5th Pay Commission. Labour Court accepted the prayer and directed payment. High Court upheld the order passed by the Labour Court.

E In appeal to this Court, the appellant contended that the application in terms of Section 33C(2) of the Act was misconceived and that the High Court wrongly took the view that the recommendations of 5th Pay Commission are binding on the appellant-Corporation and dues are payable.

Allowing the appeal, the Court

F HELD: 1.1. Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from the employer and is denied of such benefit, he can approach Labour Court under Section 33 C(2) of the Act. The benefit sought to be enforced under Section 33 C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33 C(2) of the Act while the latter does not. [692-H; 693-A-B]

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1.2. When a question arises as to the adjudication of a claim for back wages, all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, to find out whether the workman is entitled to back wages at all and to what extent. [693-C-E] A B

1.3. Judged in the background of principles set out above, the orders passed by the Labour Court and the High Court are indefensible and are accordingly set aside. [693-F] C

*State Bank of India v. Ram Chandra Dubey & Ors.*, [2001] 1 SCC 73 and *State of U.P. and Anr. v. Brijpal Singh*, [2005] 8 SCC 58, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4292 of 2006. D

From the Final Judgment and Order dated 24.10.2005 of the High Court of Uttaranchal at Nainital in Writ Petition No. 4967 of 2001(S/S).

Pradeep Misra for the Appellant

The Judgment of the Court was delivered by E

ARIJIT PASAYAT, J. Leave granted.

Appellant calls in question legality of the judgment rendered by a Learned Single Judge dismissing writ petition filed by it. Appellant had filed writ petition with the prayer to quash the order passed by the Presiding Officer, Labour Court, Dehradun in Misc. Case No. 144 of 2001. F

Background facts in a nutshell are as follows:

A claim petition was filed by the respondent No.2 purported to be under Section 33 C(2) of the Industrial Disputes Act, 1947 (in short the 'Act') for payment of arrears relating to difference of salary, leave encashment, arrears of dearness allowance arising out of implementation of the recommendations of the 5th Pay Commission, The Labour Court accepted the prayer and directed payment within a period of two months. Said order was challenged before the High Court by a writ petition. G H

**A** Stand of the appellant before the High Court was that the application in terms of Section 33 C(2) was misconceived. The High Court took the view that the recommendations of 5<sup>th</sup> Pay Commission are binding on the appellant-corporation and, therefore, dues are payable.

**B** Learned counsel for the appellant submitted that the scope and ambit of Section 32 C(2) of the Act has been lost sight of by the Labour Court and the High Court was clearly in error in dismissing the writ petition and in upholding the order passed by the Labour Court.

**C** There is no appearance on behalf of the respondent in spite of service of notice.

The benefit which can be enforced under Section 33 C(2) is a pre-existing benefit or one flowing from a pre-existing right.

**D** In the case of *State Bank of India v. Ram Chandra Dubey & Ors.*, [2001] 1 SCC 73, this Court held as under:

**E** “7. When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

**G** 8. The principles enunciated in the decisions referred by either side can be summed up as follows:

**H** Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33

C(2) of the Act. The benefit sought to be enforced under Section 33 C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33 C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom, a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages.”

The position was re-iterated by a three-Judge Bench of this Court in *State of U.P. and Anr. v. Brijpal Singh*, [2005] 8 SCC 58.

Judged in the background of principles set out above, the orders passed by the Labour Court and the High Court are indefensible and are accordingly set aside.

The appeal is allowed but without any order as to costs.

B.B.B.

Appeal allowed.