

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 396 1992.

DATE OF DECISION 22.1.1993.

The District Manager, Tele- Applicant (s)
communications, Ernakulam & 2ors.

Shri VV Sidharthan, ACGSC Advocate for the Applicant (s)

Versus

Smt Shiji Thomas, Puthenpura- Respondent (s)
ckal, Kunnakkal PO, & another.

Shri P Ramakrishnan Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. AV Haridasan - Judicial Member

&

The Hon'ble Mr. R Rangarajan - Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

This application is directed against the order of the 2nd respondent, the Central Government Labour Court, Ernakulam, in claim No.4/91 (C) filed by the 1st respondent under Section 33(c)(2) of the Industrial Disputes Act directing the applicants to pay Rs.23,151.25 to the 1st respondent within one month and ~~not~~ providing that ^{if} the payment be not made within the aforesaid period of one month, the amount will carry interest at the rate of 12% per annum. The facts can be stated briefly as follows:-

2. When the services of the 1st respondent, initially engaged as a casual mazdoor under the applicants on 19.4.1985,

were terminated on 24.6.1987 orally, the 1st respondent challenged the action before this Tribunal filing OAK 621/88 for a declaration that the termination of her services was null and void and for the consequential reliefs. The above application was disposed of with the following declaration and directions:-

"We are of the view that the respondents are liable to treat the applicant to have continued in service despite the illegal oral termination. We, therefore, direct the respondents to re-engage the applicant forthwith. It will be deemed that her oral termination has not taken effect. The respondents are also directed to consider her case for regularisation, if there is a scheme of regularising casual employees, in accordance with her seniority and subject to her eligibility. We do not make any order as to costs."

Pursuant to the above direction, the applicants re-engaged the 1st respondent in service. The 1st respondent submitted representations claiming back wages for the period during which she was kept out of employment. As she was not given back wages inspite of her representations, she filed a claim petition No.4/91 before the 2nd respondent, the Central Government Labour Court, Ernakulam, claiming that as wages for the period from 24.6.87 to 25.12.89, (the period during which she was kept out of employment), she was entitled to get from the applicants a sum of Rs.23,151.25. She had also enclosed a calculation statement as to how the amount was arrived at. This application was contested by the applicants. They contended in the written statement filed before the 2nd respondent that as the 1st respondent has been re-engaged in service in compliance with the directions contained in the judgement of the Central Administrative Tribunal in OAK 621/88, as there was no direction in that judgement to pay back wages and as the matter had already been adjudicated by this Tribunal, the claim of the 1st respondent (the petitioner before the Labour Court) under Section 33(c)(2) of the Industrial Disputes

Act was not maintainable. They also contended that the amount claimed is excessive. On the basis of the pleadings and the evidence adduced before it, the 2nd respondent passed the impugned order dated 15.1.1992 (Annexure A6) holding that the petition was maintainable, that the petitioner before it was entitled to get Rs.23,151.25 as back wages from 24.6.87 to 25.12.1989 and directing the applicants to pay the aforesaid sum within a month. It is aggrieved by this order that the applicants have filed this application under Section 19 of the Administrative Tribunals Act. The grounds on which the impugned order is challenged are that the Central Government Labour Court has no jurisdiction to entertain the petition under Section 33(c)(2) of the ID Act as the dispute between the applicant and the 1st respondent had already been adjudicated and determined by the Central Administrative Tribunal in OAK 621/88 that as the Tribunal in its judgement did not give any direction regarding payment of backwages ^{the claim had no basis} and that if any part of the order of the Tribunal was not implemented, it was not open for the 2nd respondent to interfere and give directions in that regard. There is also a contention that the Labour Court has gone wrong in allowing the full amount as claimed by the 1st respondent.

3. We have heard the arguments of the counsel on either side and have also gone through the pleadings and documents carefully. The facts that the termination of the services of the 1st respondent with effect from 24.6.87 was set aside by this Tribunal in its judgement in OAK 621/88, that the 1st respondent was reinstated in service with effect from 26.12.89 and that during the period between 24.6.87 to 26.12.89 no wages was paid to the 1st respondent are not in dispute. While allowing OAK 621/88 this Tribunal had found that as the termination of the services of the 1st respondent with effect

from 24.6.87 was illegal, it should be deemed that the 1st respondent continued in service and that the termination had not taken effect. This is evident from Annexure ~~A2~~ A2, a copy of the order of this Tribunal in OAK 621/88. After her reinstatement in service, the 1st respondent made representations to the applicants for payment of the back wages and it was because this request was not granted by the applicants that the 1st respondent filed a claim petition before the 2nd respondent. The argument of the learned counsel for the applicants that the 2nd respondent has no jurisdiction to order payment of back wages, while this Tribunal has not in its order in OAK 621/88 given such a direction ~~xxx~~ is absolutely untenable because the declaration in the order of this Tribunal in OAK 621/88 had been that the termination of the services of the 1st respondent was illegal and that it should be deemed that the 1st respondent continued in service, leaves no doubt to the fact that the 1st respondent was entitled to get wages for the period during which she was illegally kept out of employment. As the entitlement of the 1 respondent to get back wages flows from the declaration in the order of this Tribunal in OAK 621/88, the 2nd respondent had only to compute the quantum of wages to which the 1st respondent was entitled to. The 2nd respondent did not have to adjudicate the question of entitlement, but had only to compute the monetary benefits. Under Section 33(c)(2) of the ID Act, the Labour Court had jurisdiction to compute the monetary benefits due to an employee in regard to his/her service. The learned counsel for the applicant further argued that if the entitlement of the 1st respondent to get back wages flowed from the order of this Tribunal in OAK 621/88 and if that was not implemented by the applicants, the proper course open to the 1st respondent was to move this Tribunal under Contempt of Court Act and not

to file an application under Section 33 (c)(2) of the ID Act before the Labour Court. There is absolutely no force in this argument either. Proceedings under the Contempt of Court Act cannot be considered as a ~~remedy in~~ ^{proceedings} execution of the judgement of this Tribunal. Section 27 of the Administrative Tribunals Act reads as follows:-

"Subject to the other provisions of this Act and the rules, the order of a Tribunal finally disposing of an application shall be executed in the same manner in which any final order of the nature referred to in clause (a) of sub-section (2) of Section 20 (whether or not such final order had actually been made) in respect of the grievance to which the application relates would have been executed."

The 1st respondent is a workman coming within the meaning of Industrial Disputes Act and, therefore, the benefits flowing from the decision of this Tribunal, i.e. the wages for the period during which the 1st respondent had been illegally kept out of employment can be quantified in terms of money the the Labour Court under Section 33(c)(2) of the ID Act. Therefore, this contention raised on behalf of the applicants is devoid of any merits.

4. The learned counsel for the applicants contended that the computation of the amount of backwages by the 2nd respondent solely basing on the claim made by the 1st respondent in her application is baseless and, therefore, unsustainable. It is seen from a copy of the petition filed by the 1st respondent before the 2nd respondent (Annexure A3) that a clear calculation statement as to how the amount was worked out had been filed by the 1st respondent. In the written statement filed by the applicants before the 2nd respondent opposing the claim made in the claim petition (Annexure A4) apart from saying that the amount claimed was excessive, it had not been made clear as to how the claim was excessive. The 1st respondent who was examined before the 2nd respondent had given evidence that the claim made by her was correct.

No contrary evidence had been adduced by the applicants even though MW1 was examined.

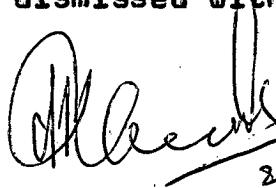
In the above circumstances, the 2nd respondent had no other alternative, but to accept the case of the 1st respondent and to compute the monetary benefits as claimed in the claim petition and as deposed by the claim petitioner before it. Therefore, we do not find any illegality in the computation of the amount by the 2nd respondent.

5. In view of what is discussed above, we do not find any infirmity in the impugned order at Annexure A6 requiring interference.

6. In the result, the application is dismissed without any order as to costs.

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(R. RANGARAJAN)
ADMINISTRATIVE MEMBER


22/1/93

(AV HARIDASAN)
JUDICIAL MEMBER

22.1.1993.

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