

was then put to vote. As the co-opted councillor had no vote he refrained from voting. The other 25 councillors voted against the President. Two-thirds of the total number of councillors were calculated on the basis of figure "37" which was 24.66 and hence the motion passed by 25 members was held to be valid. This decision, as a matter of fact, goes against the petitioners because the co-opted member was also included in 37 members. Likewise in *Namdeorao's* case (supra) where sub-section (7) of Section 49 of the Maharashtra Zila Parishads and Panchayat Samitis Act, 1962, was being dealt with by Full Bench on the subject of "no confidence" motion against President or Vice-President, it provided that "if the motion is carried by a majority of the total number of Councillors (other than associate Councillors) the President, or as the case may be, the Vice-President shall cease to hold office forthwith; and the office held by such President or Vice-President shall be deemed to be vacant." As already noticed, in the present case the associate members have not been excluded from the constitution of the committee whereas in the Maharashtra Act "associate members" have specifically been excluded.

(11) In view of the above discussion, it must be held that the members of the Committee at the material time were 17 and therefore, the motion passed by 11 members will be deemed to have been lost as having not been passed by two-third of members of the committee.

(12) In the result, the writ petition fails and is accordingly dismissed. No costs.

J.S.T.

Before Hon'ble N. K. Sodhi, J.

CEMENT CORPORATION OF INDIA LTD,—*Petitioner.*

versus

GOVERNMENT OF HARYANA & OTHERS,—*Respondents.*

C.W.P. No. 16522 of 1994.

29th May, 1995.

Industrial Disputes Act, 1947—Ss. 38C (1) & 39—Industries (Development and Regulation) Act, 1951—S. 2—Award of reinstatement with 50 per cent back wages—Application made for recovery due under the award—Labour Commissioner exercising powers

Cement Corporation of India Ltd. v. Government of Haryana 317
and others (N. K. Sodhi, J.)

under section 33-C(1) issuing recovery certificate—Cement Company challenging recovery order on the ground that Labour Commissioner had no power to issue recovery certificate against Cement industry—Even if this were true order cannot be quashed in exercise of jurisdiction under Article 226 to thwart implementation of award—Technical pleas by Management deprecated, recovery certificate is not liable to be quashed—Jurisdiction under section 33(C)(1) is an arithmetical calculation—In the absence of dispute as to entitlement, jurisdiction under section 33-C(1) is exercisable by the Labour Commissioner.

Held, that even if on a reading of notifications dated 18th June, 1974 and 8th December, 1977 alongwith the provisions of the Act one were to conclude that the Labour Commissioner, Haryana could not exercise the powers of the State Government in regard to the cement industry which had been delegated to the latter by the Central Government, I refuse to interfere in the exercise of discretionary jurisdiction under Article 226 with the impugned order passed by the Labour Commissioner.

(Para 3)

Further held, that when the award has got to be implemented, how does it matter whether the recovery certificates for its implementation are issued by the Labour Commissioner, Haryana or by an Officer exercising the powers of the Central Government. It does not behove a Corporation like the present one to raise such technical pleas only in an attempt to defeat the rights of an individual workman.

(Para 3)

Further held, that even if the order of the Labour Commissioner was to be set aside, this Court would direct the management which is otherwise a state to implement the award unless the same is set aside or its operation is stayed by any competent Court.

(Para 3)

Further held, that computation of back wages on the basis of an award is only an arithmetical calculation which can be gone into by the competent authority under section 33-C(1) of the Act and there can hardly be any dispute in this regard. It is only when the right to claim the money is disputed that the jurisdiction of the authority under section 33-C(1) could be ousted. So long as the award made by the Labour Court subsists, the management has no choice but to implement the same.

(Para 3)

S. N. Bhandari, Advocate with H. N. Mehtani, Advocate, for the petitioner.

R. S. Mittal, Sr Advocate with Tarun Jain, Advocate, for the respondent No. 6.

JUDGMENT

N. K. Sodhi, J.

(1) What is challenged by the Cement Corporation of India (for short, the management) in this petition filed under Article 226 of the Constitution is the order of the Labour Commissioner, Haryana issuing recovery certificate under section 33-C (1) of the Industrial Disputes Act, 1947 (hereinafter called the Act) for the amounts due to the workman in implementation of the award dated 5th August, 1993.

(2) Bhim Sain Prabhakar the workman herein alleged that he had been dismissed from service on 4th/5th October, 1988 in contravention of the provisions of section 33 of the Act. An industrial dispute under section 2(k) of the Act in regard to payment of bonus for the year 1984-85 was pending before the Tribunal in reference No. 7 of 1988 and it is alleged that the management dismissed the workman from service without obtaining express permission in writing from the Tribunal. The workman filed a complaint under section 33-A of the Act to the Labour Court before which the industrial dispute was pending and that Court treating the complaint as a dispute referred to it under section 10 of the Act gave its award on 5th August, 1993 holding that the dismissal of the workman from service was illegal and wrongful. The order of dismissal was set aside and the management was directed to reinstate the workman with continuity of service and other consequential benefits with 50 per cent back wages which had to be paid in two equal monthly instalments within a period of three months from the date of the award failing which the workman was held to be entitled to interest at the rate of 12 per cent from the date of the award till the date of actual payment. The management has challenged this award by filing Civil Writ Petition No. 13358 of 1993 which has been adjourned *sine die* by the Motion Bench and notice to the respondents therein has not yet been issued. Since the management did not implement the award, the workman moved the State Government under section 33-C (1) of the Act claiming recovery of money due from the management under the aforesaid award. The Labour Commissioner, Haryana exercising the powers of the State Government has by an order dated 28th March, 1994/12th April, 1994 issued recovery certificates for Rs. 71,638.55 Paise plus interest at the rate of 12 per cent, Rs. 17,468.25 Paise and Rs. 44,908.30 Paise as per the claim made by the workman. Civil Writ Petition No. 16522 of 1994 has been filed by the management to challenge this order but since the State

Cement Corporation of India Ltd. v. Government of Haryana 319
and others (N. K. Sodhi, J.)

Government did not supply a copy of the same, the writ petition was filed without a copy thereof and on a direction issued by this Court a copy of the order was supplied to the management which has been placed on the record as Annexure R/6/2. The workman has also filed Civil Writ Petition No. 15834 of 1993 challenging the award in so far as it denies to him 50 per cent of the back wages. This order will dispose of the petition filed by the workman and Civil Writ Petition 16522 of 1994 in which the order of the Labour Commissioner has been challenged by the management. The validity of the award dated 5th August, 1993 is not the subject matter of challenge before me in these writ petitions.

(3) Mr. S. N. Bhandari, Advocate appearing for the management contended that the order of the Labour Commissioner, Haryana issuing the recovery certificates is without jurisdiction inasmuch as he could not exercise the powers under section 33-C(1) of the Act in respect of the petitioner management which is a cement industry in regard to which the appropriate Government is the Central Government. While elaborating his argument, the learned counsel drew my attention to the notification dated 8th November, 1977 issued by the Ministry of Labour, Government of India whereby the cement industry which had been declared a controlled industry under section 2 of the Industries (Development and Regulation) Act, 1951 has been specified for purposes of sub-clause (i) of clause (a) of section 2 of the Act. He also referred to the notification dated 8th December, 1977 issued by the Ministry of Labour, Government of India whereby the Central Government in exercise of its powers under section 39 of the Act declared that all the powers exercisable by it under the Act shall, in relation to the cement industry, be also exercised by all the State Governments. It may be mentioned that the State of Haryana by a notification dated 18th June, 1974 had delegated the powers exercisable by it under sub-section (1) of section 33-C of the Act to the Labour Commissioner, Haryana. Even if on a reading of these notifications along with the provisions of the Act one were to conclude that the Labour Commissioner, Haryana could not exercise the powers of the State Government in regard to the cement industry which had been delegated to the latter by the Central Government. I refuse to interfere in the exercise of discretionary jurisdiction under Article 226 with the impugned order passed by the Labour Commissioner. By this order, the Labour Commissioner has only executed the award by issuing recovery certificates. Undoubtedly, the award is operative between the parties and the management is not implementing the same. When the award

has got to be implemented, how does it matter whether the recovery certificates for its implementation are issued by the Labour Commissioner, Haryana or by an officer exercising the powers of the Central Government. It does not behove a Corporation like the present one to raise such technical pleas only in an attempt to defeat the rights of an individual workman. The award is not under challenge before me in these petitions and, therefore, even if the order of the Labour Commissioner was to be set aside, this Court would direct the management which is otherwise a state to implement the award unless the same is set aside or its operation is stayed by any competent Court. By an interim order passed by this Court in the present proceedings, the management has paid the amounts in dispute to the workman as a result whereof a part of the award pertaining to the monetary benefits due to the workman thereunder has been implemented. Mr. Bhandari contended that the impugned order should be quashed and the workman left to pursue his remedy under section 33-C(2) of the Act as the management is disputing the amount claimed by the workman. There is no merit in this contention. Computation of back wages on the basis of an award is only an arithmetical calculation which can be gone into by the competent authority under section 33-C(1) of the Act and there can hardly be any dispute in that regard. It is only when the right to claim the money is disputed that the jurisdiction of the authority under section 33-C(1) could be ousted. That is not the case here. Even otherwise it, would be too harsh for the workman if he is driven to another round of litigation before the Labour Court. So long as the award made by the Labour Court subsists, the management has no choice but to implement the same.

(4) Now coming to the writ petition filed by the workman. The Labour Court while setting aside the order of dismissal has directed his reinstatement but with 50 per cent back wages. 50 per cent of the wages were denied on the ground that the workman while appearing before the Tribunal admitted in his cross-examination that he had been representing the workers of various companies before the Labour Courts/Industrial Tribunals since the year 1988. In view of this admission made by the workman, the Labour Court was justified in presuming that he was gainfully employed during the period of his forced idleness. The award of back wages is essentially a matter of discretion to be exercised by the Labour Courts keeping in view the facts and circumstances of each case. The exercise of discretion in the instant case cannot be said to be arbitrary so as to call for any interference by this Court in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution.

(5) In the result, there is no merit in either of the writ petitions and both of them stand dismissed. Since the management has not so far implemented the award of the Labour Court dated 5th August, 1993, I direct the management to implement the same within a period of months from the date of receipt of a copy of this order. This direction will, however, be subject to any order that may be passed by this Court in Civil Writ Petition 13358 of 1993 in which the award has been challenged by the management.

(6) The parties are left to bear their own costs.

R.N.R.

Before Hon'ble M. S. Liberhan & M. L. Koul, JJ.

KULTAR SINGH KULTAR,—Petitioner.

versus

STATE OF PUNJAB & ANOTHER,—Respondents.

C.W.P. No. 10052 of 1995.

12th September, 1995.

Constitution of India, 1950—Art. 226—Dismissal—Petitioner charge-sheeted—Enquiry report absolved him of charges—Report accepted by State—However still dismissed from service on recommendation of Punjab Public Service Commission—Challenge made to dismissal order—Held Punjab Public Service Commission is a mere advisory authority—Approval granted not a mandate for the punishing authority—State is the acting authority—Competent to award lesser punishment or no punishment.

Held, that mere granting of approval by an advisory authority as Public Service Commission cannot be termed as mandate for proposing the act by the punishing Authority. Approval by itself is not mandatory for the Punishing Authority.

(Para 3)

Further held, that approval of an act does not mean performance of the act. Doing an act and approval before or after the act are two distinct acts envisaged by law. Public Service Commission is only an advisory authority whose approval is required to act, while the State is infact the acting authority. No power has either been delegated by the State to the Public Service Commission to act on its behalf nor it is even remotely referred to during the course of