

(1961) 07 BOM CK 0008

In the Bombay High Court

Case No : Special Civil Application No. 668 of 1961

Abdul Rahaman D. Lambe and Another

APPELLANT

Vs

R.N. Kulkarni and Another

RESPONDENT

Date of Decision : 21-07-1961

Acts Referred:

Industrial Disputes Act, 1947 — Section 25

Citation : AIR 1962 Bom 287 : (1961) 63 BOMLR 994 : (1961) ILR (Bom) 994

Hon'ble Judges : Patel, J;Chandrachud, J

Bench : Division Bench

Advocate : Y.S. Chitale, for the Appellant; N.V. Phadke and S.Y. Deshpande, for the Respondent

Judgement

Patel, J.

(1) Petitioner No. 1 in this case is an employee of the Victoria Lamp Works, at Bombay. Petitioner No. 2 is the Union of which petitioner No. 1 is a member. Alleging that he was in service for 11 years, and that at the time in question, i.e. on the 10th of November 1960, he was earning Rs. 2-8-0 a day, that by closure notice dated 10th October 1960, his services along with that of others were terminated from 10th October 1960, and no payment was made due to him under the provisions of S. 25FFF of the Industrial Disputes Act, he made an application under S. 33-C(2) of the Act for determination of the amount due to him. This application was made to the a Labour Court constituted under the Industrial Disputes Act, 1947. The Opponent contested the application contending that the payments were already made and in any case the court had no jurisdiction to deal with the matter. The Court framed two preliminary points for its decision as follows;

"(1) Whether this court has jurisdiction to entertain these applications under S. 33-C(2) of I.F. Act?

(2) Whether the certificates as prayed for can be issued?"

(2) In support of the contention that the court had jurisdiction, the petitioners relied upon the decision of this court in the case of Shree Amarsinhji Mills Ltd. Vs. Nagrashna (M.N.) and Others, . In that case the workers claiming similar relief had made an application under the section and the court held that the Labour Court would have jurisdiction under S. 33-C(2) of the Act, to determine the amount due.

The Labour Court disagreed with the view of this court and held that it had no jurisdiction, and that it could not issue a certificate. It is this order that is now being challenged before us.

(3) We must say at the outset that we have not been able to ascertain the process of thought by which the Court came to the conclusion that it had no jurisdiction, though the judgment is none too short. Mr. Phadke, however, has tried to support the judgment under review as best as he could. Mr. Phadke invited our attention to the observations of Bhagwati J. In the case of S.S. Shetty Vs. Bharat Nidhi, Ltd., which have been cited by the Labour court and argues that they support the conclusions of the Labour court that S. 33-C(2) gives jurisdiction to the Labour Court to determine the money value of non-monetary benefits only and that it could be done on a reference to it by the appropriate Government. It is contended that this case was not cited before the Division Bench which decided Shree Amarsinhji Mills Ltd. Vs. Nagrashna (M.N.) and Others, . And therefore it is erroneously decided.

(4) Section 33C is in parimateria with S. 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950, which was considered by the Supreme Court. It is divided into two parts as is S. 20 Sub-section (1) enables a person to make an application to the State Government to issue a certificate for any money due to him under an award or order of a court established under the Act and it could then be recovered as arrears of revenue. Sub-section (2) enables a person to make an application for determining the money value of any right to which he is entitled to under the Act and on such determination it becomes enforceable in the manner provided under sub-section (1). It is at once apparent that sub-section (1) affords a method of execution by which any amount due can be recovered and can have limited application and could be invoked only when the amount is actually determined by a proper tribunal. When it has yet to be determined resort must be had to sub-section (2) and after it is determined then application for recovery could be made under sub-section (1).

(5) A few facts necessary to appreciate the observations of Bhagwati J. In S.S. Shetty Vs. Bharat Nidhi, Ltd., need be stated. The appellant before the Supreme Court was discharged by the respondent, which order of discharge was held to be illegal by the Industrial Tribunal. The Tribunal had also directed that he should be reinstated and be paid arrears of salary and allowances from the date of discharge. The respondent failed to implement the award and therefore the appellant made application to the Labour Commissioner under S. 20(2) of the Industrial Disputes (Appellate

Tribunal) Act, 1950, directly, for computation of the money value of the benefit of reinstatement. The Commissioner determined the amount due on certain basis. The appellant claiming larger amount went in appeal to the Supreme Court. Their Lordships were concerned only with determining the mode of computing the money value of the benefits which the appellant before them was entitled to under the award of the Tribunal. It is true that in that case it was non-monetary benefit that had to be valued. There is nothing in these observations from which it can even be inferred that it was held that the Labour Court had jurisdiction to determine money value of only non-monetary benefits under S.20 sub-section 92). Moreover, the observations: "and the amount at which such benefit should be computed is to be determined by the industrial Tribunal to which reference would be made by the appropriate Government for the purpose", are mere passing observations and cannot be regarded as decision on the appellant would have failed as he had made the application directly and the determination was without any reference.

(6) Mr. Phadke's contention that an application under S. 33-C, sub-section 91) must first be made to the Labour Court for computation under subsection (2) also cannot be accepted. This argument was advanced in the case of 1961 1 Lab LJ 581 cited above and negated. The argument made would amount to a suggestion that in effect the application gives rise to an Industrial dispute which Government must refer to the Tribunal or the Court as the case may be u/s 10-A. Since sub-section (1) of S. 33 does not give such power. It may be recalled that before the provisions of S. 33-C were incorporated into this Act, S. 25-H (2) (which it replaced) provided that any industrial dispute relating to any of the matters referred to in that Chapter were to be dealt with in accordance with the provisions of the Act and not in accordance with any other law. That section contemplated a distinct Industrial Dispute arising out of non-compliance with the provisions of that chapter. This provision was by the amending Act deleted and this new procedure adopted presumably because that procedure was a cumbersome one and may have been instrumental in prolonging matters unnecessarily. Instead of that procedure a shorter procedure of enabling a party to approach a Labour Court specified by the Government may as well have been intended by the amendment. It is not intended that specification of the Court be specifically for each case. General specification of Court or Tribunal would suffice. By a notification Dated 12th March 1957 the State Government has specified Labour Courts to determine the matter under S. 33-C(2). It has also delegated its powers of issuing certificates to the same court under S. 33-C(1) in virtue of its powers of delegation under S. 39. It seems to us that there is no necessity of making a reference by Govt., to do which it has no power u/s 33(1).

An application directly to the specified authority will be. The decision in *Kasturi and Sons (Private) Ltd. Vs. N. Salivateeswaran and Another*, indirectly supports this conclusion. The Court in that case was concerned with S. 17 of the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act (1955), which was similar to S. 33-C sub-section (1). While dealing with that section, Mr.

Justice Gajendragadkar observed that :

" The condition precedent for the application of S. 17 is a prior determination by a competent authority or the court of the amount due to the employee from his employer. It is only if and after the amount due to the employee has been duly determined that the stage is reached to recover that amount and it is at this stage that the employee is given the additional advantage provided by S. 17 without prejudice to any other mode of recovery available to him".

The learned Judge in this connection referred to S. 33-C of the Industrial Disputes Act, particularly sub-section (2) and observed that;

"These provisions indicate that, where an employee makes a claim for some money by virtue of the benefit to which he is entitled, an enquiry into the claim is contemplated by the Labour Court and it is only after the Labour Court has decided and it is only after the Labour Court has decided the matter that the decision becomes enforceable under S. 33-C(1) by a summary procedure".

This is made perfectly clear by the last clause appearing in sub-section (2)/

(7) There is good reason why this sub-section must apply in cases of monetary benefits as well. We have held that direct application can lie. It cannot be disputed that determination of monetary value of non-monetary benefits may be more complicated and more difficult than determining the actual amount due where it is alleged that certain monetary benefits are not given. If the application of sub-section is limited as contended for it would mean in effect that for a simple matter the elaborate machinery of the Act must be gone through while for more complicated matter a direct application could be made. This inconsistent effect could be avoided by giving a larger meaning, yet reasonable, to the words of the section as has been done by the court in *Shree Amarsinhji Mills Ltd. Vs. Nagrashna (M.N.) and Others*, .

(8) It is not necessary to consider the other reasons given by the Labour Court for holding that an application does not lie directly and that it is restricted only to non-monetary benefits as most of them were considered by this court in the above case and answered. The conclusion to which this court has reached is more than justified.

(9) Turning now to the case decided by the Madhya Pradesh High Court by which the Labour Court is oppressed so much, we must observe that the decision so far as this particular question is concerned is obiter. In that case the workmen made an application for recovery of certain amounts alleged to be due from the petitioner mills on the ground of non-compliance with S. 25FFF on closure. The application was made under S. 33-C sub-section (1) to the Labour Commissioner, who, after making calculations, issued certificates for recovery of amounts which he found due. The argument before the Court was addressed on the question as to whether or not such an application could be made under S. 33-C sub-section (1). The Court held that S. 33-C(1) is in the nature of a provision for execution which

enables the persons entitled to recover money which is actually found to be due to him. After holding that the matter could not be decided under S. 33C sub-section 91), in paragraph, 8, the learned Judges made it clear that they were not called upon to decide the question as to the competent authority, and the proper procedure to be followed, for determination of the amount of compensation payable to workmen under S. 25FFF. Thereafter, however, they proceeded to express their prima facie view on the effect of S. 33-C sub-section (2). It is hardly possible to regard this judgment as a decision interpreting S. 33-C sub-section (2).

(10) In this view of the matter it appears to us that the Labour Court was not justified in disregarding an express decision of this court given after due consideration. He was bound as a court, subject to the supervisory jurisdiction of this court, to follow the decision of this court.

(11) We cannot also endorse his finding to the effect that;

"Provisions of Chapter V-A. Relating to the rights and liabilities of the employer for lay-off, retrenchment and closure compensation that is S. 25-(C), 25(F), 25 (FFF) read along with S. 33(C), for "recovery of money due under Chapter V-A" without any period of limitation are invalid as they are inconsistent with the preamble, object and purposes of Act".

It is almost an elementary principle that neither the preamble nor the supposed object of an Act can control the express language of the statute. They merely afford help in the matter of construction if there is any ambiguity. Where the language is clear the court is bound to give it effect. If there is some ambiguity and if more than one constructions are possible the court accepts the one which is consistent with the objects of the Act as explained by the preamble. It is sufficient to say, without going into the details of the reasons, that it is impossible to sustain this finding, and Mr. Phadke has not sought to support that finding - and we must say rightly so.

(12) Mr. Phadke then as a last resort urged that even assuming that the court had jurisdiction, the petitioners had no cause of action in as much as, according to the decisions, retrenchment is not effective unless the provisions of S. 25-F in relation to retrenchment are complied with. The argument is based on sandy foundations inasmuch as the petitioners' claim is not based on retrenchment, but under S. 25-FFF on the ground of non-payment on closure. The Supreme Court had occasion to deal with the question as to whether or not a notice of closure was effective without compliance with the provisions of the said section, and it held that it was effective even if there was non-compliance with the provisions regarding payment. (See the case of Hatisingh Mfg. Co. Ltd. and Another Vs. Union of India (UOI) and Others, Mr. Phadke, when he saw this judgment has advisedly not pressed the contention.

(13) In the result we set aside the order made by the Labour Court and direct it to proceed further with the case. Opponent No. 2 will pay costs of the petitioners.

(14) We understand that the learned Judge as a result of his view on this question dismissed about four hundred applications. If that is so, no doubt it has reduced his file but that can hardly be any satisfaction to any one when one realises that a large number of workmen will be put to unnecessary expense in getting those orders reviewed, not to mention the waste of public time. The Labour Court would have been well advised to treat one case as a test case and postpone others until it was finally decided.

(15) It is hardly necessary to remind the Labour Court that while referring to case law it is customary to give the names of parties and not nly reference to reports. This facilitates the reading of judgment and getting cross-references. We do hope that the Labour Court will take the simple trouble of following this practice.

(16) Petition allowed.