

(2011) 10 DEL CK 0039

In the Delhi High Court

Case No : Writ Petition (Civil) No. 11385 of 2009

Air India Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 12-10-2011

Acts Referred:

Constitution of India, 1950 — Article 32
Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 20, 20(2), 33A, 33C
Industrial Disputes Act, 1947 — Section 10, 10(1), 18, 19, 33(C)

Citation : (2011) 10 DEL CK 0039

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Ratna Dhingra, Ms. Shreya S. Dabas and Ms. Bhavna Dhami, for the Appellant; Ravinder Agarwal, CGSC for UOI, Mr. Atul Bandhu and Mr. Varun Baweja, Advocates Writ Petition (Civil) No. 11385/2009, Mr. Ravinder Agarwal, CGSC for UOI, Mr. Govind Narayan, Advocate for respondent No. 2 Writ Petition (Civil) No. 11389/2009, Mr. Ravinder Agarwal, CGSC for UOI, Mr. A.K. Trivedi, Advocate for respondent No. 2 Writ Petition (Civil) No. 11390/2009, Mr. Ravinder Agarwal, CGSC for UOI, Mr. Govind Narayan, Advocate for respondent No. 2 Writ Petition (Civil) No. 11391/2009, Mr. Ravinder Agarwal, CGSC for UOI, Mr. Atul Bandhu and Mr. Varun Baweja, Advocates for respondent workman Writ Petition (Civil) No. 11397/2009 and Mr. Ravinder Agarwal, CGSC for UOI and Mr. A.K. Trivedi, Advocate for respondent No. 2 Writ Petition (Civil) No. 11402/2009, Mr. Ravinder Agarwal, CGSC for UOI, Mr. Atul Bandhu and Mr. Varun Baweja, Advocates for respondent workman Writ Petition (Civil) No. 11404/2009, for the Respondent

Final Decision : Allowed

Judgement

Sanjiv Khanna, J.—These seven writ petitions have been filed by National Aviation Company of India Limited, now known as Air India Limited, challenging different orders passed by the Presiding Officer, Central Government, Industrial Tribunal-cum-Labour Court u/s 33-C(2) of the Industrial Disputes Act, 1947 (Act, for short). By the aforesaid orders, the petitioner has been directed to pay the respondent employees arrears towards wages as per the agreement dated 5th

May, 1996 entered into between the petitioner and the Air India Employees Guild. It is accepted by the counsel for the parties that the reasoning given by the Industrial Adjudicator in all orders is identical and, therefore, these writ petitions can be disposed by a common order. For the sake of convenience and with the consent of the learned counsel for the parties, Writ Petition (Civil) No. 11391/2009 titled National Aviation Company of India Limited, now known as Air India Limited, v. Union of India and Raj Kumar is treated as the lead case.

2. The private respondents had filed applications u/s 33-C(2) of the Act before the Industrial Adjudicator stating, inter alia, that they had worked as drivers and were paid basic salary of Rs.1185/- per month and other allowances. They claimed and had submitted that they were entitled to basic pay of Rs.3140/- per month as stipulated in the agreement dated 5th May, 1996 between the petitioner and the Air India Employees Guild. Accordingly, the petitioner should be directed to pay the balance amount. They rely upon clause 2 of the engagement letters which has been translated and reads as under:

2. During the course of employment on temporary post (as per provisions of memorandum of settlement entered with the unions) your basic pay will be Rs.1185/- p.m., HRA (30% of basic salary), city allowance (6% of the basic or Rs.100/- whichever is less) additional pay and Dearness Allowance as applicable from time to time (on applicable rates).

3. The contention of the petitioner, on the other hand, was that the respondents had been appointed on contractual and temporary basis for a short duration mentioned in the engagement letters. The total emoluments payable to the respondents were expressly stated. The respondents were paid in terms of the emoluments mentioned in the engagement letters. The agreement dated 5th May, 1996 between the petitioner and Air India Employees Guild is in respect of permanent employees and is not applicable to the respondents. The respondents were/are not members of the said guild and were engaged as drivers on specific terms and conditions. The respondents are not entitled to the salary payable to regular drivers. The jurisdiction of the tribunal to decide the question/issue in proceedings u/s 33-C(2) is raised.

4. The tribunal examined the said contention relating to its jurisdiction but rejected the same holding, inter alia, that the agreement dated 5th May, 1996 nowhere makes a distinction between permanent and casual employees and it speaks of non-technical and technical category of workmen. The relevant portion of the order passed by the Industrial Adjudicator on this aspect reads as under:

8. As detailed above, contents of the settlement Ex.MW1/3 nowhere makes any distinction viz, permanent employees and casual employees. It speaks of non technical and technical categories of workmen. It is not case of the management that the workman is not a technical employee. Management concedes that the drivers, who were permanent employees, were paid in the scale of Rs.3140/-, in pursuance of the agreement dated 5.5.96. It is not case of the management that

the workman was not performing the similar duties as performed by the regular drivers. IN such a situation the management cannot differentiate between a driver employed on casual basis and a driver employed on permanent basis. Consequently it is evident that the contention of the management that agreement Ex. MW1/3 is not applicable to the workman, is found to be without any basis. Equal pay for equal work is norm of the day as held by the Apex Court in Tarsem Lal Gautam and another (1989 Lab. I.C. 1138), State of U.P. and another (1989 Lab. I.C. 1146), Mewa Ram Kanojia (1989 Lab. I.C. 1348), Kerala High Court Non-Graduate Staff Association and another (1998 Lab. I.C. 455), State of U.P. and others (2002 Lab. I.C. 3920). Vijay Singh and another (2006 Lab. I.C. 437). In view of above law laid by the Apex Court, it is clear that the workman is entitled to the wages as per agreement dated 5.5.96, to keep him at par with the permanent employees of his category.

9. Mr. Gaur argued that the application under sub-section (2) of Section 33C of the Act is not maintainable. According to him, the provisions of sub-section (1) of Section 33-C of the Act contemplates that when any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA or, Chapter VB of the Act, he may make an application to the appropriate Government for recovery of the money due to him and on satisfaction in that regard the appropriate Government shall issue a certificate of recovery of the amount. He argued that the application under sub-section (2) of Section 33-C of the Act is not competent. He claims that on that count the application may be discarded. His submissions are untenable. The apex Court in K.L. Kharbanda (1963 (1) LLJ 406) construed the words "any benefit which is capable of being computed in terms of money" and held that where the benefit to which the workman may be entitled to be computed, for example, any award which confers on him the benefit, sub section (2) would apply for computation such benefit, if there is a dispute about it.

10. In P.S. Rajgopalan (1963 (2) LLJ 89) the Apex Court concluded that it should not to be interpreted to mean that the scope of sub-section (2) of Section 33-C of the Act is exactly the same as in sub-section (I) of Section 33-C and further pointed out that the three categories of claim mentioned in section 33C(1) fall u/s 33-C(2) of the Act and in that sense section 33-C(2) of the Act itself be deemed to be a kind of execution proceedings, but it is possible that claim not based on settlement, awards or made under the provisions of Chapter V-A, may also be competent u/s 33-C(2) and that may illustrate its wider scope. In other words the Labour Court, acting u/s 33-C(2) of the Act, is competent to entertain claims made de hors settlements, awards or the provisions of Chapter V-A of the Act. Consequently the provisions of section (2) of Section 33C of the Act takes within its sweep cases of workman who claim that benefit to which they are entitled would be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by the employer and it is open to the Labour court to interpret an award or settlement on which the workman's right rests. In view of law laid by the Apex Court, contention advanced by Shri

Gaur are found to be untenable and the same are, therefore, discarded.

5. The respondents herein had earlier filed Writ Petition (Civil) No. 1326/1997 in this Court for a direction to the petitioner to regularize their services as permanent drivers against regular permanent vacancies. In this writ petition notice was issued and vide order dated 9th April, 1997 the petitioner was directed to maintain status quo. The status quo order continued till it was vacated when the writ petition was dismissed vide order dated 8th November, 2001. The Court while dismissing the writ petition observed that the respondents herein were appointed as temporary drivers for intermittent periods in 1989-1990 and thereafter again on different dates in 1996-1997 after a gap of 5-6 years. The tenure of engagement varied between 2-4 months. The engagement letters specifically stipulated that the appointment was on temporary basis and the service would stand terminated at the end of the period stipulated. The Court took notice of the contention of the petitioner herein that the Supreme Court had issued directions that old buses should not ply on the roads in Delhi and accordingly the petitioner had decided to do away with the old buses and as a policy decision it was decided not to purchase new CNG buses as it would not be economically viable. After considering the relevant submissions, the Court in its decision dated 8th November, 2001 recorded as under:-

14. It is thus conclusively established that when petitioners were initially appointed they did not go into the rigour of the selection process as prescribed under the regulation and their sustainability was considered only to a limited extent for the purpose of their contract appointment and they had also worked for few months and therefore no relief could be granted to the petitioner as sought for in the writ petition directing for their regularization in the service they having not been selected through a regular process of selection in accordance with the recruitment rules prescribe for such recruitment. Even otherwise no such direction for regularization could be issued in the present case as petitioner have only worked for few months with the Respondents and particularly when it is the specific stands of the Respondents now that there are no permanent vacant posts of drivers with the Respondents at the present moment. At the same time it is true that the petitioner could not have been substituted by appointing another set of casual or temporary employees.

15. Accordingly, I find no merit in this petition and the petition stands dismissed. However, before parting with the records I am inclined to make an observation wherein I hereby do, that in case the Respondent require any driver the same shall be notified for filling up in accordance with recruitment rules and in the event of the petitioners applying for the same their cases shall be considered in accordance with law giving due weightage to their past experiences with the Respondents and also by giving relaxation of age to the extent of the period they had worked with the Respondents.

6. The aforesaid paragraphs show that the appointment of the respondents was not made after following a regular selection process in terms of the recruitment

rules. The appointment was on casual or temporary basis.

7. After the aforesaid writ petition was dismissed, the respondents herein in 2002 had filed applications u/s 33-C(2) of the Act before the Industrial Adjudicator claiming that they were entitled to higher salary than what was paid to the respondents during the period of engagement in terms of the engagement letter (i.e. during the period 1996-97) and thereafter pursuant to the interim order passed by the Court on 9th April, 1997 till the decision of the writ petition vide order dated 8th November, 2001. The claim of the petitioner, as noticed above, was founded on the agreement dated 5th May, 1996 between the petitioner and the Air India Employees Guild.

8. The question which arises for consideration is whether the Industrial Adjudicator could have examined and gone into the question whether the agreement dated 5th May, 1996 was applicable to the respondents in proceedings u/s 33-C(2) of the Act. Secondly, whether clause 2 of the letter of engagement has been wrongly interpreted and whether the respondents are entitled to pay scale mentioned in the letter of engagement or the agreement dated 5th May, 1996.

9. Section 33-C(2) of the Act reads as under:-

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months:

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

10. The aforesaid Section had come up for consideration before the Supreme Court in Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others, . In the said case, the aforesaid provision was interpreted and the following propositions on the scope of the said Section as discernible were elucidated:-

(1) The legislative history indicates that the legislature, after providing broadly for the investigation and settlement of disputes on the basis of collective bargaining, recognised the need of individual workmen of a speedy remedy to enforce their existing individual rights and therefore inserted Section 33-A in 1950 and Section 33-C in 1956. These two sections illustrate cases in which individual workmen can enforce their rights without having to take recourse to Section 10(1) and without having to depend on their union to espouse their case.

(2) In view of this history two considerations are relevant while construing the

scope of Section 33-C. Where industrial disputes arise between workmen acting collectively and their employers such disputes must be adjudicated upon in the manner prescribed by the Act, as for instance u/s 10(1). But having regard to the legislative policy to provide a speedy remedy to individual workmen for enforcing their existing rights it would not be reasonable to exclude their existing rights sought to be implemented by individual workmen. Therefore though in determining the scope of Section 33-C care should be taken not to exclude cases which legitimately fall within its purview, cases which fall, for instance u/s 10(1), cannot be brought u/s 33-C;

(3) Section 33-C which is in terms similar to those in Section 20 of the Industrial Disputes (Appellate Tribunal) Act 1950 is a provision in the nature of an executing provision;

(4) Section 33-C(1) applies to cases where money is due to a workman under an award or settlement or under Chapter VA of the Act already calculated and ascertained and therefore there is no dispute about its computation. But sub-section 2 applies both to non-monetary as well as monetary benefits. In the case of monetary benefit it applies where such benefit though due is not calculated and there is a dispute about its calculation;

(5) Section 33-C(2) takes within its purview cases of workmen who claim that the benefit to which they are entitled should be computed in terms of money even though the right to the benefit on which their claim is based is disputed by their employers. It is open to the Labour Court to interpret the award or settlement on which the workmen's right rests.

(6) The fact that the words of limitation used in Section 20(2) of the Industrial Disputes (Appellate Tribunal) Act 1950 are omitted in Section 33-C(2) shows that the scope of Section 33-C(2) is wider than that of Section 33-C(1). Therefore, whereas sub-section 1 is confined to claims arising under an award or settlement or Chapter VA, claims which can be entertained under sub-section are not so confined to those under an award, settlement or Chapter VA.

(7) Though the court did not indicate which cases other than those under sub-section 1 would fall under sub-section 2, it pointed out illustrative cases which would not fall under sub-section 2 viz. cases which would appropriately be adjudicated u/s 10(1) or claims which have already been the subject-matter of settlement to which Sections 18 and 19 would apply.

(8) Since proceedings u/s 33-C(2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the benefit claimed by a workman is in such cases in the position of an executing court, the Labour Court like the executing court in execution proceedings governed by the Code of Civil Procedure, is competent u/s 33-C(2) to interpret the award or settlement where the benefit is claimed under such award or settlement and it would be open to it to consider the plea of nullity where the award is made without jurisdiction.

11. Proposition 3 mentioned above clearly states that the aforesaid Section is in the nature of execution provision. Proposition 4 states that it applies to both the monetary as well as the non-monetary benefits and covers cases where there is a dispute about their calculation. Proposition 5 states that the Section takes within its purview a claim by a workman that the benefits to which they are entitled to should be computed in terms of money, even though the right to the benefits on which their claim is based is disputed. It further states that it is open to the Industrial Adjudicator to interpret the award or settlement on which the workmen's claim vests. Proposition 8, however, clarifies that the proceedings under the said Section are analogous to execution proceedings and this determines the jurisdiction and exercise thereof by the Industrial Adjudicator.

12. The scope and jurisdiction of an Industrial Adjudicator u/s 33-C(2) was considered by the Supreme Court in the case of Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another, wherein it was held that the right to money which is sought to be calculated or the benefit which is sought to be computed must be an existing one, a right which is already adjudicated upon or provided for and must arise in the course of employment of the workman. The words "adjudicated upon" or "provided for" are important and have to be examined in the present case. The said aspect and these words were examined by the Supreme Court in Municipal Corporation of Delhi Vs. Ganesh Razak and Another, . The said decision is relevant as it pertains to claims which were made by daily rated/casual workers, who had pleaded that they were entitled to wages at the same rates as regular workers. The Supreme Court examined the said aspect whether such a claim could be adjudicated and decided in proceedings u/s 33-C(2) of the Act and held as under:-

12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding u/s 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power u/s 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power u/s 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.

13. In these matters, the claim of the respondent-workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The

workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of "equal pay for equal work" being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in the writ petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made u/s 33-C(2) of the Act by these respondents.

13. The Supreme Court in *State Bank of India Vs. Ram Chandra Dubey and Others*, examined several decisions and summed up the law dealing with jurisdiction u/s 33-C(2) as under:-

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

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 u/s 33-C(2) of the Act. The benefit sought to be enforced u/s 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 u/s 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 u/s 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.

14. The aforesaid decisions were referred to by the Supreme Court in *State of Uttar Pradesh and Another Vs. Brijpal Singh*, and it was held that u/s 33-C(2) of the Act, the Industrial Adjudicator cannot entertain a claim made by a workman which is not based upon an existing right but which can be appropriately made a subject matter of an industrial dispute in a reference u/s 10 of the Act and undetermined claim or until such claim is adjudicated, cannot be made subject matter of execution u/s 33-C of the Act.

15. In *Union of India (UOI) and Another Vs. Kankuben (Dead) by LRs. and Others etc. etc.*, the aforesaid principles have been reiterated.

16. In the light of the aforesaid enunciation, it has to be examined whether in the facts of the present case the Industrial Adjudicator had jurisdiction to pass the impugned order in exercise of power u/s 33-C(2) or he has exceeded his jurisdiction when it was held that the principle of equal pay for equal work was applicable and therefore the agreement dated 5th May, 1996 is applicable to the respondent workmen, even though they were casual or temporary workers appointed for fixed duration and on emoluments as stipulated in the engagement letters.

17. The aforesaid reasoning mentioned in the impugned orders and the contention of the respondents has to be rejected in view of the decision of the Supreme Court in *Ganesh Razak (supra)*. The issue raised in the said case was identical to the issue raised in the present case. In *Ganesh Razak*'s case the casual workers had pleaded in the proceedings u/s 33C(2) of the Act that they were entitled to same wages as regular workers on the principle of equal pay for equal work. It was held that this required an earlier adjudication of the said dispute and was not a claim to enforce a pre-existing right and computation thereof. Thus this substantive issue or dispute could not have been decided in proceedings u/s 33-C(2) of the Act. The matter and contention raised did not pertain to the "execution" of the letter of engagement or its interpretation alone, but whether on application of the principle of "equal pay for equal work", the basic pay mentioned in the letter of engagement should be ignored and substituted by the pay scales in the agreement dated 5th May, 1996 between the petitioner and the Air India Employees Guild. This was a substantive dispute that required prior adjudication.

18. Faced with the above difficulty, learned counsel for the respondents has heavily relied upon clause 2 of the engagement letter, which has been quoted above. It is submitted that the "settlement with the union" refers to the agreement dated 5th May, 1996 between the petitioner and the Air India

Employees Guild. The contention is not correct. Clause 2 of the aforesaid letter does not specifically refer to any particular settlement and does not mention date of the agreement. Photocopy of the letter placed on record shows that it is printed format in which the name of the respondent, dates or the period of temporary employment and the basic pay was filled up by hand. In most cases the letter of engagements relied upon by the respondents are after 5th May, 1996. The basis pay mentioned in the letter of engagement is Rs.1185/-, whereas in the agreement dated 5th May, 1996 the applicable pay scale in respect of the existing Grade-III employees (i.e. drivers) was Rs.3140-4480. Thus, clearly the basic pay mentioned in the letter of engagements issued in 1997 was not in accord with and as per the pay scale stipulated for drivers in the agreement dated 5th May, 1996. I have reproduced above the findings in Writ Petition (Civil) No. 1326/1997 as to the nature of employment and the terms of engagement. It may also be appropriate to reproduce the cross-examination of Raj Kumar, the second respondent in Writ Petition (Civil) No. 11391/2009 in which he has stated as under:-

.....It is correct agreement dated 5.5.96 was between M/s. Air India and Air India Employees Guild. It is correct that I am not a member of Air India Guild. It is also correct that only permanent workers are members of Air India Employees Guild. Rules and Regulations of Air India are applicable to permanent as well as temporary employees. It is correct to suggest that the rules and regulation are not applicable to temporary employees. Vol: that rules and regulations about duties were uniformly applicable all employees permanent or temporary. There is no agreement between us and the management respondent. The agreement dated 5.5.96 was between management and Air India Employees Union. It is correct that the benefits of agreement dated 5.5.96 were given to the permanent workers and not to the temporary ones.....

19. The real and core issue was what was agreed upon or provided for in the engagement letter. As noticed above, clause 2 of the letter of engagement does not refer to any agreement of a specific date. It clearly stipulates the basic pay scale or wages payable. The basic pay scale mentioned in the letter does not correspond to the pay scale which was stipulated and was applicable to Grade-III workers, i.e., drivers with effect from 1st January, 1992. The agreement dated 5th May, 1996 and a reading of clause 2 of the letter of engagement it is apparent that the basic pay scales mentioned in the agreement are not payable to the respondents. The pay/salary fixed was clearly and specifically stipulated in the letter of engagement. There was no doubt or ambiguity about the amount payable.

20. In view of the aforesaid discussion, the writ petitions are allowed and the impugned orders passed by the Industrial Adjudicator are set aside and quashed. In the facts and circumstances of the present cases, there will be no order as to costs.