

(2012) 10 AP CK 0012
In the Andhra Pradesh High Court
Case No : WA No. 917 of 2012

A.P. State Textile Development Corporation Ltd.	APPELLANT
Vs	
Presiding Officer, Hon''ble Labour Court, Guntur and Others	RESPONDENT

Date of Decision : 17-10-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33C(2), 36A

Citation : (2013) 1 ALD 423 : (2013) 4 ALT 227 : (2013) 2 LLJ 53 : (2013) 2 LLN 61

Hon'ble Judges : G. Rohini, J;C. Praveen Kumar, J

Bench : Division Bench

Advocate : M. Pitchaiah and Government Pleader for Industries and Commerce, for the Appellant; E. Ajay Reddy, Government Pleader for Labour, for the Respondent

Final Decision : Dismissed

Judgement

C. Praveen Kumar, J.—The unsuccessful writ petitioner filed the present writ appeals questioning the order dated 19.4.2012 passed in WP Nos. 12661 and 12662 of 2001 and 3072 and 3907 of 2009 wherein and whereunder the awards passed in MP Nos. 95 and 96 of 1990 dated 12.7.2000, and in MP No. 6 of 2002 and MP No. 7 of 2002 dated 16.11.2007 by the Presiding Officer, Labour Court, Guntur were under challenge. Since the facts, issues involved and the parties being one and the same, with the consent of all the Counsel, the writ appeals are disposed of by this common judgment.

2. In all these matters, the appellant is A.P. State Textile Development Corporation Limited and the respondents are its employees. For the sake of convenience, we refer to the facts as narrated in WA No. 917 of 2012.

3. The appellant in all these appeals is fully owned by Government of Andhra Pradesh, established for the purpose of taking care of the needs and welfare of weavers outside the Cooperative sector. The object was to rehabilitate the weavers in the cyclone districts of Krishna and Guntur basing on the Special

Rehabilitation Projects (SRPs) formulated by the Director of Handlooms and Textiles through G.O. Ms. No. 569 dated 27.3.1978. Under the above scheme, the following programme facilities were provided:

- (a) Training centres at Machilipatnam, Repalle, Bhattiprolu, Mangalagiri and Tenali,
- (b) Pre-loom facilities (100 warping machines including sheds):
- (c) The Dye Units at Machilipatnam and Tenali;
- (d) Post-loom facilities and Head-setting Plant at Krishna District;
- (e) Modernisation of looms (7,000 looms).

4. It may be noted that for the purpose of this writ appeal, we are concerned with the Heat setting plant at Krishna District as the respondents 2 to 7 in the writ appeal who have claimed the revised pay scales and have worked in the Heat setting plant at Krishna District.

5. The Project Officer of these SRPs recruited the respondents who were sponsored by the District Employment Exchange to work in the projects of Krishna and Guntur Districts. The respondents in the writ appeals were recruited to the post of attenders with usual allowances admissible to the staff of A.P. Textile Development Corporation Limited in the year 1979 and have been working in different places in Krishna and Guntur Districts with basic pay at Rs. 165/- and their salaries were being paid by the Corporation.

6. As things stood thus, there was a revision of pay scales by virtue of G.O. Ms. No. 235 dated 17.9.1979. The Corporation issued memo dated 10.1.1980 to all the employees of the Corporation including the respondents in all the writ appeals instructing them to give their option in the prescribed form. All the respondents have opted for revised pay scales of the Corporation. As stated above, the employees were paid salaries on par with the employees of the Corporation and the Heat setting plant at Krishna District paid an interim relief of Rs. 25/- pending implementation of the revised pay scales. The pay revision was adopted on 10.1.1980 to all its employees and the Government of Andhra Pradesh issued G.O. Ms. No. 54 dated 30.1.1981 and in Column No. 8 to the said annexure, the basic pay payable to the attenders was shown as 295-5-345-10-425 working at Heat setting plant at Machilipatnam. Subsequently the appellant has converted the project centres in the two districts of Krishna and Guntur into Co-operative Societies under the Co-operative Societies Act and after formation of Heat setting plant, the respondents were posted at Heat setting plant at Machilipatnam. Thus, the respondents became employees in the same cadre on 1.4.1981 and the Heat setting plant came to be controlled by the appellant herein which has also adopted the implementation of revised pay scales. The grievance of the employees is that they were not paid the amount due to them towards arrears as per revised pay scale in spite of number of representations being made to the authorities. The said inaction on the part of

the appellant made the respondents to file MP No. 11 of 1982 before the Labour Court for determination of the amount due to them. The Labour Court, Guntur passed orders in the said M.P. holding that they are entitled to the amount as claimed and directed the appellant to pay the same. The order being ambiguous, the authorities did not implement the same. The employees were constrained to file Writ Petition No. 2490 of 1989 before this Court for implementation of the orders passed in the said MP No. 11 of 1982. By its order dated 19.6.1990, this Hon''ble Court was pleased to dispose of the said W.P. observing that the respondents/employees may approach the Labour Court seeking clarification and High Court cannot be used for modifying the orders of the Labour Court. It also observed that the High Court cannot also act as an executing Court to implement the orders of the Labour Court. Thus, the employees approached the Labour Court vide MP No. 95 of 1990 claiming arrears of revised pay scales and also interest on the said amount. The Labour Court by its order dated 12.7.2000 allowed MP No. 95 of 1990 filed u/s 33(C)(2) of the Industrial Disputes Act (for short "the Act") and directed the appellant to pay to each of the employees the amount claimed, within three months, failing which they were held liable to pay interest at 12% p.a. on the amount due from the date of the said order. Aggrieved by the same, the appellant herein filed Writ Petition No. 12661 of 2009. By an order dated 19.4.2012, a learned Single Judge of this Hon''ble Court dismissed the said writ petition confirming the orders of the Labour Court and consequently directed the appellant herein to deposit the said amount with accrued interest thereon before the Labour Court within a period of four weeks from the date of receipt of the said order. Questioning the order of the learned Single Judge, the present writ appeals are filed.

7. Heard Sri E. Ajay Reddy the learned Counsel for the appellant in all these appeals and also Sri N. Pitchaiah, learned Counsel for the respondent employees and learned Government Pleader for Industries and Labour. Perused the record.

8. The learned Counsel for the appellant mainly contended that the Corporation was established as an implementing agency by the Government of Andhra Pradesh by entrusting the work of implementation and supervision of rehabilitation package under SRP which were under the control and authority of Director of Handlooms and Textiles Corporation. There is no employee and employer relationship between the appellant Corporation and the respondents. According to him, clause 9 of G.O. Ms. No. 569 clearly indicates that the appellant will only act as an implementing agency on behalf of the handlooms and textiles as the appellant was equipped with full infrastructure facilities to implement the above rehabilitation project. It is further contended that the Project Officer of SRP, Vijayawada recruited respondent/employees through Employment Exchange on temporary basis and that it is only releasing funds to the Project Officer SRP, Vijayawada from out of the funds disbursed by the Director of Handlooms and Textiles from time to time in connection with the implementation of the scheme and it was the Project Officer who was paying salaries to them. According to him, the centre was closed on 31.3.1981 and on

closure of such centers, the Project Officer of SRP, Vijayawada absorbed the employees and the workers worked in the said centers instead of retrenching them. Thus, the appellant contended that the Corporation has absorbed the respondents in the Weavers' Co-operative Societies which are independent and separate bodies under the Co-operative Societies Act. It is his further contention that the G.O. issued towards revision of pay scales was in respect of Government employees specified therein but not to the employees of the Corporation as the employees were appointed purely on temporary basis that too for project work. It is thus contended that even if under a mistaken impression the employees submitted their option accepting revision of pay scale, the appellant is not under any legal obligation to consider them as they were never its employees. The learned Counsel would further contend that application u/s 33(C)(2) of the Act is not maintainable since there is a dispute between the parties with regard to the entitlement of arrears due to revised pay scales and also the relationship of employer and employee between the appellant and the respondents/employees. Thus, he is disputing the very claim of the respondents before the Labour Court u/s 33(C)(2) of the Act. He contends that any disputed claim cannot be adjudicated by the Labour Court. In support of his contention, he relied upon the dicta laid down in the following judgments viz., (i) The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., (ii) Municipal Corporation of Delhi Vs. Ganesh Razak and Another, (iii) Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others, (iv) Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, (v) State Bank of India Vs. Ram Chandra Dubey and Others, (vi) Maridagam Radhakrishna Reddy v. Sri Bharathi Velu Bus Service and another, AIR 1936 AP 102, (vii) State of Uttar Pradesh and Another Vs. Brijpal Singh, , (viii) D. Krishnan and Another Vs. Special Officer, Vellore Co-operative Sugar Mill and Another, and (ix) Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another,

9. On the other hand, the learned Counsel for the respondents contended that the respondents were paid salaries on par with the employees of the appellant Corporation which by itself entitled them to be treated as employees of the Corporation. According to him, benefit sought to be enforced u/s 33(C)(2) of the Act is a pre-existing benefit as such the Labour Court has jurisdiction to entertain the said application. According to him, the Labour Court as well as the learned Single Judge have dealt the matter in detail holding that the respondents are employees of the appellant herein and that the Labour Court has jurisdiction to entertain a disputed claim as well. Hence prays for dismissal of the writ appeals.

10. In P.S. Rajagopalan's case (supra), the apex Court was dealing with a situation in which the claim was made by the workman u/s 33(C)(2) of the Act on the basis of Sastry Award. The employer disputed the claim of the workman on several grounds including the applicability and maintainability of Section 33(C)(2) of the Act. It was urged that since the applications involved a question of interpretation of the Sastry Award, they were outside the purview of Section 33(C)(2) of the Act because interpretation of awards or settlements has been

expressly provided for u/s 36A of the Act. While dealing with the said situation, the Court indicated that the power of the Labour Court in a proceeding u/s 33(C) (2) of the Act being akin to that of the executing Court, the Labour Court is competent to interpret the award and the settlement on which a workman bases his claim u/s 33(C)(2) of the Act like the power of an Executing Court to interpret the decree for the purpose of execution. Therefore, the Constitutional Bench felt no difficulty in holding that for the purpose of resolving any dispute u/s 33(C)(2) of the Act, it would in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests. The said decision indicates the power of the Labour Court in interpreting the award or settlement like that of an executing Court's power to interpret the decree for the purpose of execution.

11. In the said case, the Supreme Court, however, remanded the matter back to the Labour Court to decide whether the nature of duties and responsibilities of the post held by the employees legitimately justifying the contention that they were comptists.

12. In *Bombay Gas Co. Ltd.*'s case (supra), the apex Court while referring to the above Constitution Bench decision, held that the proceedings contemplated u/s 33(C)(2) of the Act are analogous to execution proceedings and the Labour Court like the Executing Court in the execution proceedings is governed by the CPC and would be competent to interpret the award on which the claim is based. The Court held that the power of the executing Court is only to implement the adjudication already made by a decree and not to adjudicate a disputed claim which requires adjudication for its enforcement in the form of decree. The executing Court, after the decree has been passed, is however competent to interpret the decree for the purpose of its implementation.

13. In *Central Inland Water Transport Corporation Ltd.*'s case (supra), the Supreme Court in the facts and circumstances of the said case observed that the problems raised are appropriate for determination in an Industrial Dispute on a reference u/s 10 of the Act and cannot be regarded as merely incidental to the computation u/s 33(C)(2) of the Act. The Court held that the Labour Court has no jurisdiction to deal with the questions referred to it u/s 33(C)(2) of the Act.

14. In *Municipal Corporation of Delhi*'s case (supra), the Supreme Court was dealing with maintainability of the claim of daily rated/casual workers of the Municipal Corporation of Delhi who claimed that they were doing the same kind of work as regular employees and they were required to be paid by the appellant the same pay as that of the regular employees on principle of equal pay for equal work. The claim was disputed by Municipal Corporation of Delhi. There was no adjudication or recognition of the claim earlier. Since the dispute relating to entitlement was not incidental to the benefit claimed for uniformity in pay with regular employees, the apex Court held that it is outside the scope of proceedings u/s 33-(C)(2) of the Act as the Labour Court has no jurisdiction to decide the workmen's entitlement and then proceed to compute the benefit in

exercise of its power u/s 33-C(2) of the Act.

15. In Ram Chandra Dubey's case (supra), the Court after analyzing the facts and the authorities placed before it held 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....

16. In D. Krishnan's case (supra), the apex Court held that the proceedings u/s 33(C)(2) of the Act are in the nature of execution proceedings. Such proceedings presuppose some adjudication leading to determination of a right, which has to be enforced. It was a case where the appellant therein claimed that as they had put in overtime work for a specific number of hours each day, they were entitled to overtime wages for the said period. Seeking the benefit of overtime wages, they filed an application u/s 33(C)(2) of the Act before the Labour Court. The respondent therein filed counter contending that the appellants have not been directed to do any overtime and as a matter of fact they had never done so. The Court rejected the claim of the workmen and held that as there was no adjudication in the said case and the relief of the workmen was exclusively on documentary evidence, the Court found that application u/s 33(C)(2) of the Act could not have been entertained.

17. In Brijpal Singh's case (supra), relied on by the learned Counsel for the appellant, the apex Court was dealing with a situation where the Labour Court directed the appellant therein to make payment of salary and bonus of Rs. 1,55,821/- for the period 1987 to 1992 within one month from the date of the said order. Aggrieved by the said order of the Labour Court, the appellant filed writ petition before the High Court wherein the order of the Labour Court was confirmed. Challenging the judgment of the High Court, the appellant approached the Supreme Court. The apex Court held that the right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman and his employer. The Court further held that it is not competent for the Labour Court exercising jurisdiction u/s 33(C)(2) of the Act to arrogate itself the functions of an Industrial Tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject-matter of an industrial dispute in a reference u/s 10 of the Act. The learned Counsel for the appellant also relied on Maridegam Radhakrishna Reddy's case (supra) and Suresh Chand's case (supra), wherein similar

principles of law were enunciated by the apex Court.

18. By referring to the above judgments, the learned Counsel reiterated his submission that the Labour Court has got the power to entertain an application u/s 33(C)(2) of the Act only if the entitlement of a workman has been either adjudicated upon or recognized by the employer and if there is some ambiguity in the interpretation of the same, then the Labour Court would get jurisdiction to entertain an application u/s 33(C)(2) of the Act. He further contends that Labour Court cannot first decide the entitlement and then proceed to compute the benefits arising out of the said adjudication. In substance, he contends that Labour Court in an application u/s 33(C)(2) of the Act cannot decide the applicability of revision of pay scales to respondents/employees who are not their employees at a point of time.

19. There cannot be any dispute with regard to the principle of law laid down in cases referred to above. In facts and circumstances of each case, the apex Court decided the issue with regard to the jurisdiction of Labour Court in entertaining the application u/s 33C(2) of the Act. However, a Constitutional Bench of the apex Court in P.S. Rajagopalan's case (supra), has clearly held in Para No. 16 of its judgment as under:

In our opinion on a fair and reasonable construction of sub-section (2) it is clear that if a workman's right to receive the benefit is disputed, that may have to be determined by the Labour Court. Before proceeding to compute the benefit in terms of money the Labour Court inevitably has to deal with the question as to whether the workman has a right to receive that benefit. If the said right is not disputed, nothing more needs to be done and the Labour Court can proceed to compute the value of the benefit in terms of money; but if the said right is disputed, the Labour Court must deal with that question and decide whether the workman has the right to receive the benefit as alleged by him and it is only if the Labour Court answers this point in favour of the workman that the next question of making necessary computation can arise.

20. The Court further held that the Clause "Where any workman is entitled to receive from the employer any benefit" does not mean "where such workman is admittedly, or admitted to be, entitled to receive such benefit." Thus, the Court held that Section 33(C)(2) of the Act takes within its fold cases of workmen who claimed the benefit to which they are entitled to, be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers.

21. This Hon'ble Court in Ramesh Watch Company Vs. The Addl. Industrial Tribunal-cum-Addl. Labour Court and Ch. Bhagwan, had categorically held that denial of an existing right by the employer does not take away the jurisdiction of the Industrial Tribunal/Labour Court to entertain a petition u/s 33-C(2) of the Act. While the right itself should be an existing right for enabling a workman to maintain a petition u/s 33-C(2) of the Act, it is not necessary that this existing

right should have been admitted by the employer. The denial of the existing right of the workman to receive money or the benefits neither ousts the jurisdiction of the Industrial Tribunal/Labour Courts to entertain a petition u/s 33-C(2) of the Act nor does it require reference u/s 10 of the Act. The Court held that denial of the right would require the Labour Court to enquire into the fact whether the right is existing. The Labour Court has jurisdiction to decide and determine this jurisdictional fact. The enquiry u/s 33-C(2) of the Act in such cases would have to be preceded by an enquiry into the existence of the right and such an enquiry is incidental to the main determination which has been conferred on the Labour Court u/s 33-C(2) of the Act.

22. In the above said decision, the learned Judge of this Hon''ble Court also referred to the ratio laid down in Mandegam Radhakrishna Reddy Vs. Sri Bharathi Velu Bus Service and Presiding Officer, Labour Court, Guntur, , wherein a Full Bench of this Hon''ble Court was dealing with a situation where the workman in the said case who was driver under the employer met with an accident. The contention of the workman in that case was that he reported to duty on the next day of the accident, whereas the contention of the employer was that the licence of the workman was seized on the next date of the accident and the workman had got away without informing to the employer and it is only after the workman being acquitted from the said charge, reported to duty nearly three years thereafter. In that situation, the Labour Court rejected the plea of the employer as without substance. The Full Bench of this Hon''ble Court held that by mere denial, the jurisdiction of the Labour Court to enquire into the matter would not be excluded and that the Labour Court had rightly enquired into the jurisdictional fact as to the existence of the workman's right to the claim made by him.

23. The above observations make it clear that the Labour Court in an application u/s 33(C)(2) of the Act can enquire as to whether the workman is entitled to receive any benefits under a scheme. In other words, the Labour Court can deal with a dispute raised by an employer by way of a regular enquiry and decide whether the workman is entitled to receive the benefit as alleged and if found to be acceptable, can make necessary computation.

24. Such being the position, the primary question which falls for consideration is whether the respondents are regular employees of the appellant Corporation and whether they are entitled to revision of pay scales.

25. The SRP was created by G.O. Ms. No. 567 dated 23.7.1978 and the appellant is an implementing agency for the said scheme. As per the said G.O. posts were also sanctioned by the Government for Project Officer at Vijayawada, Machilipatnam, Tenali. Project Centre at Machilipatnam, Repalle, Tenali, Bhattiprolu and Mangalagiri have Heat setting plants in Krishna District. As per the documents produced before the Labour Court, the respondents were appointed as attenders by the Project Officer, SRP, Vijayawada with allowances admissible to employees of appellant Corporation. Thus the pay scales of employees were fixed on par with the employees of the Corporation. The

respondents were granted regular increments by the Project Officer. Pursuant to the closure of the SRP on 31.3.1981, Weavers Co-operative Societies were formed and the respondents were absorbed in the said co-operative societies with the same pay scales and after formation of Heat setting plant at Machilipatnam they were transferred to the said Heat setting plant. As per the proceedings of the Project Officer, SRP, Vijayawada dated 15.10.1981 the employees working in the co-operative societies were transferred to Heat setting plants at Machilipatnam under the control of Processing Manager on the same emoluments which they were drawing at that time. Thus, it is clear that the Weavers Co-operative Society was also under the control of the Project Officer of SRP, Vijayawada and the Heat setting plant at Machilipatnam was a unit of the appellant as admitted by one K. Venkata Ramana who was examined before the Labour Court as their witness. The documents Ex. R2 placed before the Labour Court would indicate that the Heat setting plant at Krishna was also under the SRP granted by the Government of Andhra Pradesh. As held by the Labour Court and confirmed by the learned Single Judge, the Heat setting plant is a unit of the appellant and SRP was also functioning under the appellant. The employees working in SRP were transferred to Heat setting plant by Project Director of the SRP. In view of the transfer of the employees from one organization to another, maintaining the same pay scale, it can safely be held that they are all part of the appellant Corporation. The posts sanctioned by the Government to the appellant Corporation were being utilized by the projects, which are being either run or supervised by the Corporation. We hold that the denial of relationship of employer and employee by the appellant cannot be a bona fide dispute and it appears to be a denial only to deny the benefits which the workmen are entitled due to wage revision more so when the funds sanctioned by the Government to the appellant are being utilized for the SRP by the Corporation.

26. From the aforesaid discussion, the dispute as to whether the appellant is an employer of the respondents stood well established. When once it is established that the respondents are employees of the appellant Corporation, and their salaries are being paid on par with the employees of the Corporation from out of the funds allotted by the Government, the employees, as a matter of right, are entitled to revised pay scales. It is a right which gets accrued and cannot be disputed by the employer. Therefore, the Labour Court will get jurisdiction to entertain an application filed u/s 33-C(2) of the Act.

27. Even the Labour Court after a thorough enquiry and after examining all the material witnesses, rightly held that there was no dispute with regard to the employer and employee relationship and the said dispute is raised only to deny the benefits which got accrued to the workmen/employees. The said findings were upheld by a learned Single Judge of this Court after re-appreciating the material placed before the Court.

28. The Labour Court after holding that the employees are entitled to the benefits under the said G.O. computed the benefits in terms of money. Further,

as held by various judgments, the Labour Court, u/s 33-C(2) of the Act, has only extended the interpretation of the provisions of the G.O. on which the workmen's right rests like the power of an executing Court to interpret the decree for the purpose of execution and nothing more than that. The said findings of the Labour Court were also upheld by the learned Single Judge of this Hon''ble Court who extensively dealt with the issue both on merits and on principles of law. In view of the findings arrived at, there is no illegality or error apparent on the face of record warranting our interference. For the above said reasons, we do not find any merit in all these writ appeals and accordingly they are dismissed. No order as to costs.