

(1981) 02 MAD CK 0049

In the Madras High Court

Case No : Writ Petition No. 3741 of 1978

B. Pankajammal (Proprietrix), Baskaran Motor Service, Polur
(N.A. Dist.)

APPELLANT

Vs

Rathikanthammal and Another

RESPONDENT

Date of Decision : 18-02-1981

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 62, 62(2)

Industrial Disputes Act, 1947 — Section 2A, 33, 33(4), 33C(1), 33C(2)

Citation : (1982) 44 FLR 422 : (1982) ILR (Mad) 314 : (1982) 1 LLJ 261

Hon'ble Judges : S. Nainar Sundaram, J

Bench : Single Bench

Judgement

1. One J. D. Chandran filed C.P. No. 20 of 1976 before the Labour Court, Madras under S. 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The petitioner in this writ petition was the respondent in the said claim petition. Pending adjudication of the said claim petition, J. D. Chandran died and his mother one Subhadrai Ammal was brought on record as the legal representative of her deceased son, on her application. This was done in spite of the contest by the petitioner herein that such an application was not maintainable. Pending further orders in the main claim petition, the aforesaid Subhadrai Ammal also died and her daughter Rathikantha ammal, the first respondent herein, filed I.A. No. 112 of 1978 before the Labour Court, Madras seeking to be brought on record as the legal representative of the deceased Subhadrai Ammal and also of late J. D. Chandran to prosecute the claim petition. The petitioner herein contested the said application stating that the right under S. 33C(2) of the Act is a personal one to the workman and the legal representative of a deceased workman cannot prosecute or continue the claim petition filed by the workman. The petitioner also put forth a plea that the application, I.A. No. 112 of 1978 cannot be countenanced for want of production of a succession certificate. The Labour Court, Madras overruled these objections of the petitioner herein, by order dated 6-7-1978 and allowed the petition,

permitting the first respondent herein to persecute and continue the proceedings in the main claim petition. The present writ petition is directed against this order of the Labour Court, Madras.

2. Mr. C. S. Prakash Rao, learned counsel for the petitioner would repeat and reiterate the contention that on the death of a claimant-workman in a petition under S. 33C(2) of the Act, the legal representative of the deceased workman cannot continue the claim petition. The learned counsel did not press forth the contention that for want of a succession certificate the legal representative of a deceased-workman cannot continue the proceedings before the Labour Court.

3. Reference was made before me to a judgment of a Division Bench of the Delhi High Court in *Yad Ram v. Labour Court*, 1978 II L.L.J. 306, where it has been held as follows :

"In S. 33C(2) the right to make an application is given to the workman personally and not to any other person authorised by him or to his assignee or heir. It is a personal right to and it must die with him. The right to sue for money or equivalent of money to the benefit due to a workman, however, survives to his heirs, successors and legal representatives and they can take appropriate legal proceedings by way of a suit in a civil Court. They cannot, however, continue the application under S 33C(2)."

4. Learned counsel for the petitioner also draws my attention to a judgment of Mohan, J, in *V. Veeramani v. The Management of Madurai District Co-operative supply and Marketing Society Ltd., Madurai* and another, W.P. No. 6555 of 1973 judgment dated 1-9-1976), where the learned Judge dealt with a case, where pending adjudication of an industrial dispute under S. 2-A of the Act, the workman died and the learned Judge held that it is an essential requisite that there must be an employee or a workman for a dispute to survive and the dispute could not be continued by the legal representative, even when one of the disputants is dead and when it ceased to be an industrial dispute within the meaning of S. 2(k) of the Act. The learned Judge extended the principle of action personalis moritur cum persona to the case dealt with by him. The following observations of the learned Judge cannot also be lost sight of :

"Section 33-C(1) provides for the legal representative continuing the action as it is well-known it is by way of execution. In other words, where the award has fruited into a claim, definitely that monetary claim can be recovered by the assignee or the legal heir".

5. As against this, Mr. K. S. Janakiraman the learned counsel for the first respondent, would rely on a judgment of a Division Bench of the Bombay High Court in *Sitabai Naruna Pujari Vs. Auto Engineers*, where the Division Bench held that cause of action created in favour of a workman under sub-s. (2) of S. 33C survives to the workman's legal heirs and in this view it was held in that case that the wife of the deceased workman could file an application under S. 33C(2) of the Act. The learned counsel for the first respondent also relies on a judgment

of a Division Bench of the Patna High Court (Ranchi Bench) in Jharia Fire Bricks and Pottery Works (Pvt.) Ltd. Vs. Bhirgonath Sharma and Another, . There the question arose as to whether an heir of a deceased workman can apply to the Labour Court under S. 33C(2) of the Act. The Division Bench held that such an application is valid and maintainable.

Section 33C of the Act as a whole reads as follows :

"33C. Recovery of money due from an employer : (1) Where 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 the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue :

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer :

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant has sufficient cause for not making the application within the said period.

(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.

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it is so thinks fit, appoint a commissioner who shall, after taking evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-s, (1).

(5) Where workman employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Explanation : In this section, Labour Court includes any court constituted under any law relating to investigation and settlement of industrial disputes in force in any State".

In sub-section (1) of S. 33C of the Act, there is a clear reference to the assignee or the heirs of a deceased-workman making an application for the appropriate relief under that sub-section. In contrast, in sub-s. (2) of S. 33C of the Act, there is a significant omission to refer to an assignee or heir of a deceased workman as persons entitled to have the matter decided by the Labour Court. Sub-section (4) of S. 33C of the Act lays down that the decision of the Labour Court shall be forwarded to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section. (1). This also, to a very great extent, clarifies the position that in the matter of adjudication of the question under sub-section (2) of S. 33C of the Act, no such right is given to the assignee or heir of a deceased workman. Such an adjudication can be done only at the instance of the workman and not at the instance of an assignee or heir of a deceased workman Sub-section (1) S. 33C of the Act constitutes a provision in the nature of execution, where the claim of the workman relates to money due to him, under the circumstances enumerated therein, and the application under sub-s. (1) of S. 33C of the Act can be made either by the workman himself or by his authorised representatives or by his assignee or by his heirs, in the case of his death. It is well-settled that Labour Court is not a court so as to say that the general principles applicable to Court could be invoked in respect of proceedings before the Labour Court. Any provision for continuation of proceedings before the Labour Court on the death of the person at whose instance they were initiated, can only be made by Legislature and not by Court on any analogy or any other consideration. When the Legislature has consciously omitted to incorporate the provision for initiation or continuation of the proceedings under sub-s. (2) of S. 33C of the Act, by the assignee or the legal representatives of a deceased workman it will be assuming the role of the Legislature for Courts to import or read any such provision into that sub-section. The Act itself is a special enactment to make provision for the investigation and settlement of industrial disputes and for certain other allied purpose. The Courts cannot add on or subtract something to it or from it. Equally so, it is not the duty of the Court to stretch any words to fill in gaps or omissions. The scope and ambit of sub-s. (2) of S. 33C of the Act cannot be enlarged on analogy or consideration of expediency. That sub-section has carefully omitted to enable the assignee of a workman or legal representative of a workman, for setting the machinery under that provision in motion.

6. Mr. K. S. Janakiraman, learned counsel for the first respondent would refer to me the Industrial Disputes (Central) Rules, 1957 and in particular Rule 62 with proviso to sub-rule (2) added on in 1977 and the rule reads as follows :

* (1) Where any money is due from an employer to a workman or a group of workman under a settlement or an award or under the provisions of Chapter V.A.

(Chapter V.B.) the workman or the group of workmen, as the case may be, may apply in Form K-1 for the recovery of the money due :

Provided that in case of a person authorised in writing by the workman, or in the case of the death of the workman, the assignee or heir of the deceased workman. The application shall be made in Form K-2.

(2) Where any workman or a group of workmen is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money, the workman or the group of workmen as the case may be, may apply to the specified Labour Court in Form K-3 for the determination of the amount due or, as the case may be, the amount at which such benefit should be computed. Provided that in the case of the death of a workman, application shall be made in Form K-4 by the assignee or heir of the deceased workman."

7. That could be of no avail to the first respondent for the simple reason that these rules would not apply to the case on hand. I have my own doubts as to whether the said proviso to sub-rule (2) of Rule 62 could be a substitute for or addition to the sub-s. (2) of S. 33C of the Act, which is significantly silent as to the making of an application by the assignee or heir of a deceased workman. There is no need to investigate this aspect in the instant case. It is admitted that the Tamil Nadu Industrial Disputes Rules, 1958, which alone are applicable, do not contain any such provision which contemplates the assignee or legal representative of a deceased workman initiating or continuing proceedings under sub-s. (2) of S. 33C of the Act. I find my views fall in line with those expressed by the Division Bench of the Delhi High Court in *Yad Ram (Deceased) through his Lrs. Vs. Bir Singh and Another*, , and of Mohan, J., in the judgment referred to above. I am inclined to follow the above decisions in preference to the decisions of the Bombay and Patna High Courts referred to above. In this view, I am not able to uphold the order of the Labour Court, Madras, and accordingly, this writ petition is allowed. But there will be no order as to costs.