
(1963) 12 MAD CK 0056
In the Madras High Court
Case No : Writ Appeal No. 77 of 1962

C. Murugesu Mudaliar

APPELLANT

Vs

Management of S.U.S. Davey Sons and Another

RESPONDENT

Date of Decision : 03-12-1963

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(1), 33C(2)
Tamil Nadu Shops and Establishments Act, 1947 — Section 41

Citation : AIR 1964 Mad 503 : (1964) 77 LW 321

Hon'ble Judges : Ramamurthi, J; Anantanarayanan, J

Bench : Division Bench

Advocate : Addl. Govt. Pleader, B. Lakshminarayana, for the Appellant; M.R. Narayanaswami, for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

Anantanarayanan, J.—This writ appeal instituted by the second respondent in W. P. No. 723 of 1961 before Veeraswami J. will obviously have to be allowed, in the light of the decision of the Supreme Court in *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, which was followed and applied to the facts in W. A. No. 213 of 1962, decided by the Hon'ble the Chief Justice and my learned brother, Ramamurti J.

2. The facts in the present matter are that the second respondent was an employee of the management of Messrs. S. U. S. Davey Sons, Madras, the writ petitioner before the learned Judge. He; was dismissed from service with effect from 21st February 1959. But, admittedly, the order of dismissal was set aside by the Additional Commissioner for Workmen's Compensation, on an appeal petition" filed by the second respondent (the present appellant) u/s 41 of the Madras Shops and Establishments Act. The effect of that, as the learned Judge (Veeraswami J.) himself states, was undoubtedly as though the order of dismissal did not exist. Subsequently, the management sought to challenge the order of the Commissioner by successively filing a writ petition and a writ appeal

in this court, both of which proceedings were unsuccessful. The appellant claimed back wages or salary for the period from 21-2-1959 to 31-10-1950. He instituted applications in the Labour Court to compute such wages payable to him, as though they constituted a "benefit" to which the appellant was entitled, u/s 33-C(2) of the Industrial Disputes Act.

3. In making the rule nisi absolute and quashing the order of the Labour court in so far as it related to the question of the maintainability of the applications filed by this appellant, Veeraswami J. acted upon the view of the scope of Section 33C(2) of the; Industrial Disputes Act which had been earlier adopted by the learned judge in W. P. 195 of 1960 and W. P. 273 of 1960. In brief, the view was that the scope of Section 33C(2) was co-extensive or identical with the scope of Section 33-C(1) of the Act, and that unless the benefit was embodied or formed part of the settlement or award, or it arose under the provisions of Ch. V A, no application would lie u/s 33-C(2). But it is precisely this view of Section 33-C(2) which has been departed from in the decision of the Supreme Court that we have earlier referred to, and the judgment in W. A. 213 of 1962, which follows that decision. Learned counsel for the respondent-employer does not dispute that the true position at law is that Section 33-C(2) is wider in its scope than Section 33-C(1), so that the Labour Court would have jurisdiction to proceed into the question of the right of the appellant to the back wages claimed, provided the benefit is capable of being computed in terms of money.

Learned counsel for the employer desires, however, to make a reservation in respect of pleas that might be validly urged by him in the Labour Court itself, upon the precise application of the principles of Section 33-C(2) of the Act, to the facts of the instant case. That, however, is a matter that does not concern us at the moment, since the applications are pending, and therefore the maintainability is manifest, in the light of the principle that we have referred to.

4. The writ appeal is, accordingly allowed, setting aside the issue of the writ by the learned judge. The parties will bear their own costs.