
(1974) 07 KL CK 0015
In the High Court Of Kerala

C.G.G. Panicker

APPELLANT

Vs

T.M. Eapen and Others

RESPONDENT

Date of Decision : 11-07-1974

Acts Referred:

Constitution of India, 1950 — Article 43
Industrial Disputes Act, 1947 — Section 10, 33C

Citation : (1975) 1 LLJ 126

Hon'ble Judges : V. Khalid, J

Bench : Single Bench

Judgement

V. Khalid, J.—The petitioner, a partnership firm, seeks the issuance of a writ of certiorari or other writ or order to quash Ext. P 12 order dated 9-3-1972, passed by the Labour Court, Quilon. The first respondent was appointed as a stenographer and was confirmed on 1-11.1958. For alleged acts of misbehaviour and indiscipline, his services were terminated by an order Ext. P 1 dated 21-1-1961: He filed an appeal before the Appellate Authority u/s 41(2) of the Travancore-Cochin Shops and Establishments Act, 1125, as appeal No. 4 of 1961. The appellate authority set aside the order of termination by its order Ext. P 2 dated 19th May, 1962. Pursuant to Ext. P 2 order, the first respondent sent a notice to the petitioner on 17-7-1962 making a claim for the salary for the period from January, 1961 to June, 1962 and for other benefits. The petitioner replied to him by notice dated 128-7-1962 denying liability and asserting that [termination order did not provide for reinstatement or for payment of wages,

2. Thereupon, the first respondent filed an application under the Payment of Wages Act (P.W. No. 16 of 1962), before the Industrial Tribunal, Trivandrum, claiming salary and other benefits from the date of termination of his employment. Various contentions were raised by the petitioner before the Industrial Tribunal. Inter alia it was contended that the order under the Shops Act was without jurisdiction, that the Payment of Wages Act was not applicable and that the petitioner was exercising a profession and not an industry and none of the labour laws was applicable to the firm. The Tribunal Upheld the

petitioner's contentions and dismissed the application filed by the first respondent as per its order dated 2-4-1972. The first respondent filed another application before the same authority, which was later withdrawn by him. Thereafter he filed an application u/s 33C(2) of the Industrial Disputes Act before the Labour Court, Quilon, as Claim Petition No. 93 of 1965 for his reliefs pursuant to the order in Appeal No. 4 of 1961. He assessed his claim at Rs. 21,281. 43. The said application is Ext. P 4. The Labour Court, Quilon, accepted a portion of the claim put forward by the first respondent and passed order dated 18-12-1967 granting benefits to the first respondent for Rs. 8,415 as per Ext, P6. The petitioner challenged the said order as per O.P. No. 2264 of 1968. The said O.P. was dismissed as per Ext. P 8 judgment dated 3-1-1969. The writ appeal filed against Ext. P 8 judgment was also dismissed.

3. The petitioner thereafter sent a notice on 20-4-1965 to the first respondent directing him to report for duty on or before 30-4-1965. It is stated that this was done without prejudice to his contentions. The first respondent did not respond to the offer.

4. The first respondent filed another claim petition on 20-8-1968 before the Labour Court, Quilon, purporting it to be u/s 33C(2) of the Industrial Disputes Act, claiming wages, etc., from 4-3-1965 to 4-8-1968. The Labour Court allowed the said claim partially overruling the objections filed by the petitioner and determined the benefits at Rs. 6,970 by its order dated 9-3-1972. It is this order Ext. P 12 that is under challenge in this case. It is also mentioned by the counsel for the petitioner that the first respondent has made a third claim for a period from 5-8-1968 to 31-12-1972. A copy of the petition was produced along with C.M.P. No. 225 of 1974 and marked as Ext. P 14. This, in short, is the background of the case.

5. The main point which has to be decided in this case is, whether the order on an application u/s 33C(2) of the Industrial Disputes Act, finally decides the rights of a worker, who obtains an order of reinstatement from the Labour Court or whether the worker has a right to claim wages or salary as and when it falls due. This becomes necessary in view of the contention by the petitioner that on account of the earlier decision by the Labour Court, ultimately confirmed by this Court, further and subsequent petitions for the same relief u/s 33C(2) will be barred. This argument is rested on the principles of *res judicata*. Before considering this question, we have to examine the rights available to an employee consequent on an order of reinstatement. The employee can either treat the contract of service as subsisting and claim his salary, wages, etc., as though he is continuing in service, or, he can construe the order of reinstatement as entitling him to the full benefits, commensurate with his salary, etc., which he would have earned under the original contract of service. In the former case, he cannot accept alternative employment while in the latter case he can. This position is made clear by the Supreme Court in the decision reported in *S.S. Shetty Vs. Bharat Nidhi, Ltd.*, wherein it is observed:

...If, however, the contract is treated as subsisting and a claim is made by the servant for a declaration that he continues in the employ of the master and should be awarded his salary, benefits, etc., on the basis of the continuation of the contract, the servant would be entitled to a declaration that he continues in the employ of the master and would only be entitled to the payment of salary, benefits, etc., which accrued due to him upto the date of the institution of the suit.

* * * * ... The effect of an order of reinstatement is merely to set at naught the order of wrongful dismissal of the workman by the employer and to reinstate him in the service of the employer as if the contract of employment originally entered into had been continuing.

The terms and conditions of the contract which obtained when the workman was in the employ of the employer prior to his wrongful dismissal which has been set aside continue to govern the relations between the parties and the workman continues in the employ of the employer under those terms and conditions. There is no variation of those terms and conditions of the contract. The only thing which happens is that the workman is reinstated in his old service as before.

6. It will be useful to extract the relevant section, on which the claim is made:

33C(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 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.

This section comes into play only when the claim of the worker is disputed by the employer. A claim for an admitted amount can be made by recourse to Section 33C(1) of the Act. Section 33C(2) cannot be invoked straightaway when a worker is sent out from service. He has first to get a wrongful dismissal or termination of his service set aside by a competent authority under the industrial law and then only can he make use of Sub-section (2) for quantification of the benefits due to him. The first respondent obtained an order from the Appellate Authority, Ext. P2, by which, the order terminating his services, was set aside. The operative portion of the order reads as follows:

I, therefore, hereby set aside Ext. P1, terminating the services of the appellant u/s 41(2) of the Travancore-Cochin Shops and Establishment Act, 1125.

7. The applications u/s 33C(2) of the Industrial Disputes Act, were consequent upon the direction given in Ext. P2 setting aside the termination of the first respondent's services. The original stand taken by the petitioner was that Ext. P2 did not provide for reinstatement. This was not countenanced by this Court, when he challenged Ext. P2 order in O.P. No. 2264 of 1968. The judgment in that O.P. is Ext. P8. In paragraph 7, we have the following observations:

There remains the objection that no reinstatement had been ordered by Ext. P1 order. The said order did set aside the order of termination of service of the first respondent. That means that the first respondent continued to be in the service of the petitioner. That this is the effect of setting aside an order of termination of service, has been ruled in *South Arcot Electricity Distribution Co., Ltd., v. Elumalai and Ors.* 1959 I L.L.J. 625, and in *Murugesu Mudaliar v. S.U.S. Davey Sons, Madras* 1964 1 L.L.J. 219. Moreover, it was admitted that it is open to the Labour Court u/s 33C(2) to construe and interpret Ext. P1 order. It has done so, and, as I understand from paragraph 4 of Ext. P9, it found that there was, in effect, an order directing reinstatement of the first respondent. The said conclusion appears to be just and calls for no interference.

It is now concluded between the parties that the first respondent is deemed to continue in the service of the petitioner. From the materials on record, it has to be found that the petitioner has not taken any alternative employment. Thus, the question which needs consideration is, whether Section 33C(2) can be invoked for recovery of dues as and when they fall due or whether a decision once made bars future applications.

8. Now, we will consider the scope of Section 33C(2). In *Central Bank of India Ltd. v. Rajagopalan* 1963 II L.L.J. 89, the Supreme Court had to consider the scope of Section 33C. It is observed at page 92 as follows:

It is common ground that Section 33C(1) provides for a kind of execution proceedings and it contemplates that if money is due to a workman under a settlement or an award, or under the provisions of Chapter V-A, the workman is not compelled to take resort to the ordinary course of execution in the civil Court, but may adopt a summary procedure prescribed by this sub-section. This sub-section postulates that a specific amount is due to the workman and the same has not been paid to him. If the appropriate Government is satisfied that the money is so due, then it is required to issue a certificate for the said amount to the Collector and that leads to the recovery of the said amount in the same manner as an arrears of land revenue. The scope and effect of Section 33C(1) are not in dispute before us.

There is also no dispute that the word "benefit" used in Section 33C(2) is not confined merely to non-monetary benefit which could be converted in terms of money, but that it takes in all kinds of benefits which may be monetary as well as non monetary if the workman is entitled to them, and in such a case, the workman is given the remedy of moving the appropriate Labour Court with a request that the said benefits be computed or calculated in terms of money. Once such computation or calculation is made u/s 33C(2), the amount so determined has to be recovered as provided for in Sub-section (1). In other words, having provided for the determination of the amount due to the workman in cases falling under Sub-section (2), the Legislature has clearly prescribed that for recovering the said amount, the workman has to revert to his remedy under Sub-section (1).

9. From the above observation, it is clear that Section 33C(1) can be invoked by workers only when specific amount is due to them and the same is either not disputed or is determined. On an application by a workman, the appropriate State Government, on being satisfied, that money is due, will issue a certificate and the same will be recovered in the same manner as the land revenue. Section 33C(2) has an entirely different purport. It is not invoked when a worker or workers are entitled to a specified amount. Section 33C(2) is not confined merely to non-monetary benefit which could be converted into terms of money. But it takes in all kinds of benefit which is monetary as well as non-monetary, if the workmen are entitled to them and in such cases the workmen can move the Labour Court for its computation and calculation thereof in terms of money. Once a computation or calculation is made, the amount has to be recovered as provided for in Sub-section (1) of Section 33C.

10. The Supreme Court has observed thus in the above-referred decision regarding the scope of Section 33C(2) thus:

We must accordingly hold that Section 33C(2) takes within its purview cases of workmen who claim that the 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 their employers. Incidentally, it may be relevant to add that it would be somewhat odd that under Sub-section (3), the Labour Court should have been authorized to delegate the work of computing the money value of the benefit to the Commissioner if the determination of the said question was the only task assigned to the Labour Court under Sub-section (2). On the other hand, Sub-section (3) becomes intelligible if it is held that what can be assigned to the Commissioner includes only a part of the assignment of the Labour Court.

In *State Bank of Bikaner and Jaipur Vs. R.L. Khandelwal*, , the Supreme Court has observed as follows:

These decisions make it clear that a workman cannot put forward a claim in an application u/s 33C(2) in respect of a matter which is not based on an existing right and which can be appropriately the subject-matter of an industrial dispute only requiring reference u/s 10 of the Act.

In *U.P. Electric Supply Co. Ltd. Vs. R.K. Shukla and Another, etc.*, , Shaj, J., as he then was, has observed thus:

The legislative intention disclosed by Section 33C(1) and Section 33C(2) is fairly clear. u/s 33C(1) where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter Y-A, the workman himself, or any other person authorised by him in writing in that behalf, may make an application to the appropriate Government to recover the money due to him. Where the workman who is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money, applies in that behalf, the Labour Court may u/s 33C(2) decide the questions

arising as to the amount of money due or as to the amount at which such benefit shall be computed. Section 33C(2) is wider than Section 33C(1). Matters which do not fall within the terms of Section 33C(1) may, if the workman is shown to be entitled to receive the benefits, fall within the terms of Section 33C(2).

In *S.S. Shetty v. Bharat Nidhi Ltd.*, (supra), the Supreme Court while dealing with Section 20(1) and Section 20 (2) of the Industrial Disputes (Appellate Tribunal) Act, 1950 which are in pari materia with Section 33C(2) of the Industrial Disputes Act, observed as follows:

The purpose of the enactment of Section 20 (2) of the Act is not to award to the workman compensation or damages for a breach of contract or a breach of a statutory obligation on the part of the employer. Any money which is due from an employer under the award can by virtue of the provisions of Section 20(1) of the Act be recovered by the appropriate Government on an application made to it by the workman.

Where, however, any benefit which is not expressed in terms of money is awarded to the workman under the terms of the award it will be necessary to compute in terms of money the value of that benefit before the workman can ask the appropriate Government to help him in such recovery. Section 20, Sub-section (2) provides for the computation in terms of money of the value of such benefit 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 appropriate Government for the purpose.

11. The question that has to be decided in this case is not, whether the workman who is ordered to be reinstated is entitled to move the Labour Court u/s 33C(2) for his benefits, but whether such a workman can make repeated applications u/s 33C(2) for the benefits, on refusal to be reinstated, as and when they fall due. It is here that the difficulty arises. The petitioner's case is that when once Section 33C(2) is invoked by the workman and the Labour Court has decided the benefits due to him, on the employer's failure to reinstate him, the back wages and salary or other benefits cannot be made a recurring subject-matter u/s 33C(2)

12. The contention of the counsel for the petitioner is, when the second application and the subsequent applications u/s 33C are made, they are barred by res judicata since the Labour Court had already quantified the benefits available to the worker on refusal to reinstate him by the employer. Regarding the application of res judicata in industrial cases, Supreme Court observes as follows : In *Associated Cement Staff Union and The Associated Cement Cos. Ltd. Bombay Vs. The Associated Cement Co. Ltd., Bombay*, The Workmen employed by Respondent No. 1 who are not represented by Appellant No. 1 and The Workmen, ; the Supreme Court has thus observed:

It is true that too frequent alterations of conditions of service by Industrial adjudication have been generally deprecated by this Court for the reason that it is likely to disturb industrial peace and equilibrium. At the same time the Court

has more than once pointed out the importance of remembering the dynamic nature of industrial relations. That is why the Court has, especially in the more recent decisions, refused to apply to industrial adjudications principles of res judicata that are meant and suited for ordinary civil litigations.

Again, in *Workmen of Balmer Lawrie and Co. Vs. Balmer Lawrie and Co.*, , the Supreme Court has observed:

It would be unreasonable to introduce considerations of res judicata as such, because for various reasons which constitute the special characteristics of industrial adjudication the said technical considerations would be inadmissible.

13. It has to be borne in mind that normally principles of res judicata are not made applicable to industrial cases. Reasons are obvious. Relationship between labour and capital undergoes a progressive change. The wage structure is in the process of metamorphosis, an evolution from a subsistence level to a living level. This is the directive contained in Article 43 of the Constitution of India. It would, therefore, bedoing violence to "these principles, to import the principles of res judicata, to industrial cases, since more often than not, it would work disaster to the labour. But this is not to say that this rule cannot be invoiced at all. Where an employee chooses to take alternative employment and applies u/s 33C(2) for his full benefits in accordance with the terms of the original contract of service and he obtains an order from the Labour Court, then future applications for the same relief will be barred. But here that is not the case. Here the petitioner has treated the original contract as subsisting. This Court in Ext. P2 found that the first respondent is continuing in service. Here the claims of the first respondent consisted of the following:

1. Salary from 4-3-1965 to 4-8-1968 at the rate of Rs. 225 per month (Rs. 200 maximum of scale of pay fixed by appointment order dated 12-8-1958) (copy of order attached hereto) plus Rs. 25 special allowance as per the last drawn salary voucher dated 29-12-60 attached hereto.... Rs. 9,225.

2. Bonus at the rate of six months salary per year:

(a) Proportionate bonus for 1958 from the date of joining duty on 22-8-1958 to 31-12-1958, four months and 10 days (Rs. 150 X2 months plus Rs. 5 X 5days). ...Rs. 325

(b) Bonus for 1959 (Rs. 160 X 6 months) ... 2Rs. 960.

(c) Bonus for 1960 (Rs. 195 X 6 mont32041h3s) (last drawn salary) ... Rs. 1,170.

3. Privilege leave salary till 4-8-1968 at the rate of one month's salary for 11 months of service after confirmation of service from 1-11-1958. ... Rs. 2,147. 73.

4. Life insurance premium to be paid by the employer. ... Rs. 210. 56.

5. Bus fare for 20 days between Ernakulam and Indian Aluminium Co., Ltd., Alupuram. Always, from 6-1-1961 to 25-1-1961 ... Rs. 20. 00.

6. Rail fare between Ernakulam and Trivandrum (return trip only as per cash receipt No. 794 dated 25-1-1961. ... Rs. 7. 94

7. Balance of tour allowance for 22 days from 5-1-1961 to 26-1-1961 ... Rs. 40. 00

Grand Total ...Rs. 14,106. 23.

Thus, it will be clear that the claim here is confined to the dues upto the date of filing of the petition, while the earlier claim for an earlier period. It cannot be said that the claim is barred by res judicata. The contention that Section 33C(2) cannot be invoked for a claim for back wages and salary, etc., as they are ascertained sums of money is also devoid of merits since the claim is disputed in this case.

14. The order Ext. P12 does not suffer from any error of law. The writ petition is dismissed. No costs.