

(1988) 07 OHC CK 0007

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2015 of 1981

Chintamoni Acharya

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-07-1988

Acts Referred:

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

Citation : (1988) 66 CLT 714

Hon'ble Judges : G.B. Patnaik, J;A.K. Padhi, J

Bench : Division Bench

Advocate : B. Misra and D.S. Misra, for the Appellant; B. Pal, for the Respondent

Final Decision : Allowed

Judgement

A.K. Padhi, J.—In this writ application the Petitioner challenges the order dated 19-5.1981 passed by the Presiding Officer, Labour Court in Industrial Misc. Case No. 3 (c) of 1978.

2. The Petitioner was appointed in the year 1963 as Electrical Khalasi promoted as Station Plant Attendant in the year 1974 and in the year 1976 transferred to Sakhigopal. According to the Petitioner the work he was doing in Sakhigopal was formerly being done by two persons and he was working overtime to cope up with the work. He worked overtime from 12-1-1976 to 12-2-1978 for a period of 500 days. He represented to the authorities for his overtime wages and as his claim was not adjudicated by the authorities he filed an application u/s 33C (2) of the Industrial Disputes Act, 1947 hereinafter referred to as "the Act". His claim before the Labour Court was for overtime wages computed by the Petitioner to the tune of Rs. 18,720.00 representing the period from 12-1-1976 to 12-2.;1978. According to the Petitioner, he is a workman and under the Indian Railways Act there is provision for paying overtime wage. On 4-4-1979 the Labour Court by its order No. 13 Industrial Misc. Case No. 3 (c) of 1978 gave the finding that (a) the Petitioner is essentially an intermittent workman; and (b) the Petitioner has worked overtime and to compute the exact amount the employer

was directed to produce the records to calculate his days of leave.

At this stage objection was taken by the Rail way Management that the claim petition is not maintainable as the Union of India has not been made a party. The Petitioner filed a petition on 31-3-1979 to make the Union of India a party. The application for impleading the Union of India was allowed on 31-8-1979. On 24-9-1979 the Union of India filed their counter affidavit and disputed the claim of the Petitioner. The main ground taken was since the opposite parties are disputing the entitlement and claim of the Petitioner the Court has no jurisdiction to entertain the application u/s 33-C (2) of the Act and the petition is not maintainable. On 29-4-1980 another petition was filed for deciding the maintainability of the claim petition. On 19-5-1981 the Labour Court considered the question of maintainability and held that the Court has no jurisdiction, to investigate and to determine the Petitioner's right nor it can decide the liability, of the opposite parties. The Labour Court came to the conclusion that the application of the Petitioner does not come within the scope and ambit of Section 33-C (2) and dismissed the claim petition for want of jurisdiction. This order of the Labour Court is assailed in the present writ application.

4. Keeping in view the facts and circumstances of the case undoubtedly, the Petitioner is a workman and there is provision under the Indian Railways Act for overtime.

The points, for determination which arise in this case are:

(i) whether the order dated 19-5-1981 will tantamount to a review of the order dated 4-4-1979; and

(ii) whether the Labour Court has the, jurisdiction to entertain the claim petition.

5. So far as point No. (i) is concerned, the Union of India was not a party when the order dated 4-4-1979 was passed. The Union of India is necessary party to the claim petition. The Petitioner prayed for impleading the, Union of India a party which was allowed on 31-8-1979 after which the written statement was filed and the impugned order was passed. It is true that review is a creature of the statute and under limited conditions an order can be reviewed. In the instant case since the Union of India was not a party when the order dated 4-4-1979 was passed, the Union of India is not bound by that order. The order dated 19-5-1981 is not an order of review, but a fresh order passed by the Labour Court after the amendment sought for by the Petitioner was allowed and the Union of India was made a party. Hence this ground for challenging the order must fail.

6. The main point for consideration in this case is whether under the facts and circumstances of the case as stated earlier the claim petition of the Petitioner u/s 33-C (2) is maintainable or not. Section 33-C (2) reads as follows:

(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.

The Hon"ble Supreme Court and various High Courts have interpreted the ambit and scope of Section 33-C (2), and we think it appropriate to notice a few decisions.

In Punjab National Bank Limited Vs. K. L. Kharbanda, , their Lordships held "The work "benefit" used in Sub-section (2) of Section 33-C, is not confined merely to non-monetary benefit which could be converted in terms of money but is concerned with all kinds of benefits, whether monetary or non-monetary to which a workman may be entitled, say, for example under an award and the Sub-section comes in to play when the benefits have to be computed or calculated and there is a dispute as to the calculation or computation."

In The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., , their Lordships held:

Though in determining the scope of Section 33-C Industrial Disputes Act, cases must be taken not to exclude cases which legitimately fall within its purview, it must also be borne in mind that cases which fall within Section 10 (1) of the Act for instance, cannot be brought within the scope of Section 33-C.

Their Lordships further held:

Claims made u/s 33-C (1) by itself can be only claims referable to the settlement award, or the relevant provisions of Chapter V-A. These words of limitations are not to be found in Section 33-C (2) and to the extent, the scope of Section 33-C (2) is undoubtedly wider than that of Section 33-C (1). The three categories of claims mentioned in Section 33-C (1) fall u/s 33-C (2) and in that sense, Section 33-C (2) can itself be deemed to be a kind of execution proceeding; but it is possible that claims not based on settlements, awards or made under the provisions of Chapter V-A may also be competent u/s 33C (2) and that may illustrate its wider scope,

7. The facts in Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others, , were that applications were filed by the workmen claiming bonus under the scheme framed by the Central Government under the Coal Mines Provident Fund and Bonus Scheme Act 46 of 1948 and railway fares and leave wages under the award of the Industrial Tribunal (Colliery Disputes) which came into effect as from February 22, 1954. The Central Government Labour Court at Dhanbad allowed their claim u/s 33-C (2) of the Industrial Disputes Act, 1947. The company filed an appeal against the order before the Hon"ble Supreme Court. The company had disputed the entitlement of the claim of workman. It was also submitted before the Hon"ble Supreme Court:

(a) u/s 33-C (2) the benefit capable of being computed in terms of money is a non-monetary benefit and not a claim for money itself ;

(b) that the proceedings u/s 33-C (2) being in nature of execution proceedings, substantial questions between on employer and his employee cannot be adjudicated by the Labour Court under this Section; and (c) the workman having been employed as domestic servants and personal worker they cannot claim bonus.

Their Lordships held that since the scope of Sub-section (2) is wider than that of Sub-section (1) and the Sub-section is not confined to cases arising under an award or settlement or under the provisions of Chapter V-A. There is no reason to hold that a benefit provided by a statute or a scheme made thereunder without there being anything contrary under such statute or Section 33-C (2), cannot fall within Sub-section (2). Consequently the benefit provided in the bonus scheme made, under the Coal Mines Provident Fund and Bonus Scheme Act, 1948 which remains to be computed must fall under Sub-section (2) and the Labour Court therefore had jurisdiction to entertain and try such a claim, it being in respect of an existing right arising from the relationship of an industrial workman and his employer., In U.P. Electric Supply Co. Ltd. Vs. R.K. Shukla and Another, etc., , the question which arise before their Lordships was whether there has been retrenchment or not and whether the retrenchment benefits can be claimed u/s 33-C (2). Their lordships while observing that section. 33-C (2) is "wider than that of Section 33-C (1) further held that unless the retrenchment is conceded by the employer such a question cannot be decided by the Labour Court and it can be only decided by the tribunal.

In Madhaorao and Others Vs. The State of Maharashtra, it was held that the claim of compensation of every workman who is laid-off is one which arises under the statute" itself and Section 25-C provides for a benefit to the workman which is capable of being computed in terms of money u/s 33-C (2) of the Act. The scheme of the Act is to enable a workman to approach a Labour Court for computation of the compensation claimed by him in terms of Section 25-C of the Act.

In Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, . it was laid down that:

A proceeding u/s 33-C (2) is a proceeding generally in the nature of an execution proceeding wherein the Labour Court calculate the amount of money due to a workman from his employer, or if the workman is untitled to any benefit which is capable of being computed in terms of money the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit in view of its being previously adjudged, or, otherwise duly provided for. In a suit a claim for relief made by the Plaintiff against the Defendant involves an investigation directed to the determination of (i) the Plaintiffs right to relief; (ii) the corresponding liability of the Defendant including whether the Defendant is at all liable or not; and (iii) the extent of the Defendant's liability if any. The working out of such liability with a view to give relief is generally, regarded as the function of an execution

proceeding. Determination No. (iii) referred to above, that is to say the extent of the Defendant's liability may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). Since a proceeding u/s 33-C (2) is in the nature of an execution proceeding it should follow that an investigation of the nature of determinations" (i) and (ii) above is normally, outside its, scope. It is true that in a proceeding u/s 33-C (2), as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But that is merely "Incidental". Therefore, when a claim is made before the Labour Court u/s 33-C (2) that Court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions - say of an Industrial Tribunal which alone is entitled, to make adjudications in the nature of determinations (i) and (ii) referred to above or proceed to compute the benefit by dubbing the former as "Incidental" to its main business of computation. In such cases determinations (i) and (ii) are not "Incidental" to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal.

In the above mentioned case the moot question before their Lordships was whether the former employees of the Company who were,not absorbed by the Corporation could make out a claim against the transferee Corporation either for compensation on termination of their service following the transfer or for re-employment. Considering such facts their Lordships held that only on a detailed investigation it would be possible to determine whether the workman had any right to a benefit and, if so, the Corporation was liable to satisfy the same. Their Lordships further held that the other question which would be necessary to decide was whether the Corporation was a successor of the defunct company and such an investigation would clearly be quite outside" the speedy individual remedy contemplated u/s 33C (2). Their Lordships had also relied on Chief Mining Engineer, East India Coal Co. Ltd. Bararee Colliery, Dhanbad v. Rameshwar and Ors. ", and The Central Bank of India Ltd. V. P.S. Rajgopalan etc. (supra).

In our opinion Central Inland Water: Transport Corporation Ltd. v. The Workmen and another⁶, (supra) has not taken any contrary view but under the facts and circumstances of that case their Lordships held that applications u/s 33C (2) were not maintainable. .

Coming to the decisions of various High Courts, in Shree Amarsinhji Mills Ltd. v. Nagrahna (M. N.) and Ors. 1961 (I) L. L. J. 581 which is a case from Bombay High Court their Lordships have held that: -"On reading S. 33C (1) of the Industrial Disputes Act, It becomes clear that there is nothing in the language of Sub-section (1) which in any manner controls or affects the ambit and operation of Sub-section (2). Sub-section (1) is only an enabling provision. Further the expression "benefit" occurring in, Sub-section (2) of S. 33C is of amplitude and

one of wide import. Under modern concept of industrial relations numerous benefits are conferred upon and recognised in favour of the workmen and this at times, apart from any principles of social justice. It would be impossible to enunciate or catalogue what these benefits would be. In Interpretation this Sub-section, the object of the legislation and the scheme of the enactment must be borne in mind. Of course the Court could not wrest with the language of the section in doing so, and a meaning which is beyond the plain and ordinary meaning used in the context in which the Sub-section appears in the Act should be given to it. Hence the words "the benefit which is capable of being computed in terms of money" occurring in Section 33C (2) of the Act would certainly include a claim for monetary benefits also. It would include a claim for lay-off compensation under Chap. V-A of the Act. It is a benefit which is capable of being computed in terms of money is manifest."

In *Shivaji Gulabrao Bhoite Vs. B.N. Biscuit Confectionery Works and Another*, which is a decision from Bombay High Court, their Lordships held that application for recovery of overtime wages is maintainable u/s 33C (2) and the Labour Court has the jurisdiction to entertain the application. In that case the Labour Court had held that it has no jurisdiction to entertain such an application and their Lordships set aside the order and directed the Labour Court "to adjudicate the matter holding that it has jurisdiction to entertain such an application."

In *Bharat Krishak Samaj v. M. L. Kakkar and Ors.* 1984 (1) L.L.J. 251, his Lordship held that the claim for overtime wages is a matter for the Labour Court to compute u/s 33C (2).

In *. Managing Director, the Orissa Agro Industries Corporation Ltd. Vs. Presiding Officer, Labour Court and Another*, their Lordships have held:

Mere denial of the right of an employee does not oust the jurisdiction of the Labour Court which is entitled to make an enquiry into the right which is claimed by the employee. This proposition of law must also hold good in a case where the status of an employee is denied by the employer; mere denial of the status by the employer on the ground that the applicant is not its Employee will not divest the Labour Court, of its jurisdiction to decide the question in a proceeding u/s 33-C (2) of the Act.

In *Rambrichna Ramnath v. Presiding Officer Labour Court, Nagpur and Anr.* 1970 (11) L.L.J. 306 (S. C), the conflict in certain observations in *The Central Bank of India*² and *East India Coal*³ in one hand and the *U.P. Electric Supply Co.*⁴ was pointed out to the Court. Their Lordships observed that the concluding portions of the observations in *U.P. Electric Supply Co.* could not be considered disassociated from the setting in which they were made and in view of the decision in *The Central Bank of India*² in examination of a claim u/s 33-C (2) may be in some cases have to be proceeded with by an enquiry into the existence of the right.

As it will be apparent from the above decisions, the scope-and extent of the

jurisdiction of the Labour Court u/s 33-C (2) is the subject of considerable debate both in the Supreme Court and many other High Courts. Hon^{ble} Justice Gajendragadkar in *The Central Bank of India*², has laid down the scope of Section 33-C (2) relying on the provision of Section 33-C (1) of the Industrial Disputes Act and Industrial Appellate Tribunal Act, 1950. According to the principles of these decisions the scope and ambit of Section 33-C (2) is wider. Section 33-C (1) is confined to cases under settlement or an award under the provisions of Chapter V-A of the Act. Such a limitation not being there in Section 33-C (2) it cannot be read into it and claims not arising out of the settlement or award under the provisions of Chapter V-A can be adjudicated u/s 33-C (2). Their Lordships have given certain illustrations which according to them are also not exhaustive and in our opinion *Central Inland Water Transport Corporation Ltd. v. The Workmen* and another⁶, has not taken any different view. Their Lordships in the facts of that case have held that the petition u/s 33-C (2) is not maintainable.

10. What vexes the Court is what would fall within the scope of Section 10 reference of the Act and which matters can be adjudicated u/s 33-C (2) of the Act. Keeping in view the principles laid down by the Supreme Court and various High Courts we are of the view that the test would be whether the claim of the workmen relates to any money claimed from the employer or any benefit which is capable of being computed in terms of money and disputes raised must be incidental or ancillary to the money claimed as aforesaid. Ancillary or incidental disputes will also include disputes whether the workman is entitled to receive the money so also the computation of the quantum of money. However, when the dispute is of such a nature that the claim of money becomes incidental to the dispute it can be only adjudicated by the Tribunal by way of deference u/s 10 of the Act.

11. It would be very difficult to enunciate or catalogue which category of claim will fall u/s 33-C (2)., No Court has made any attempt to do so nor we propose to make such an attempt.

12. Keeping the aforesaid principle in view on the facts of this case we are of opinion that the claim made by the workman in this case can be adjudicated u/s 33-C (2) of the Act, notwithstanding the stand of the employer the Union of India. The order dated 19-5-1981 holding that the proceeding u/s 33-C (2) is not maintainable can not be sustained and is accordingly quashed. The claim petition is remitted back to the Labour Court for disposal in accordance with law. The writ application is allowed but there will be no order as to costs.

G.B. Patnaik, J.

13. I agree.