
(1992) 11 MAD CK 0071
In the Madras High Court
Case No : W.A. No. 1207 of 1988

Dharmapuri District Co-op. Sugar Mills Ltd. APPELLANT
Vs
P. Viswanathan and Others RESPONDENT

Date of Decision : 11-11-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)
Payment of Wages Act, 1936 — Section 15

Citation : (1994) 2 LLJ 359

Hon'ble Judges : A.S. Anand, C.J.; J. Kanakaraj, J

Bench : Division Bench

Advocate : B.M. Krishna Raju, for the Appellant; Periyasamy, for the Respondent

Final Decision : Dismissed

Judgement

1. The first respondent filed an application u/s 33-C(2) of the Industrial Disputes Act, 1947 asking the Labour Court to compute the money value of the emoluments payable to him in the clerical post Grade I. The case of the first respondent was that he was an employee of the appellant society and he was promoted by an order, dated July 8, 1979, on a scale of pay of Rs. 405-8-445-ED-12-601-14-643 and that the appellant was not paying the emoluments due to him under the said grade. The appellant filed a counter statement, admitting the order of promotion given on July 8, 1979, by the Special Officer of the Society, but contending that the said order had not been given effect to. It was also stated that there were procedural irregularities in the promotion order, dated July 8, 1979, and that the appellant was disputing the enforcement of the said order. Consequently it was submitted that the claim being a disputed one, could not be agitated u/s 33-C(2) of the Industrial Disputes Act.

2. The Labour Court considered the plea of appellant and held that Exhibits W.1 to W.7 clearly showed that the promotion order had been given effect to and the first respondent had been recognised in the promoted post. Those exhibits were communications to third parties recognising the promotion of the first

respondent. Accordingly the Labour Court allowed the claim petition and computed the dues payable to the first respondent, as on the date of the claim petition, as at Rs. 1,281. This order of the Labour Court was questioned by the appellant in Writ Petition No. 6042 of 1981 and a learned Single Judge of this Court, by order, dated July 27, 1988, dismissed the writ petition. The learned Single Judge held that all the relevant records as well as the evidence had been thoroughly discussed by the Labour Court and there was absolutely no infirmity in the order of the Labour Court

3. Before us Sri R.M. Krishnaraju, learned counsel for the appellant, argues that the application u/s 33-C(2) of the Industrial Disputes Act was totally incompetent and beyond the scope of the said provisions of law. The argument is that if the first respondent was claiming the wages due to him in respect of the post of Purchase-in-charge, the proper thing would have been to invoke Section 15 of the Payment of Wages Act. Reliance is placed on *Lakman Tulsiram v. Dayatal Mouhji and Company* (1968-I-LLJ-139). In that case an employee had claimed the difference in wages actually paid to him for a particular period and the wages payable to him under the Madhya Pradesh Minimum Wages Fixation Act, 1962. The Labour Court had rejected the application on the ground that it had no jurisdiction to entertain the said application. It is in those circumstances the Madhya Pradesh High Court was called upon to decide the issue and they opined: (p. 142):

"In our opinion, there is no indication whatsoever, either in Section 33-C(2) of the Industrial Disputes Act or in Section 15 of the Payment of Wages Act or in the Supreme Court's decision in the case of *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, that the scope of Section 33-C(2) is wide enough to include claims under Sections 2(vi) and 15 of the Payment of Wages Act".

Accordingly, they upheld the order of the Labour Court in rejecting the application u/s 33-C(2) of the Industrial Disputes Act. A careful perusal of Section 15 of the Payment of Wages Act, shows that it provides for all claims arising out of the deductions from the wages or delay in payment of wages. Therefore, it follows that in all other cases, as also the case before us, where the employer is refusing to pay the wages as per their own promotion order, there is no reason at all as to why Section 33-C(2) of the Industrial Disputes Act cannot be invoked. Even in cases which are covered by Section 15 of the Payment of Wages Act there seems to be absolutely no bar to deal with a claim of an employee u/s 33-C(2) of the Industrial Disputes Act. We may here record that the case of the first respondent was not one relating to either delay in the payment of wages or deductions in the payment of wages.

4. In *R. Krishnaswami Reddiar, Etc., Etc. Vs. Labour Court and Another, Etc., Etc.*, a Division Bench of this Court held that Section 15 of the Payment of Wages Act was limited in its scope and was confined to only claims arising out of deductions from wages or delay in payment of wages and an application u/s 33-C(2) of the Industrial Disputes Act was maintainable. It was also pointed out that

an application u/s 15 of the Payment of Wages Act had to be made within the prescribed time. In that case certain transport workers filed application u/s 33-C(2) of the Industrial Disputes Act for computation in terms of money of certain benefits payable to them under the Motor Transport Workers Act. It was held that provision of Section 33-C(2) of the Industrial Disputes Act was wide enough to cover the relief and there was nothing in common between Section 15 of the Payment of Wages Act and Section 33-C(2) of the Industrial Disputes Act. In fact, the Division Bench went to the extent of saying that where the jurisdiction was concurrent there was no legal bar to the wider jurisdiction being invoked without resorting to the special jurisdiction. However, the Division Bench held that Section 15 of the Payment of Wages Act and Section 33-C(2) of the Industrial Disputes Act were operating in different fields, and the application u/s 33-C(2) of the Industrial Disputes Act was maintainable. What is more, the Madhya Pradesh High Court judgment, quoted *supra*, was also taken into consideration and following the dictum of the Supreme Court in *Central Bank of India v. Rajagopalan (supra)* the application u/s 33-C(2) of the Industrial Disputes Act was held to be maintainable. In *The Management of Southern Roadways (P.) Limited Vs. D. Venkateswarlu etc.*, the Labour Court rejected the preliminary objection that it had no jurisdiction to enquire into application u/s 33-C(2) of the Industrial Disputes Act, because the workers had their remedies under the provisions of the Minimum Wages Act, 1948 and the Payment of Wages Act, 1936. Ismail, J. (as he then was), held as follows:

"However, on analogous principle it can be held that the mere fact that Payment of Wages Act provides for a remedy does not take away the right of the Labour Court to adjudicate on the same in a petition u/s 33-C(2) of the Industrial Disputes Act, particularly when there is nothing in either of the Acts express or implied excluding the jurisdiction of the Labour Court".

5. We are inclined to follow the judgments of this Court quoted *supra* because elaborate reasons have been given as to why an application u/s 33-C(2) of the Industrial Disputes Act is maintainable. On the other hand the judgment of the Madhya Pradesh High Court runs contrary to the view expressed by the Supreme Court in *Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others*, .

6. Sri Krishnaraju, however, stresses another point that inasmuch as there is a dispute as to the enforcement of the order of promotion, the first respondent could only raise a dispute u/s 10 of the Industrial Disputes Act and cannot straightway seek to compute the money value of the said promotion order in an application u/s 33-C(2) of the Industrial Disputes Act. Dealing with a similar argument the Apex Court in *R.B.R.A. Mills Company v. Labour Court, Nagpur* AIR 1972 SC 457, quoted with approval the passage in *Central Bank of India v. Rajagopalan (supra)* to which we have already made a reference (p. 95):

"The claim u/s 33-C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry might

be held to be incidental to the main determination which has been assigned to the Labour Court by Sub-section (2). As Maxwell has observed:

"Where an Act confers jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution".

Accordingly it was held that Section 33-C(2) took within its purview cases of workmen who claimed that the benefit to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers".

7. Therefore, a claim u/s 33-C(2) of the Industrial Disputes Act cannot be defeated by an employer by simply saying that the basis of the claim is disputed, and, therefore, the claim of the employee cannot be computed in a proceeding u/s 33-C(2) of the Industrial Disputes Act. The argument of Sri Krishnaraju is rejected. We have already noticed that the Labour Court had given good and sufficient reason for holding that the order of promotion had been given effect to by the appellant. In fact it is not disputed before us that the order of promotion, dated July 8, 1979, had not been set aside by any other authority in any manner known to law. The order of the Court is, therefore, perfectly in order and does not call for any interference. We have also noticed that the learned Single Judge has also confirmed the order of the Labour Court on the ground that there was no infirmity in the order of the Labour Court.

8. For all the above reasons, the writ appeal has no merits and is dismissed. However, there will be no order as to costs.