

(1981) 02 BOM CK 0041
In the Bombay High Court
Case No : Spl. C.A. No. 2086 of 1977

Divisional Superintendent, South Central Railway Sholapur
and others

APPELLANT

Vs

Madhav Kashinath Kulkarni and another

RESPONDENT

Date of Decision : 23-02-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 33C, 33C(2)

Citation : (1982) 1 LLJ 64

Hon'ble Judges : R.A. Jahagirdar, J

Bench : Single Bench

Judgement

1. A patent error of jurisdiction committed by the Central Government Labour Court No. 2 at Bombay has been rightly challenged in his petition under Arts. 226 and 227 of the Constitution. The error of jurisdiction has arisen because of the Presiding. Officer of the Labour Court to comprehend the correct ambit and scope of S. 33C(2) of the Industrial Disputes Act, 1947. The well-settled proposition of law that S. 33C provides for execution of an industrial dispute has been totally missed by the Labour Court.

2. The first respondent was employed as a stenographer in the then Great Indian Peninsular Railway on 30th of March, 1938. Subsequently on 12th of March, 1989 he was confirmed in that post. According to the rules as interpreted by the Railways, who have now become successor to the Great Indian Peninsular Railway, the petitioner was made to retire with effect from 19th of September, 1971, which is the date on which he attained the age of 58 years.

3. In the year 1975, the first respondent filed the present application No. LC-2/22 of 1975, in the Central Government Labour Court No. 2 at Bombay contending that he has been wrongly retired from service with effect from 19th of September, 1971 whereas he ought to have been allowed to continue in service till 19th of September, 1973. His case was that he was entitled to

continue in service till he attained the age of 60 years. He, therefore, prayed for salary for the two years between 19th September, 1971 and 19th September, 1973.

4. This application was rightly resisted on behalf of the petitioners who are the authorities of the South Central Railway by contending that the Labour Court had no jurisdiction to entertain a claim of the type made by the respondent under S. 33C(2) of the Industrial Disputes Act. The learned Presiding Officer of the Labour Court, however proceeded to interpret the rule and practically adjudicating upon what was essentially an Industrial dispute, namely, whether the retirement on 19th of September, 1971 was correct or not, held that the respondent was entitled to his salary for the two years as claimed by him. He thereafter directed the parties to the application to file statements of the dues on the basis of the order passed by him this was done by the Presiding Officer of the Labour Court by his judgment and order dated 5th of April, 1977. This order is the subject-matter of challenge in this petition.

5. I have already prefaced my judgment with what is the correct position in law. This position in law had been laid down by the Supreme Court as early as in 1964 in *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, . It has been re-affirmed in Several decisions, one of which only need be referred to here. That is *Central Inland Water Transport Corporation Limited Vs. The Workmen and Another*, . It has been pointed out in this judgment that a proceeding under S. 33C(2) is in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workmen from his employer, or if the workmen is entitled 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 claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff's right to relief; (ii) the corresponding liabilities of the defendant is, at all, liable or not; and (iii) the extent of the defendant's liability, if any. The investigation of the third point referred to above may sometimes be left over for determination in execution proceedings but the other two points could never be the subject-matter of execution proceedings. It is not necessary to labour upon the same in any great details because, in my opinion the averments made by the respondent in his application that the termination of his service was wrongful and that he should be given salary on the basis that he continued to be in service till he attained the age of 60 years oust the jurisdiction of the Labour Court. Unless the respondent gets rid of the order which has been passed, he cannot claim salary on the basis that he continued to be in service.

6. Mr. Singhvi, the learned advocate appearing for the first respondent, has, however, sought to argue that in effect the prayer of the respondent was that he continued to be in service in view of Rule No. 2046 of the Indian Railway

Administration Code According to Mr. Singhvi, the interpretation of this rule was an incidental question to be decided by the Labour Court in exercise of the jurisdiction vested in it by law. If the rule itself properly interpreted permits the respondent to continue in service till he attained the age of 60 years, it cannot be said that the order which was passed by the Railways was valid or legal. In these circumstances, the Labour Court, says Mr. Singhvi, was competent to proceed to determine the amount due to the respondent on the basis that the respondent continued to be in the service of the Railways.

7. I am unable to accept these contentions of Mr. Singhvi As I have already mentioned above, unless the respondent gets rid of the order passed against him he cannot claim salary for the period subsequent to the passing of the order. Whether the order is right or wrong is a matter to be decided in adjudication proceedings, which proceedings are outside the jurisdiction of the Labour Court under S. 33C(2) of the Industrial Disputes Act.

8. In the result, this petition must succeed. The order passed by the Central Government Labour Court No. 2 on 5th April, 1977 in Application No. LC-2/22 of 1977 is set aside and consequently all proceedings pursuant to that order are also quashed.

9. There will, however, be no order as to costs in this petition.