
(1978) 09 KL CK 0012
In the High Court Of Kerala

Fibre Foam Private Limited

APPELLANT

Vs

K. Kannan Nair and Others

RESPONDENT

Date of Decision : 20-09-1978

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 25F, 25FFF, 33C

Citation : (1979) 1 ILR (Ker) 262

Hon'ble Judges : N.D.P. Namboodiripad, J

Bench : Single Bench

Judgement

N.D.P. Namboodiripad, J.—Respondents 1 and 2 in this case were employees of the petitioner, which is a firm. The petitioner issued Exts. P2 and P3 dated 13-11-74 retiring respondents 1 and 2 from service on the ground that they have exceeded the age of 58 years. Respondents 1 and 2 received gratuity and other retirement benefits. Later on respondents 1 and 2 filed two petitions before the 3rd respondent, which is the Labour Court, Kozhikode as C.P. No. 2 of 1976 and C.P. No. 3 1976 u/s 33C(2) of the Industrial Disputes Act, 1947 (shortly the Act). The petitioner, which was the respondent in those cases, contended that the 3rd respondent had no jurisdiction to entertain the two petitions and that since the two petitioners therein were retired on attaining the age of superannuation the questions of retrenchment and payment of compensation did not arise. Those contentions were turned down and the 3rd respondent passed Ext. P1 order. In C.P. No. 2 of 1976 the respondent therein was directed to pay Rs. 1,834.50 as retrenchment compensation and in C.P. No. 3 of 1976 the compensation determined was Rs. 2,374.95. The petitioner challenges Ext. P3 award.

2. The first contention urged by the petitioner before me is that respondents 1 and 2 are precluded from contending that they were not sent out on attainment of the age of superannuation and that the termination of their services constituted retrenchment within the meaning of the Act. It is not disputed before me that the contract of employment did not specify that the concerned workmen have to retire on attaining 58 years. The contention of the petitioner is,

therefore, founded on the Payment of Gratuity Act, 1972 (briefly Act 39 of 1972). It is undisputed that respondents 1 and 2 received gratuity from the petitioner-employer. Payment of gratuity is governed by Section 4 of Act 39 of 1972. Sub-section (1) of Section 4 which alone is relevant for the purpose of this case may be read:

4. Payment of gratuity -- (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,--

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs.

Explanation - For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

The expression "superannuation" is defined in Section 2(r) of the above Act. That provision also may be read:

(r) "superannuation", in relation to an employee, means

(i) the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment; and

(ii) in any other case, the attainment by the employee of the age of fifty-eight years;

By the aforesaid definition it follows that in cases where the contract of employment does not specify the age of superannuation, the attainment of the age of 58 years by the employee would amount to "superannuation". Gratuity was received by respondents 1 and 2 from the petitioner-employer under the relevant provisions of Act 39 of 1972. The 3rd respondent proceeded on the basis that the age of superannuation mentioned in Act 39 of 1972 cannot apply when rights under the Act are adjudged. Technically that proposition is correct. Here the question of superannuation arises because of the acceptance of gratuity under Act 39 of 1972. Having obtained the benefits under Act 39 of 1972 it is not open to respondents 1 and 2 to contend later that for the purpose of retirement on superannuation they are not bound by Act 39 of 1972. There is thus force in the contention of the petitioner that by acceptance of gratuity in accordance with

the provisions of Act 39 of 1972 respondents 1 and 2 are estopped from contending that the termination of their services was not retirement on superannuation but retrenchment.

3. The alternative argument advanced on behalf of the petitioner-firm is that the 3rd respondent had no jurisdiction to adjudge the compensation payable to respondents 1 and 2 by the petitioner. The two petitions which led to Ext. P1 order were laid u/s 33C(2) of Act 39 of 1972. That provision may be read:

33C. Recovery of money due from an employer--

(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.

According to the petitioner the jurisdiction u/s 33C(2) can be exercised by the third respondent only when there is no dispute regarding the very status of the claimants and the opposite party. The expression "Where any workman is entitled to receive from the employer any money or any benefit" would indicate that Section 33C(2) can be invoked only when the workman is legally entitled to receive any money or any benefit from the employer. If the very liability of the employer on the one part to pay and the right of the employee on the other to receive any compensation is in dispute, Section 33C(2) cannot possibly be invoked. The relief, if any, of the aggrieved employee is to have the claim adjudged u/s 10 of the Act. There is good authority in support of that proposition. A similar question arose for decision in *Swastik Manufacturers Ltd. Vs. Labour Court and Another*, . In that case the employees whose services were dispensed with moved the Labour Court for realisation of compensation on the strength of Section 33C(2) of the Act. The contention of the employer was that the workmen voluntarily left the service and received bonus and other perquisites. The Court relied upon the decision in *Central Inland Water Transport Corporation Limited Vs. The Workmen and Another*, . In that case the Supreme Court held that the proceeding u/s 33C(2) is in the nature of an execution proceeding where the Labour Court calculates the amount of money due to a workman or the value of the benefit to which he is entitled. This calculation follows upon an existing right to the money or benefit in view of its being previously adjudged or otherwise duly provided for. 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". The Labour Court cannot arrogate to itself the functions say of an Industrial Tribunal which alone is entitled to make adjudications regarding the workmen's right to relief or the corresponding liability of the employer by dubbing as "incidental" to its main business of computation. The several problems raised in the contentions of the employer involve in effect a major industrial dispute, an investigation into

which is quite outside the scope of Section 33C(2). In this case also the question is whether the termination of services of respondents 1 and 2 amounted to retrenchment. Though respondents 1 and 2 would claim that it was retrenchment, the case of the petitioner is that it was retirement on attainment of the age of superannuation. Thus the basic issue is whether the termination of service amounted to retrenchment within the meaning of Industrial Disputes Act to attract the provisions of that Act. Such a question can be decided only by a reference u/s 10 and is not a matter which the Labour Court can decide in an application laid u/s 33C(2) of the Act. The learned Counsel for the respondents referred to a decision of the Supreme Court in *Sahu Minerals and Properties Ltd. Vs. Presiding Officer, Labour Court and Others*, . "In that case the dispute was whether the compensation was payable u/s 25F or 25FFF. The facts in the present case are clearly distinguishable from those of the Supreme Court in *Sahu Minerals*" case. The decision in *R. Krishnaswami Reddiar v. Labour Court*, reported in (1978) 52 F.J.R. 119, also considered the same proposition. The Court pointed out that the decision of the Supreme Court in *Central Bank of India Ltd. v. P.S. Rajagopalan* 1963 25 F.J.R. 44 has not laid down that the power of the Labour Court u/s 33C(2) of the Industrial Disputes Act, 1947 can be invoked for deciding the question of status or categorisation of employees because that was a case in which the right to allowance was disputed as a defence and decision of that question was incidental to the computation of money value of the allowance. Any incidental question which may be brought within the scope of Section 33C(2) of the Act should be inherently related to the problem of computation. But status is not one such question just a defence of dismissal or retrenchment, which when disputed, could not be decided u/s 33C(2). The question of status of a workman can be decided only by raising an industrial dispute u/s 10(1) of the Act. The Orissa High Court had occasion to consider the scope of Section 33C(2) in the decision *Shyamsundar Sahu and Co. Vs. Labour Court and Another*, . In that case it is pointed out that a proceeding u/s 33C(2) being in the nature of an execution proceeding, the Labour Court in a proceeding under this section has only to calculate the amount of the benefits as provided under the said section, and the Court should decide matters which are not for the execution Court to decide. As adjudication of the basis and formation of the claim is the principal function and concern of the Industrial Tribunal, the Labour Court should not trespass upon the powers of the Tribunal and arrogate to itself jurisdiction of the Tribunal to decide such matters. The Court further pointed out that a blank or mala fide denial of the workmen's status cannot by itself oust the jurisdiction of the Labour Court. But where the basis and foundation of the claim is seriously contested and determination of that basic factor of the case will involve an elaborate process the question is to be decided by the Industrial Tribunal and not by the Labour Court, in exercise of its jurisdiction u/s 33C(2) of the Act.

4. It is thus clear that the 3rd respondent exceeded his authority in awarding compensation after entering a finding that the termination of the employment of

respondents 1 and 2 was retrenchment. To repeat, whether in the instant case the termination of employment of respondents 1 and 2 was retirement on attainment of the age of superannuation or whether it was a case of retrenchment within the meaning of Section 2(oo) of the Act is a serious question that can be decided only by a reference u/s 10 of the Act. Exhibit P1 order cannot be sustained on this ground also.

5. In the result, Ext. P1 order is hereby set aside and the two petitions decided by the 3rd respondent in Ext. P1 are dismissed. This original petition is allowed. I make no order as to costs.