

(1989) 08 PAT CK 0027

In the Patna High Court

Case No : C.W.J.C. No. 1767 of 1985 (R)

General Manager, Garden Reach Shipbuilders and Engineers
Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 16-08-1989

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33(C)(2)

Citation : (1994) 3 LLJ 225

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : C.B. Mitter, for the Appellant; N. Roy, Govt. Pleader No. 2, I.D. Sinha, Jr. Counsel for the State, B. Saran Lal and Ashwani Kumar for Respondent Workman, for the Respondent

Judgement

S.B. Sinha, J.—This writ application is directed against the order dated 31.8.85 passed by the Presiding Officer, Labour Court, Ranchi in Case No. M.J. 9.83 as contained in Annexure-12 to the writ application whereby and whereunder the said learned Court allowed the application filed on behalf of the respondents Nos. 2 to 31 purported to be u/s 33C(2) of the Industrial Disputes Act, 1947.

2. The facts of the case lie in a very narrow compass.

3. The respondents Nos. 2 to 31 admittedly are the workmen of the category the clerical staff of Marine Diesel Engine Plant of Ranchi which is a unit of M/s. Garden Reach Shipbuilders and Engineers Ltd. The said respondents filed an application before the respondent No. 1 purported to be u/s 33C(2) of the Industrial Disputes Act, 1947 inter alia alleging therein that they are entitled to monetary benefit in respect of extra special holidays for three days as per custom/practice prevailing in the petitioners company. The said application is contained in Annexure-1 to the writ application.

In short, the claim of the concerned workmen before the respondent No. 1 was

that in the Ranchi Unit of M/s Garden Reach Shipbuilders & Engineers Ltd. commonly known as Marine Diesel Engine Plant a system of grant of three days" leave existed in order to maintain parity with the holidays enjoyed by the workmen of the company. The said system continued without any break and as such a right has accrued in favour of the workmen. According to the workmen, the said leave used to be granted over and above the other kinds of leave usually granted to them. According to the workmen a slight change in the practice accrued in the year 1973 whereby the clerical staff were granted two days extra holidays other than the production/work/operative staff which were directed to be adjusted against full days work on different sections as indicated in the notification dated 26.9.73.

4. It appears that on or about 21.9.89 (sic) a settlement was arrived at between the management and the representative of the Union of Garden Reach Shipbuilders and Engineers, wherein also the scheme, block closure holidays was incorporated. In para 9 of the application, the workmen stated that the workmen of the plant situated at Ranchi also demanded the continuance of the said holidays in terms of the aforementioned prevailing in the Ranchi Unit of the said company.

5. The workmen have further stated as follows:-

"That according to the prevailing system the clerical staff including these applicants were required to avail the said extra/special holidays for 3 days latest by 31st December of each year, failing which the holidays would lapse. Such employees were required to avail the leave in a phase so as not to affect the office work.

That following the said practice based on the usages, custom, the settlement dated 25.5.79 and the decision of the management notified vide Memo No. MEP/P/P & W-MD/289/79 dated 12.9.79, when the applicants desired to avail the extra/special holidays in a phased manner, the management refused to allow the applicants to avail such extra/special holidays for the year 1983.

That it is humbly submitted that the settlement arrived at between the management and representatives of the Union of Garden Reach Shipbuilders & Engineers Limited dated 25.9.1979 is still in vogue and as such by virtue of this settlement along with the above notification dated 12.9.1979 and 21.11.1979, the extra/special holidays for 3 days over and above the holidays for a period of sixteen days as stipulated in the Certified Standing Order applicable to this industry has also acquired a status of condition of service of these applicants.

That in order to bring about any change in such condition as listed in Fourth Schedule of the Industrial Disputes Act, 1947, a notice u/s 9-A of the Industrial Disputes Act is mandatory."

6. The cause of action for filing the aforesaid application arose when the concerned workmen were not allowed the extra holidays for 3 days in 1983.

7. The petitioner having been directed to show-cause in the aforementioned M.J.C.N.9/83 filed its show-cause wherein inter alia it was ascertained that the Marine Diesel Engine Plant is a separate unit and the terms and conditions of the service of the employees are incorporated in the Standing Order which became effective from 1.10.82. According to the management the additional leave granted to the clerical staff was discriminatory in nature and as such the same could not have been allowed to continue. The petitioner has further denied existence of any custom or privilege with regard to the grant of the three days leave to the concerned workmen.

8. It is admitted that the Standing Order provided for holidays or/leave or different types of leave availed by the workmen. It is further admitted that the memorandum of settlement of the year 1979 entered into by and between the workmen and M/s. Garden Reach Shipbuilders & Engineers Limited covers only the workmen employed in different units of the company situate in the State of West Bengal including Main Unit, Taratala Unit, Delure Unit, Baranagar Unit, 61 Park Unit Fitting. Put Jetty and Deck Machinery Division of the company, except the Assistant Supervisors and Clerical Graded Staff for whom separate settlements were to be arrived at.

9. The said settlement contains provisions of different types of leave and also "block closure" in the following terms:-

Block closure: It is agreed that the present practice of block closure will be restricted to 4(four) days including the Durga Puja festival.

10. The aforementioned settlement is contained in Annexure-3 to the writ application.

11. It further appears that a memorandum of settlement was arrived at in course of conciliation proceeding between the Marine Diesel Engines Plant, Dhurwa and their workmen on 28.1.1983. The said memorandum of settlement is contained in Annexure-II to the writ application.

12. The said settlement also contains the matters relating to grant of leave in the following manner:-

"Leave: The management said that detailed provision for quantum of leave having been provided in the recently Certified Standing Orders of the company there was no such (sic) the matter should be left at that. The union also did (sic) press the point further."

13. It appears that despite coming into force of the Certified Standing Order, three days extra leave were granted to the clerical staff and the Assistant Supervisors in terms of the notification dated 23.10.1982. By reasons of the said notification, the concerned workmen were allowed to avail their leave on any day prior to 31.12.82 on prior sanction of leave in writing by the authorities concerned. It is further evident that in the year 1979, the management instead of 3 days" leave granted two days" leave whereby protest was made and

pursuant whereof an agreement arrived at by and between the management and the union whereby inter alia the demand of one day's extra leave put forward by the workmen was conceded by the management. The said agreement is contained in Annexure-10 to the writ application.

14. Before the respondent No. 1, both parties adduced their respective evidences. The respondent No. 1 by reason of his order dated 31.3.85 as contained in Annexure-12 to the writ application allowed the application filed by the concerned workmen u/s 33C(2) of the Industrial Disputes Act by holding inter alia as follows:-

"Thus in the instant case I find that the grant of the block closure holidays was an implied condition of service and that by withdrawing these holidays in the year 1983 the employer sought to effect, a change which adversely and materially affected the service condition of the applicants. Under these circumstances the management therefore violated the provisions of Section 9(A) of the I.D. Act. Besides this the grant of these holidays could not be denied to the applicants all of a sudden in the year 1983 specially to keep the harmony between the management and employees and to maintain the industrial peace."

15. Mr. C.B. Mitter, the learned counsel appearing on behalf of the petitioner in support of the writ application placed before me the history of grant of block closure holidays. According to the learned counsel, holiday used to be given to the employees working in West Bengal as during the Durga Puja festival which is the main festival in the West Bengal the workmen never worked and used to go on casual leave as a result whereof the clerical staff had no job to perform during the aforementioned puja holidays and thus extra leave used to be granted to the clerical staff and Assistant Supervisors also.

16. It was however conceded by Mr. Mitter that following the said practice, leave used to be granted to the clerical staff of Marine Diesel Engine Plant, Dhurwa which is an independent unit of the Garden Reach Shipbuilders & Engineers Limited. Mr. Mitter however submitted that whereas in the settlement dated 25.5.79 as contained in Annexure-3 to the writ application, the provisions for "block closure holidays" had been kept but no such terms exist either in the Certified Standing Order or in the settlement dated 28.1.83 as contained in Annexure-II to the writ application.

17. The learned counsel further submitted that in view of the aforementioned Certified Standing Order and memorandum of settlement arrived at by all concerned and which is binding upon all the workmen, the workmen cannot be said to have any existing right with so far as their purported extra leave for three days is concerned. It was further submitted by the learned counsel that in any event, the concerned workmen cannot take any advantage of the settlement dated 25.5.79 as contained in Annexure-3 to the writ application, inasmuch as, firstly the said settlement was imperative in the units named therein, all of which are situate in the State of West Bengal and also in view of the fact that by reason

of the said settlement block closure "holidays" have not been provided and not (sic) leave to the concerned workmen who have been claiming three days extra leave allegedly on the basis of on existing custom.

18. The learned counsel further submitted that the workmen (sic) failed to prove that the said custom has been prevailing in the petitioners factory at Ranchi nor any right can be founded thereupon. The learned counsel further submitted that in any event, such a question cannot be permitted to be adjudicated in an application u/s 33C(2) of the Industrial Dispute Act, 1947.

19. Mr. B.S. Lal, the learned counsel appearing on behalf of the concerned workmen, on the other hand, submitted that an application u/s 33C(2) of the Industrial Disputes Act, 1947 is maintainable also to enforce a right based on custom. The learned counsel in this connection has relied upon a decision reported in *Dalmia Cement (Bharat) Ltd., New Delhi Vs. Their Workmen and Another*, . The learned counsel has further relied on various decisions of the Supreme Court and this Court with regard to the scope and object of an application u/s 33C(2) viz. the case of *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, *Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others*, and *Bihar State Road Transport Corporation v. Bhawsagar Mishra* reported in (1979) 39 FLR 112 (Patna) and *The Management of Indian Oil Corporation Ltd. Vs. Its Workmen*, .

20. The learned counsel submitted that neither the Certified Standing Order nor the memorandum of settlement dated 31.1.83 having covered the subject-matter of three days" leave to the clerical staff of Marine Diesel Engine Plant, the workmen had an existing right to enforce by way of an application u/s 33C(2) of the Act as the right derived by them in terms of the prevailing practice/custom. The learned counsel in this connection has also submitted that the practice of grant of extra leave to the clerical staff has ripened into a right and the said practice continued despite the settlement dated 25.5.79 as contained in Annexure-3 and 28.1.83 as contained in Annexure-11 to the writ petition. It has also been submitted that the privilege of the respondent-workmen regarding their right to avail 3 days extra leave does not stand derecognised of in any manner affected by reason of the aforementioned settlement.

21. In this connection, the learned counsel has drawn my attention to the minutes of meeting dated 13.11.79 as contained in Ann. 10 to the writ application and submitted that whenever the said right was sought to be curtailed protest in relation thereto made whereupon the same was restored to them.

22. In short, the case of the concerned workmen appears to be that as they had been enjoying the privilege of three days extra leave for a long time despite the settlement having been entered into and despite the coming into force the Certified Standing Order, they are entitled to the enjoyment of the said leave and/or wages in lieu thereof. Before the learned Tribunal, the concerned workmen

examined two witnesses and produced various documents.

23-24. By reason of the impugned award as contained in Ann. 12 to the writ application, the respondent No. 1 inter alia held as follows:

(a) The practice of granting special leave continued since 1971 and despite coming into force of the Certified Standing Order.

(b) Such an implied condition of service could not be changed unilaterally without taking recourse to Section 9A of the Industrial Disputes Act.

Section 33C(2) of the Industrial Disputes Act reads as follows:-

"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 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."

From a plain reading of the aforementioned provisions, it would be clear that the said provision has contemplated a proceeding which is in the nature of execution proceeding.

25. It is further well-known that a proceeding u/s 33C(2) would depend upon the existence of a right in favour of the claimant.

26. In other words, in a proceeding u/s 33C(2) of the Industrial Disputes Act, the Labour Court cannot decide a question with regard to a matter which may appropriately fall for decision in a reference u/s 10 of the Industrial Disputes Act.

The scope and extent of jurisdiction of a Labour Court has been laid down by the Supreme Court in Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, . In the aforementioned decision, the Supreme Court has relied upon the The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., as also Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others, upon which as noticed herein before heavy reliance has been placed by Shri B.S. Lal and pleaded the law in the following terms (paras 12 and 13):-

"A proceeding u/s 33C(2) is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman 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, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff's right to reliefs, (ii) the corresponding liabilities 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 proceedings. Determination No. (iii) referred to above, i.e. to say, the extent of the defendant's liability may some time be left over for determination in execution proceedings. But that is not the case with the determination under heads (i) and (ii). Since a proceeding u/s 33-C(2) is in the nature of an execution proceedings it should follow that an investigation of the nature of determination (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 limitations under which it is to function. It cannot aggregate to itself the function say of an Industrial Tribunal which alone is entitled to make, adjudication 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 computations. In such cases determinations (i) and (ii) are not "incidental" to the computations. The computation itself is consequential upon subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal."

In *Heavy Engineering Corporation Ltd. v. Presiding Officer, Labour Court, Ranchi* in C.W.J.C. No. 926/828 a Division Bench of this Court stated the law thus:

"There is no dispute about the legal position that computation u/s 33-C(2) of the Act follows upon an existing right to the money or benefit, in view of its being previously adjudged or otherwise duly provided for. If therefore, the workmen have succeeded in proving that they had an existing right under Ann. 4 to get the monetary benefit of the higher scale of pay of different grades of drillers, the Labour Court had jurisdiction to compute that benefit."

Recently also another Division Bench of this Court in *Heavy Engineering Corporation Ltd. v. Presiding Officer, Labour Court, Ranchi* reported in 1988 BLT 400 upon taking into consideration various decisions of Supreme Court and other High Courts stated the law in the following terms:-

"Bearing in mind the principles laid down in the abovementioned cases, it must be held that before a claim can be made u/s 33-C(2) of the Act, it must be established that benefit which is capable of being computed in terms of money. Such a right can be established by reference of any award or settlement or agreement or by reference to the terms and conditions of employment, office circulars or orders or any statutory notification that may be issued from time to time. It is neither possible nor desirable to give an exhaustive list of the source from which the right flows. What is material is that the right must pre-exist. In the case of *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, as also in the case of *Canara Bank (supra)*, the workmen concerned referred to the Sastry Award to establish their existing right and claimed that they fell within the category of persons specified in the award. But if the claim of an existing right is

denied by the Management on the ground that the workmen concerned are not workmen entitled to the benefit under the award or the settlement etc. even then the jurisdiction of the Labour Court u/s 33-C(2) of the Act is not ousted. The claim would still be maintainable and the Labour Court may make an enquiry as to the existence of the right before computing the benefits. Such an enquiry would be incidental to the main determination of the claim u/s 33-C(2) of the Act may involve the examination or interpretation of the settlement or the award etc. The Labour Court cannot go behind such settlements or awards and it must merely give effect to the rights created under the award of the settlement or any other circular, office order, Standing Orders, letters of appointment or terms and conditions of service from which the right flows. Such an enquiry, generally speaking, would be to identify the persons entitled to the benefit under the existing right, and the determination of the nature of benefits and the ultimate relief to which they may be entitled. It is, therefore, not enough for the Management to dispute a worker's claim by merely saying that it is not entitled to the benefit because it would be open to the Labour Court to make an enquiry as to the existence of the right. If the Labour Court comes to the conclusion that the right exists it must grant the claim of the workmen and computes the benefit. But the Labour Court must also bear in mind its limitation. It is now well settled that where a matter sought to be raised before a Labour Court for exercise of its jurisdiction u/s 33-C(2) of the Act is a matter which can properly be the subject-matter of adjudication u/s 10 of the Act having regard to the nature of issues raised, the Labour Court cannot take upon itself the responsibility of adjudicating upon such issues. It is for this reason that it has very often been observed that the nature of jurisdiction which the Labour Court exercised u/s 33-C(2) of the Act is in the nature of an executing Court or analogous to the jurisdiction of an executing Court. It may not be fair to literally equate a Labour Court exercising jurisdiction u/s 33-C(2) of the Act with an executing Court under the Code of Civil Procedure, but it only emphasises the nature of its jurisdiction. Thus where a right is disputed on the basis that there is any award or settlement or circular or Standing Orders or any other administrative order or notification which denies to the workman the benefit claimed by him the Labour Court cannot grant the claim after holding that such a settlement or award or circular or Standing Order etc. is contrary to law and therefore, void. The adjudication upon the question of the validity or invalidity of such award settlement etc. can be properly the subject-matter of adjudication u/s 10 of the Act. Thus it was held that a workman who has been dismissed or demoted from service cannot claim any benefit u/s 33-C(2) of the Act on the basis that the order of dismissal or demotion was illegal since such dispute can be raised only in a proceeding under the other provisions of the Industrial Disputes Act such as Section 10 of the Act. It is also well settled that where a valid settlement is made which is binding upon the workman concerned, no claim should be made by the workmen u/s 33-C(2) of the Act which is inconsistent with the settlement arrived at between the Management and the workman. An enquiry which is incidental to the main determination of the claim u/s 33-C(2) of

the Act is not barred and in the facts and circumstances of each case it is to be determined having regard to the broad principles stated above whether such an enquiry is or is not incidental to the main determination u/s 33-C(2) of the Act."

The decision of the Supreme Court reported in *Dalmia Cement (Bharat) Ltd., New Delhi Vs. Their Workmen and Another*, was rendered in absolutely a different situation. In that case, it was found as of fact that there had been a continued and uninterrupted practice from 1948 for encashment of privileged leave of certain specified purposes and in the facts and circumstances of the case it was held that such impugned to (sic) implied condition of service and when in 1957 the management refused some of such applications, it was held that departure by the management has been made from the past practice without any lawful reasons. However, that case arose out of a reference u/s 10 of the Industrial Disputes Act and not u/s 33-C(2) thereof. There is no dispute that a denial of a right without reasonable cause by the management may be adjudged in a reference to be had in law.

27. In terms of the 3rd Schedule appended to the Industrial Disputes Act leave without wages and holidays come within the purview of the jurisdiction of an Industrial Tribunal.

In this case, as noticed hereinbefore the Management and workmen entered into a settlement whereby and whereunder all disputes and differences by and between them were purported to have been settled. Further even the Certified Standing Order provides for different kinds of leave but does not include a leave of the kind as claimed for by the workmen.

28. The settlement arrived at by and between the parties during conciliation proceeding as also the Standing Order as certified under the Industrial Employment (Standing Orders) Act, 1946 are binding upon all workmen. It is not in dispute that after coming into force of the Certified Standing Order extra leave was granted but no such leave was granted in the year 1983 after the settlement came into force.

29. From the claim petition filed on behalf of the workmen as contained in Ann. I to the writ application, it is evident that they based their claim inter alia on the settlement of the year 1979 allegedly entered into by and between the Workmen and M/s. Garden Reach Shipbuilders and Engineers Ltd. The said settlement of the year 1979 which is contained in Ann.-3 to the writ application and provides for block closure holidays has no application to the workmen working in the Ranchi Unit of Marine Diesel Engine Plant. In fact, Shri Bheklal Rana who examined himself on behalf of the workmen stated in his deposition which is contained in Ann.-4 to the writ application that there had been a settlement by and between the Union and the Management at Ranchi relating to leave and other conditions of service. He further admitted that their Union had nothing to do with the Union of Garden Reach Shipbuilders & Engineers Ltd.

30. Similarly Shri Bipin Kumar Sinha who is General Secretary of the Marine

Diesel Engine Plant Employees Association admitted that they are not members of the Union of Calcutta. He further admitted that in the settlement arrived at Calcutta, nothing has been written with regard to the employees of Ranchi. It is further evident from the memo of settlement dated 28.1.83 as contained in Ann.-11 to the writ application that a settlement was arrived at inter alia with regard to the matter of grant of the leave and has been provided in the Certified Standing Order and in relation that to the union did not press their alleged dispute for grant of further leave. Shri Bipin Kumar Sinha in his evidence as contained in Ann.-5 to the writ application has admitted that the said settlement is a tripartite settlement. It is, therefore, clear that the workmen did not have any existing right on the basis of the aforementioned settlement dated 18.1.83 or on the basis of the settlement of the year 1979. As noticed hereinbefore Certified Standing Orders have the force of law. Even assuming that the matter in relation to the grant of extra leave was in vogue for some time, the workmen abandoned their right in view of the aforementioned Certified Standing Order and/or the settlement dated 18.1.83.

31. Further the basis upon which the concerned workmen have been claiming their right i.e. the block closure holidays granted to the employees of the State of West Bengal is also not available to the workmen of the Marine Diesel Engine Plant Ltd. at Ranchi. The aforementioned settlement of the year 1979 as contained in Ann.-3 to the writ application speaks of "block closure holidays, whereas at Ranchi the workmen had been getting "extra leave". A distinction has to be made by and between leave and extra holidays.

32. Further an existing practice or a custom must also be reasonable. The stand of the management appears to be justified that it will amount to discrimination if some extra/special leave for three days is granted to the clerical staff only and thereby ignoring the cases of all others. In any view of the matter, there has been a serious dispute with regard to the existence of any custom and/or practice and further there is a dispute as to whether such custom or practice was abandoned by the workers in view of coming into force of the Certified Standing Order and further in view of the aforementioned settlement dated 28.1.83, in my opinion, the said dispute could not have been adjudged in a proceeding u/s 33-C(2) of the Industrial Disputes Act inasmuch as such a dispute could be raised only in a reference made by the appropriate Government u/s 10 of the Industrial Disputes Act.

33. On the aforementioned background, the other decision cited by Shri Lal may be considered.

In the case of the management of Indian Oil Corporation Ltd. 1975 LIC 1429 (supra) the question which arose for consideration was as to whether a voluntary decision of the management to grant compensatory allowance was implied condition of service or not, the Supreme Court, while hearing an appeal from an award passed by the Presiding Officer, Industrial Tribunal, Gauhati in a reference, held in the facts and circumstances of the case that the grant of such

compensatory allowance amounted to implied condition of service. The decision has also no application in the facts and circumstances of the present case. As mentioned hereinbefore, the same was decided in a reference and not u/s 33-C(2) of the Industrial Disputes Act.

34. The decision of the Bihar State Road Transport Corporation reported in 1979 39 FLR 112 (supra) has also no application. In the facts and circumstances of that case, this Court found that the employees had a right under the circular issued by the State of Bihar from time to time which supplemented the provisions of Bihar Service Code.

35. Thus taking into consideration the facts and circumstances of the case, I am of the view that the application filed by the concerned workmen u/s 33-C(2) of the Industrial Disputes Act was not maintainable and in this view of the matter, the impugned order passed by the respondent No. 1 as contained in Ann.-12 to the writ application cannot be sustained.

36. In the result, this writ application is allowed and the impugned order as contained in Ann.-12 is quashed. Let a writ of certiorari issue accordingly. In the facts and circumstances of the case, there will be no order as to costs.