
(1990) 02 P&H CK 0033
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 1020 of 1983

Harnam Chand and Others

APPELLANT

Vs

The Management, Punjab University Printing Press

RESPONDENT

Date of Decision : 28-02-1990

Acts Referred:

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

Citation : (1994) 3 LLJ 85

Hon'ble Judges : J.V. Gupta, Acting C.J.; M.S. Liberhan, J

Bench : Division Bench

Advocate : Ajay Tewari, for the Appellant; N.K. Sodhi R.S. Khosla and Nitin Kumar, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Liberhan, J.—It would be ex-pedient to collate the facts leading to this appeal. The appellants preferred a petition u/s 33C(2) of the Industrial Disputes Act claiming that while they were working as Compositors at the Punjab University Printing Press, a settlement took place between Employees' Union and the Punjab University to the effect that the workers of the Punjab University Printing Press will be given grades as in force in the Union Territory Press, Chandigarh, from time to time, and the revision of the grades will not adversely affect the emoluments of the workers then prevalent in the Punjab University Printing Press. It was further agreed that in case any worker wanted to retain the existing grade he will have the option to do so. It was averred that at the time the settlement was arrived at there was one cadre of Compositors in the pay scale of Rs. 100-5-150 in the Press, and the petitioners were working in that cadre arrived at and while there were two cadres of Compositors, i.e. Junior Compositors and Senior Compositors in the Union Territory Press. Their grades were Rs. 100-4-140/5-160 and Rs. 120-5-150/6-180/8- 220/10-250 respectively. There was no equation of the post of Compositor of the Punjab University Printing Press with either of the two cadres of the Compositors in the

Union Territory Press. The petitioners claimed wages in the grade of Rs. 120-5-150/6- 180/8-220/10-250, i.e. the grade of Senior Compositor as applicable in the Union Territory Press.

2. The respondents refuted the claim. It was averred that the Senate of the Punjab University, designated the posts of the Compositors of the Punjab University Printing Press as Junior Compositors and as there was a dispute with respect to the status of the claimants and the dispute being squarely covered by Section 10 of the Industrial Disputes Act, could only be determined by the Industrial Tribunal, and the Labour Court had no jurisdiction to determine the status of the claimants. The Labour Court's jurisdiction u/s 33C(2) of the Act to determine the status of claimants was challenged. Various other objections were raised which are not relevant for the purpose of determining the question raised in this appeal.

3. The Labour Court found that since the settlement did not equate posts of the claimants with the posts of Senior Compositors, the Labour Court had no jurisdiction to decide the same in proceedings u/s 33C(2) of the Industrial Disputes Act as the proceedings are in the nature of execution and since the claim was with respect to the nature of status of the claimants the parties may approach the Industrial Tribunal. The claim application was dismissed.

4. The award of the Labour Court was impugned in the Writ Petition and the learned Single Judge found that as the matter of equation of posts of Compositors was in dispute which was outside the purview of Section 33C(2) of the Act, the Labour Court rightly declined to determine the issue raised. The Writ Petition was dismissed.

5. The learned counsel for the appellants challenged the findings of the learned Single Judge as well as of the Labour Court to the effect that the Labour Court did not have jurisdiction to determine the controversy raised i.e. the equation of the status of the claimants with those of the Junior Grade Compositors by the subsequent order of the University. It was contended that the Claim petition being in execution of the settlement entered into between the parties, it was incidental to the proceedings to determine whether the order of the University equating the claimants with Junior Grade Compositors of the Union Territory Press, Chandigarh, was valid, legal and bona fide. The learned counsel for the appellants relied on Goverdhan Prasad and Others Vs. Management of Indian Oxygen Ltd., : and Market Committee v. Presiding Officer, Labour Court ILR 1981 P &H . 313.

6. It was not disputed in the course of argument that the dispute with respect to the order equating the claimants with Junior Grade Compositors in the Union Territory Press is an industrial dispute squarely covered by Section 10 of the Industrial Disputes Act and the same can be determined by the Industrial Tribunal after taking numerous factors into consideration.

7. It has been observed in P.K. Singh and Others Vs. Presiding Officer and

Others, as under (Para 5):

" It is obvious from the facts narrated above, which are not in dispute, that by merely doing the same kind of work which is done by a "B" Grade Fitter will not be entitled to claim the wage of a "B" Grade Fitter unless he is duly promoted after getting through the prescribed trade tests. Such a workman cannot complain that he is not being paid the salary and allowances due to a "B Grade Fitter, since he does not possess an existing right to claim it. If on an adjudication made on the said question on a reference made u/s 10(1) of the Act, it is held that he should be deemed to be a member of the cadre of "B" Grade Fitters then only he would be able to claim the salary and allowances payable to "B" Grade Fitters. The case before us is analogous to the claim made by a Junior Clerk, who can become a Senior Clerk, only on promotion, to the salary attached to the post of Senior Clerk on the ground that both the Junior Clerk's and the Senior Clerk are engaged in clerical work".

8. In the *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, the following observations were made by their Lordships of the Supreme Court (Para 15):

"The legislative history to which we have just referred clearly indicates that having provided broadly for the investigation and settlement of industrial disputes on the basis of collective bargaining, the legislature recognised that individual workmen should be given a speedy remedy to enforce their existing individual rights, and so, inserted Section 33A in the Act in 1950 and added Section 33C in 1956. These two provisions illustrate the cases in which individual workmen can enforce their rights without having to take recourse to Section 10(1) of the Act, or without having to depend upon their Union to espouse their cause. Therefore, in construing Section 33C we have to bear in mind two relevant considerations. The construction should not be so broad as to bring within the scope of Section 33C cases which would fall u/s 10(1). Where industrial disputes arise between employees acting collectively and their employers, they must be adjudicated upon in the manner prescribed by the Act, as for instance, by reference u/s 10(1). . These disputes cannot be brought within the purview of Section 33C. Similarly, having regard to the fact that the policy of the Legislative in enacting Section 33C is to provide a speedy remedy to the individual workmen to enforce or execute their existing rights, it would not be reasonable to exclude from the scope of this section cases of existing rights, which are sought to be implemented by individual workmen. In other words, though in determining the scope of Section 33C we must take care not to exclude cases which legitimately fall within its purview, we must also in mind that cases which fall u/s 10(1) of the Act for instance, cannot be brought within the scope of Section 33C".

9. It was observed in *U.P. Electric Supply Co. Ltd. v. R.K. Shukla* 1969 IX LLJ 728 as follows:

"The legislative intention disclosed by Sections 33C(1) and 33C(2) of the

Industrial Disputes Act, 1947 (which are substantially in the same terms as sub-sections (1) and (2) of Section 6 H.U.P. Industrial Disputes Act) is fairly clear. u/s 33C(1) where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A the workman himself, or any other person authorised by him in writing in that behalf, may make an application to the appropriate Government to recover the money due to him. Where the workman entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money, applies in that behalf, the Labour Court may u/s 33C(2) decide the questions arising as to the amount of money due or as to the amount at which such benefit shall be computed. Section 33C(2) is wider than Section 33C(1). Matters which do not fall within the terms of Section 33C(1) may, if the workman is shown to be entitled to receive the benefits, fall within the terms of Section 33C(2). If the liability arises from an award, settlement or under the provisions of Chapter V-A, or by virtue of a statute or a scheme made thereunder, mere denial by the employer may not be sufficient to negative the claim u/s 33C(2) before the Labour Court, Where, however, the right to retrenchment compensation which is the foundation of the claim is itself a matter which is exclusively within the competence of the Industrial Tribunal to be adjudicated upon a reference, it would be straining the language of Section 33C(2) to hold that the question whether there has been retrenchment may be decided by the Labour Court. The power of the Labour Court is to compute the compensations claimed to be payable to the workmen on the footing that there has been retrenchment of the workmen. Where retrenchment is conceded, and the only matter in dispute is that by virtue of Section 25FF no liability to pay compensation has arisen the Labour Court will be competent to decide the question. In such a case the question is one of computation and not a determination, of the conditions precedent to the accrual of liability. Where, however, the dispute is whether workmen have been retrenched and computation of the amount is subsidiary or incidental, the Labour Court will have no authority to trespass upon the powers of the Tribunal with which it is statutorily invested".

10. The principles discernible from the judgments cited above are : (i) where a dispute is squarely covered by Section 10 of the Industrial Disputes Act, that cannot be determined by the Labour Court while exercising the powers u/s 33C(2) which are in the nature of execution proceedings, though the Labour Court is competent to interpret the award or the settlement in order to execute the same; (ii) if the liability arises from an award, settlement or under the provisions of Chapter V-A or by virtue of a statute or scheme made thereunder, mere denial by the employer may not be sufficient to negative the claim u/s 33C(2) before the Labour Court; (iii) where the right which is the foundation of the claim is itself in dispute which is exclusively within the competence of the Industrial Tribunal to adjudicate upon, it would be outside the purview of Section 33C(2) to determine the question by the Labour Court. u/s 33C the power to the Labour Court is to compute the compensation claimed to be payable to the

workmen; and (iv) where the questions raised are identical or referable to the interpretation of the settlement, award etc., the Labour Court will be within its jurisdiction to determine the same in order to compute the compensation payable in terms of Section 33C(2) of the Act.

11. The observation made in Goverdhan Prasad's case (supra) were to the effect that "It is admitted that the Delhi based workmen of the Company are governed by the dearness allowance formula as per the award in Reference I.D. No. 88 of 1973.

The ten workmen who moved the Labour Court u/s 33C(2) stated that for all practical purposes they are under the general superintendence and control of the Delhi Branch and therefore, the expression to Reference I.D. No. 88/73 "including general staff (employed in Delhi Branch)" would comprehend the workman employed by the Company and stationed at Ghaziabad. A mere common sense view would dictate that the claim made is unassailable and unquestionable. It is not a case of fresh demand made by the workmen. The question raised was one of interpretation of award to determine its coverage when computing monetary benefit admissible to workmen. Section 33C(2) provides that "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. What the workmen contended before the Labour Court was that the dearness allowance paid to them is not according to the award by which they are governed as being included in the expression "staff employed in Delhi Branch".

12. It was further observed that the dear-ness allowance having not been paid in accordance with the award, the workmen were quite legitimate in preferring a petition u/s 33C(2) and there was no question of any fresh demand and seeking adjudication thereof. That is not the case here. In this case, admittedly the question for determination is the status of the claimants determined by the University. It is in dispute whether the University could determine the status of the Compositors and equate them with the Junior Compositors in the absence of determination of their status at the time of the settlement. There can be no gainsaying that the dispute raised is squarely covered by Section 10 of the Industrial Disputes Act.

13. So far as Market Committee's case (supra) is concerned, the question for determination before the Court was whether the Labour Court could decide the disputed questions of relationship of employer and workmen between the parties the answer to the question that the Labour Court could determine the status of the applicant whether he is entitled to the benefit can be decided u/s 33C(2) of the Act, was given on its own facts. The status could be determined when such a determination was incidental and referable to the award or settlement etc. which

is not the case here.

14. In view of the observations made above, no error can be pointed out in the view taken by the learned single judge and we affirm the same.

15. The appeal is dismissed, with no order as to costs.