

(1963) 08 BOM CK 0004

In the Bombay High Court

Case No : Special Civil Application No. 1116 of 1963

Iypunny C.K.

APPELLANT

Vs

Madhusudan Mills and Another

RESPONDENT

Date of Decision : 12-08-1963

Acts Referred:

Industrial Disputes Act, 1947 — Section 20, 31, 33(1), 33C, 33C(1)

Citation : (1963) 08 BOM CK 0004

Hon'ble Judges : R.M. Kantawala, J;D.V. Patel, J

Bench : Division Bench

Advocate : A.V. Ghate, for the Appellant; B. Narayanaswami, for the Respondent

Judgement

Patel, J.—The petition arises out of an application under S. 33C(2) of the Industrial Disputes Act, 1947, by the petitioner to the labour court, Bombay. The petitioner was employed as a comprise on a monthly salary of Rs. 200 and other allowances. He served for about eleven years and resigned on 6 December, 1961 on medical grounds. His resignation was accepted and all his dues except gratuity were paid. He made this application alleging that as per the Cotton Textile Industry award he was entitled to be paid gratuity and requested the labour court to compute the amount of the gratuity payable to him. The labour court declined jurisdiction and hence this petition.

2. The contention of respondent 1 was that as the award was made under the Bombay Industrial Relations Act, 1946, and not under the Industrial Disputes Act, S. 33C(2) had no application. This argument was founded on the basic contention that the subject-matters of Ss. 33C(1) and 33C(2) were the same, i.e., both applied to cases of award, settlement or rights available under Chap. V-A of the Act.

3. Sri Narayanaswami contended in the first instance that under S. 33C(2) the money benefit could be computed only when such right is claimed under an award or settlement under the Act or by reason of the provisions of Chap. V-A of

the Act, i.e., in other words, the section is applicable only to cases falling within S. 33(1). He relies on Management of the Lakshmi Mills Co. Ltd. Vs. Presiding Officer, Labour Court, Coimbatore and Another, . This Court in Shree Amarsinhji Mills Ltd. Vs. Nagrashna (M.N.) and Others, held that

"..... there is nothing in the language of Sub-section (1) which in any manner controls or affects the ambit and operation of Sub-section (2)";

4. and the words "any benefit" were construed to include a claim for compensation by a workmen who is laid off. In Abdul Raheman D. Lambe Vs. Kulkarni R.N. and Another, , sitting with my brother Chandrachud, J., I said while comparing Ss. 33C and 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950, :

"..... Sub-section (2) [of S. 33C] enables a person to make an application for determining the money value of any right to which he is entitled to under the Act, and on such determination it becomes enforceable in the manner provided under Sub-section (1)."

5. The use of the words "under the Act" are unfortunate as it must be admitted that we were dealing with the case of an employee who claimed a right only under the Act and the question whether an application could be made under this sub-section for relief in respect of any other right was not considered by us. The words have crept in inadvertently and were not intended to lay down any limitation to the jurisdiction of the labour court under S. 33C(2) of the Act.

6. In Civil Appeals Nos. 823 to 826 of 1962 decided on 19 April, 1963 [The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., the Supreme Court had occasion to consider the section. The claimants claimed Rs. 10 per month as special allowance for operating the adding machine under the Sastri award. It was contended that under S. 33C(2) of the Industrial Disputes Act only non-monetary benefits could be claimed and not a claim such as the one in the case. This contention was negatived. It was said :

"In our opinion, on a fair and reasonable construction of Sub-Section (2) it is clear that if a workman's right to receive the benefit is disputed, that may have to be determined by the labour court thus our conclusion is that the scope of S. 33C(2) is wider than S. 33C(1) and cannot be wholly assimilated with it, though for obvious reasons we do not propose to decide or indicate what additional cases would fall under S.33C(2) which may not fall under S. 33C(1). In this connexion, we may incidentally state that the observations made by this Court in the case of Punjab National Bank Limited Vs. K. L. Kharbanda, , that S. 33C is a provision in the nature of execution should not be interpreted to mean that the scope of S. 33C(2) is exactly the same as S. 33C(1)."

7. In Management of the Lakshmi Mills Co. Ltd. Vs. Presiding Officer, Labour Court, Coimbatore and Another, the reasoning is that

"..... In respect of claims of money or benefit computable in terms of money

which fall outside the purview of an award, settlement or the provisions of Chap. V-A of the Industrial Disputes Act, there are remedies provided for the workmen under the provisions of the appropriate and related enactments, like the Payment of Wages Act, 1936, the Workmen's Compensation Act, 1923, and the Minimum Wages Act, 1948."

8. The learned Judge observed that

"the Act should be construed in such a way as not to lead to the overlapping or trenching upon the special jurisdiction under the particular related legislations."

9. With respect it is not appreciated that those three Acts are intended to be of general application to all workmen many of whom may not be governed by the Industrial Disputes Act and more over quite a few matters appropriately do not fall within the purview of those Acts since the jurisdiction of the authority under those Act is limited. Justice Sri Rajagopala Ayyangar of the same Court in the case of *Railway Employees' Co-operative Bank, Ltd. v. Labour Court* 1960 I L.L.J. 345, held that the section applies to computation of money value of benefit available to a workmen not only under an award or settlement under the Act or under Chap. V-A but to that available under a contract or by reason of any other statute. In view of the decision of the Supreme Court referred to above, the decision in *Management of the Lakshmi Mills Co. Ltd. Vs. Presiding Officer, Labour Court, Coimbatore and Another*, cannot be regarded as good law.

10. It is ten contended that in any case as the Bombay Industrial Relations Act, 1946, contains provisions for enforcing an award made under its provisions the remedy under S. 33C(2) is not available. In any case S. 31 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, which added Ss. 33C(1) and 33C(2) restricted its application.

11. It is admitted by the petitioner that the right is claimed under an award made under the Bombay Industrial Relations Act. Though all disputes under that Act must be settled with the aid of representative union, it is admitted by Sri Ghate that under Ss. 46(2)(iii) and 46(5) read with S. 3(15) non-implementation of any part of the award even in respect of a single individual is deemed to be an illegal change and is capable of being brought before the labour court established under that Act by the individual concerned. This can be done under S. 79(3). There is, therefore, a remedy provided with a limitation that the application must be made within three months of the concerned employee having last approached the employer under the proviso to Sub-section (4) of S. 42.

12. However, the remedy does not appear to be adequate. In the Bombay Industrial Relations Act an application can be made to the labour court in respect of an illegal change. The industrial court under S. 80 has to make enquiry as provided by the rules made under S. 85. The rules made under S. 85 merely provide the procedure for the conduct of such enquiry. Under S. 80D the labour court has to record its decision and the grounds on which it is based. Under S. 47 of the Act (Bombay Industrial Relations Act) the employer has to carry out the

change or withdraw the change within the time prescribed in the decision of the labour court or if no such time is prescribed, within 48 hours. If this is not done, then the employer is liable to penalty as prescribed by S. 106 and under Sub-section (3) the Court is given discretion to award compensation to the employee concerned. It is apparent that the employee does not have adequate remedy for computation of the benefit to which he is entitled under this Act, and a direction for payment.

13. Section 33C was added to the Industrial Disputes Act, 1947, in 1956 and the intention was to provide a speedy remedy to employees for the realization of their rights. Ordinarily, looking to the purpose and the nature of the provisions, in the absence of anything else, one cannot see any reason to restrict its operation to only such settlements or awards as have been made under the Act. It is true that S. 33C(1) has very limited application. But words similar to those used S. 33C(1) which limit its application have not been used in S. 33C(2). For this reason it has consistently been held that S. 33C(2) has wider application. In view of the wider amplitude of S. 33C(2) it would be legitimate to say that an employee is entitled to claim relief under that section in respect of a benefit under a contract or any standing order, etc., and if these are included within its ambit, there is no reason why a benefit under an award made under the Bombay Industrial Relations Act should not be within it. There being no restrictive words and the language being wide enough, there is no difficulty in regarding the remedy under S. 33C(2) as an alternative remedy to the one that may have been provided by the statute under which the award is rendered.

14. Sri Narayanaswami, lays emphasis on the absence of the words "without prejudice to any other mode of recovery" found in Sub-section (1) and contends that this shows that it was intended by the legislature to be exclusive remedy in the sense that if there is any other method of getting relief this sub-section cannot be resorted to. There are two answers to this contention. Firstly, this sub-section is really not a mode of recovery. It enables the labour court merely to determine the money value of the benefit only and, when determined, the amount has to be recovered by resort to Sub-section (1). It may, therefore, that the legislature may not have used similar words to indicate that this remedy was available without prejudice to any other remedy; secondly, it may be that the said words in Sub-section (1) have been said *ex major cautela*. Their mere absence, therefore, cannot be regarded as negating the availability of the remedy under the section merely because the right can be enforced under any other Act. It is possible that in a given case a benefit given by an award or settlement under this Act is capable of being realized under the Payment of Wages Act and yet an application could be made under Sub-section (2). It could not in such a case be argued that such an application cannot lie. It seems to us, therefore, that the absence of these words is not enough for limiting the meaning of the section in the manner suggested.

15. Coming to S. 31 of the amending Act of 1956, it reads as follows :

"(1) If, immediately before the commencement of this Act, there is in force in any State any Provincial Act or State Act relating to the settlement or adjudication of disputes, the operation of such an Act in that State in relation to matters covered by that Act shall not be affected by the Industrial Disputes Act, 1947 (14 of 1947), as amended by this Act."

16. The word "affect" is not a word of art and carries several meanings. The words "shall not affect the operation of" do indicate that the legislature intended that the Central Act should not in any manner trench upon the provisions of the State Acts. The question is whether the procedure of S. 33C(2) for working out the rights of the employee under an award made under the Industrial Relations Act affects the operation of the State Act.

17. In our view, the provisions of S. 33C(2) of the Industrial Disputes Act do not in any manner encroach upon the Bombay Industrial Relations Act. Both the provisions can exist side by side without affecting the other. The word "affect" sometimes is construed to mean "validate or invalidate" (See Stroud's Judicial Dictionary, Vol. 1, p. 82). In the context in which the words "affect the operation of the State Act" are used, they must only mean this that if there is a conflict between the two Acts the State Act is to prevail. This provision may have been deemed necessary because the subject of legislation being in the Concurrent List it may have been thought that the Central Act would supersede the State Act in view of the proviso to Art. 254(2) of the Constitution. By this section the Parliament expressly saved the State legislation. But if the provisions of the Central Act can operate without impairing those of the State Act, then there can be no reason to restrict the operation of the Central Act.

18. It is argued that to hold that the remedy under S. 33C(2) is additional or supplementary to the one under the State Act (Bombay Industrial Relations Act) would enable a party after he has lost in one Court to take resort to another Court. We do not think that the contention is justified. Even though S. 11 of the CPC cannot apply as the proceedings are not in civil Courts, the principles analogous to res judicata have been applied to proceedings under these Acts on grounds of public policy in the general interest of finality of decision-see D.P. Dunderdele and Others Vs. G.P. Mukherjee and Another, ; Mckenzie and Co. Ltd. Vs. Its Workmen and Others, ; Trichy-Srirangam Transport Company (Private), Ltd. Vs. Industrial Tribunal and Others, ; India General Navigation and Railway Co. Ltd., Calcutta and Another Vs. Their Workmen and Another, ; Walford Transport, Ltd., v. First Industrial Tribunal 1961 II L.L.J. 25. If, therefore, an application is made under either of the Acts and fails on merits, a similar application would be barred. The suggested reason for the limited construction of this section must, therefore, fail.

19. On the whole, therefore, it seems to us that the better view is that the remedy under S. 33C(2) is in addition to such as exists under the State Act or any other law.

20. In the result, we set aside the order of the labour court and direct it to dispose of the matter in accordance with law.

21. The petitioner will get his costs of this application.