

(1993) 02 BOM CK 0059
In the Bombay High Court
Case No : Writ Petition No. 632 of 1989

Jagannath Bhagwandas Shrivastav and Others

APPELLANT

Vs

Harish Thadani and Another

RESPONDENT

Date of Decision : 12-02-1993

Acts Referred:

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

Citation : (1993) 3 BomCR 39 : (1994) 68 FLR 540 : (1994) 1 LLJ 15

Hon'ble Judges : B.P. Saraf, J

Bench : Single Bench

Judgement

B.P. Saraf, J.—This writ petition has been filed by the three petitioners, whose application before the Labour Court u/s 33-C(2) of the Industrial Disputes Act, 1947 ("the Act") for recovery of a sum of Rs. 8,400/- each, by way of notice salary, retrenchment compensation and bonus for three years and leave with pay for 14 days was rejected by that Court on account of the existence of a dispute as to whether the petitioners were the employees of the employer concerned or not.

2. The facts, briefly stated, are as follows :

"The petitioners claimed that they were working with the respondent No. 1 Evergreen Trades and Agencies (Exports) as Ironers since March 18, 1980 and their services were terminated on account of closure of the factory due to fire with effect from March 145, 1983. According to the petitioners, they approached the respondent No. 1 for the legal dues amounting to Rs. 8,400/- each on account of notice salary, retrenchment compensation, bonus, leave wages etc. As the same was not paid, the petitioners approached the Labour Court u/s 33-C(2) of the Act for recovery of the same. The respondent No. 1, on getting the copy of the complaint, filed a written statement wherein it was categorically stated that the petitioners were never employed by it in its employment and as such, question of payment of any amount as alleged did not arise. Respondent No. 1, therefore, prayed that the applications u/s 33-C(2) should be rejected on the

count itself.

3. The Labour Court considered the controversy in regard to the maintainability of the claim of the petitioners. It found that there was a dispute regarding the very fact of the petitioners being employees of the respondent No. 1. That being so, no claim can be entertained u/s 33-C(2) of the Act until the question whether they were the employees of the respondent No. 1 was decided in their favour by the Competent Court in a proper proceedings. In that view of the matter, the Labour Court dismissed the applications of all the three petitioners.

4. Aggrieved by the action of the Labour Court, the petitioners have approached this Court by filing this petition. According to the counsel for the petitioners, Labour Court was not justified in dismissing the applications without making an enquiry into the claim of the petitioners that they were the employees of the respondent No. 1. Reliance is placed in this connection on the decisions of this Court in *Furnishers and Decorators, Bombay v. D. P. Mistri* 1988 (1) LLN 495 and *Bombay Dyeing and Mfg. Co. Ltd. and others Vs. Aditya Narayan Shyam Charan Upadhyay and Others*, and the decision of the Andhra Pradesh High Court in *Desai Brothers Ltd. v. Smt. Laxmibai Peddmolla* 1988 (2) LLN. 186. The counsel for the petitioners also placed reliance on a post-card in support of his contention that the petitioners were in employment of the respondent No. 1.

5. I have carefully considered the submissions of the learned counsel. I find that the facts of the two decisions of this Court referred to above are quite different and they have no application to the controversy in this case. Section 33-C(2) deals with recovery of money due from "employer". Sub-section (2) thereof, which is relevant for the present purpose, provides :

"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".

It is clear from the scheme of the Section 33-C and language of sub-section (2) thereof that the only limited question that a Labour Court can decide under this sub-section is "the amount on which any benefit should be computed", provided, however, that the workman "is entitled to receive from the employer any money or any benefit". This section postulates the existence of relationship of an employer and workman and the entitlement of a that can be decided by the Labour Court under this section is in a very narrow compass, that money that may be due. Where the very foundation is absent, the remedy provided to a workman under the sub-section cannot be availed of. The power of the Court in processing u/s 33-C(2) of the Act, as observed by Supreme Court in *The Central Inland Water Transport Corporation Ltd. Vs. Their Workmen*, , is in the nature of an execution proceeding, and, therefore, when a claim is made before a Labour

Court u/s 33-C(2), that Court must clearly understand the limitations under which it is to function. It cannot arrogate to itself power to make adjudication in the nature of determination which some other authority or Court is competent to do. Thus, where there is a controversy in regard to very fact whether the person concerned was in employment or not, the question of computing the reliefs will not arise.

6. Similar view has been taken by the Andhra Pradesh High in *Desai Brothers Ltd. v. Smt. Laxmibai Peddmolla* 1988(2) LLN 186. Here also it was reiterated that Section 33-C(2) of the Act should be on those lines. When an objection is raised by the management that the applicants are not their workmen, the Labour Court has to make an enquiry to that limited extent, but if it becomes disputed question then it cannot entertain an application u/s 33-C(2) of the Act. Even if some genuine doubt arises about the relationship, then the only course left for the Labour Court is to direct the union or the workman to raise a dispute under the Industrial Disputes Act, 1947.

7. The Counsel for the petitioners laid stress on the observations in the above judgment of the Andhra Pradesh High Court to the effect that, to arrive at a conclusion in respect of that, to arrive at a conclusion in respect of maintainability of applications filed u/s 33-C(2), some reasonable enquiry is necessary. In that connection, the petitioners relied on the post-card which is dated November 23, 1988 written by one G. P. Advani to the second petitioner wherein it was stated as follows :

This is to inform you that M/s. Evergreen Trades and Agencies (Export) is starting from November 26, 1981. With its new assignment, if interested, report to the factory at 9.00 a.m. on November 26, 1981".

On the back of this post-card, the stamp of the respondent No. 1 firm is affixed. I have carefully considered this post card and contents thereof. In my opinion, this post card can in no way help the petitioners for more than one reasons. First, simply because the post card of a particular person is used by somebody, it does not become a letter written by that person or firm. Second, this letter on the face of it purports to be a personal communication from one C. P. Advani to the second petitioner. It does not even purport to be on behalf of the employer. Even on facts, this communication informing the petitioner that the business of the respondent No. 1 was going to start from November 26, 1981 and if he has interest, he could report at the factory on that day rather goes counter to the statement of the petitioners that they were in the employment of the respondent No. 1 ever since March 18, 1980 till the closure of the factory on account of fire on March 14, 1983. If any credence can be given to this post card, then also the inevitable conclusion will be that the statement of the petitioners that they were in employment of the respondent No. 1 continuously for a period of 3 years from March 18, 1980 to March 14, 1983 for which period they had claimed retrenchment compensation, bonus, leave with wages etc., is false. In that view of the matter also, there is no merit in the contentions of the petitioners that the

Labour Court ought to have examined their claim in regard to the employment.

8. In any view of the matter, I find that except the statement of the three petitioners they were in employment and the post card (Exhibit 1B") which rather contradicts their own statement, there is nothing on record prima facie to satisfy the Labour Court to embark on an enquiry as to the correctness of the statement of the respondent No. 1 that the petitioners were not its employees. The Labour Court, in my opinion, acted absolutely within the parameters of the powers conferred on it u/s 33-C(2) of the Act in rejecting the applications of the petitioners on the ground that the question of examining the alleged claim u/s 33-C(2) of the Act in rejecting the applications of the petitioners on the ground that the question of examining the alleged claim u/s 33-C(2) of the Act in rejecting the applications of the petitioners on the ground that the question of examining the alleged claim u/s 33-C(2) could not arise unless and until the question whether they were employees of the respondent No. 1 is decided, in their favour by a competent Court in a proper proceeding.

9. In view of the forgoing discussions, I do not find any merit in this writ petition and the same is, therefore, dismissed. I make no order as to costs.