

(1977) 07 PAT CK 0019

In the Patna High Court

Jharia Fire Bricks and Pottery Works (Pvt.) Ltd.

APPELLANT

Vs

Bhirgonath Sharma and Another

RESPONDENT

Date of Decision : 21-07-1977

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 33C

Succession Act, 1925 — Section 306

Citation : (1977) 2 LLJ 306

Hon'ble Judges : Uday Sinha, J;R.P. Sinha, J

Bench : Division Bench

Judgement

Uday Sinha, J.—This is an application under Articles 226 and 227 of the Constitution of India by the petitioner (hereinafter called "the company") for quashing the order of the Presiding Officer, Labour Court, Bokaro steel City, dated 10.10.1975 (Annexure. 4) whereby the company was directed to pay Rupees 19, 487.54 to respondent No 1. The present application-arises in the following circumstances:

2. One Harinandan Sharma, father of respondent No. 1 was a workman in the factory of the company. He was taken ill of consumption in 1956 and continued to be afflicted of the malady for considerable length of time. His period of absence was reckoned as on leave till 6.1.1960 by the company. As the workman was unable to join his duties even thereafter, his services were terminated by the company. That led to an industrial dispute. The matter relating to the termination of the employment of Harinandan Sharma was subject-matter of Reference No. 3 of 1963. The reference u/s 10(c) of the Industrial Disputes Act (hereinafter referred to as "the Act") came to a conclusion on 1.8.1963 by an order of the Labour Court which directed reinstatement of Harinandan Sharma with consequential benefits. The company, however, did not take it lying down. A writ application was filed by the company before this Court for quashing the order of the Labour Court which came up for consideration in M.J.C. No. 813 of 1963. The writ application filed by the company was dismissed, by a Bench of this Court on

25.2.1966, reported in The Management of Jharia Fire-bricks and Pottery Works (Private) Ltd. Vs. The Presiding Officer, Labour Court, Chota-nagpur Division and Others, . The company pursued the matter farther. An application was filed before this Court for a certificate of fitness for appeal to the Supreme Court. The application for grant of certificate was also rejected by this Court on 25.8.1967 and was not pursued any further. Although the company was worsened before the judicial Courts and Tribunals, it managed to resist reinstatement of the workman till December, 1967. On 23.12.1967 Harinandan Sharma never reported for duty and, therefore, the company could not reinstate him. This tuition has been contested by respondent No. 1 Harinandan Sharma having failed in his efforts to enjoy the fruits awarded to him by the Labour Court, respondent No. 1 his son filed an application before the Labour Court u/s 33C(2) of the Act. The application was contested by the company. The matter dragged on for several years and was ultimately brought to a conclusion by an ex parte order dated 10.10.1975 whereby the Labour Court held that a sum of Rs. 19,487.54 was due to the respondent against the Management. The company being aggrieved by the order of the Labour Court has, therefore, filed the present application.

3. Two points have been urged in sup port of the rule issued in this case. The points urged were as follows:

- (i) The Labour Court had no jurisdiction to decide the turn payable to respondent No. 1 because he was only the son of the workman and not the workman himself.
- (ii) The claim of respondent No. 1 being only for Rs. 16,451.49, the Labor Court had no jurisdiction to order payment of Rs. 19,487.54.

4. The really serious question for consideration in the present application is the first submission. The contention. That the respondent being an heir of the deceased workman should have applied to the State Government in terms of Section 33C(1) and not to the Labour Court in terms of Section 33C(2) of the Act According to Mr. Rajgarhia, the Labour Court had no jurisdiction to grant the relief, which it did by Annexure 4 Sections 33C(1) and 33C(2) of the Act ate in the following terms:

33C. Recovery of money due from an employer?(1) Where any money in 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 this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of laud revenue:

Provided that every, such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(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.

It has been contended that whereas assignee or heirs of a workman may make an application to the appropriate Government for the recovery of the money due to the workman, but they have not been even given the liberty to move the Labour Court in terms of Sub-section (8) of Section 33C of the Act.

5. There can be no doubt that an element of ambiguity exists in regards to the true ambit of Sub-sections (1) and (2) of Section 33C of the Act. On first view the submission urged on behalf of the petitioner that the Labour Court cannot entertain applications by heirs or assignees appears attractive, but a deeper probe shows that the respondent cannot be defeated on the ground urged on behalf of the petitioner. Section 33C of the Act was amended in 1964 by Section 23 of the Industrial Disputes (Amendment) Act, 1964 (Act 3 of 1964). Prior to the amendment Section 33C of the Act read as follows:

Section 33C Recovery of money due from an employer.?(i) 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 may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him. and if the appropriate Government is satisfied that any money is to be due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

(2) Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under this Act, be determined by such Labour Court as may be specified in this behalf by the appropriate Government and the amount so determined for in Sub-section (1).

(3) For the purpose of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

An appraisal of Sub-sections (1) and (2) of the Act prior to the amendment leaves no manner of doubt that the distinct features of the two sub-sections veered round the question whether money or the benefits had been quantified or not. It is well-settled that Sub-section (1) of Section 33C of the Act provides for a sort of executing Court. The adjudication of rights has to be done in terms of Sub-section (2) of Section 33C of the Act. Although Section 33C of the Act was amended in 1964, the main thrust of the law has been carried through. It conferred added benefit to workman and created wider ambit for the Labour court. It also clarified that heirs and assignees also had a right to claim the benefits to which they were entitled in their capacity as heirs or assignees. While Sub-section (1) of Section 33C of the Act opens with the words "Where any money is due to a workman" Sub-section (2) opens with the expression "where any workman is entitled". In my view, the expressions "due" and "entitled" are significant. Whereas the word "due" signifies a claim quantified and computed, the expression "entitled" comprehends the right to realise which include the extent of the right and the benefits. In my view, therefore, the distinctive feature in Sub-sections (1) and (2) of Section 33C of the Act lies in the fact whether the money or the benefit claimed by the applicant had been computed or not. If it has been computed already, the application must lie to the appropriate Government in terms of Sub-section (1) of Section 33C of the Act for realisation of the sum due. But if it requires adjudication of the right or computation of money or benefits capable of being computed in terms of money, the application must lie in terms of Section 33C(2) of the Act before a Labour Court. In the instant case, the right of the respondent was indisputable; the quantum alone remained to be determined. In *Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others*, the Supreme Court observed in para. 6 as follows:

6. It is plain from the wording of Sub-section (1) and Sub-section (2) of Section 33C that the former sub-section deals with cases where money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V A, while the latter sub-section deals with cases where a workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money. In the present case applications were filed by the employees against the respondent for computing in terms of money the benefit of holidays and for recovering the amount. This case falls squarely within Sub-Section (2) of Section 33C. There is no award or settlement under which the benefit of holidays had already been computed.

In my view, Sub-section (1) of Section 33C of the Act only creates an executing Court and not the Court for adjudication of rights or computation of benefits where rights have to be adjudicated and benefits computed the application must necessarily be filed before a Labour Court, but where rights have been adjudicated and computed and the only question is of realisation of the money from the Management, the application must be before the appropriate Government, in the present case, the respondent's right was indisputable and,

therefore, he filed an application for computing the money that he was entitled to. The application, therefore, necessarily had to be before the Labour Court in terms of Sub-section (2) of Section 33C of the Act.

6. A similar question came up for consideration before the Bombay High Court in *Sitabai Naruna Pujari Vs. Auto Engineers*, In that case also the question raised was whether widow of a workman could maintain an application u/s 33C(2) of the Act before the Labour Court. In that case the widow of a deceased employee had filed an application before the Labour Court for computing the money and the money value of the benefit to which she was entitled to. Her claim was rejected by the Labour Court on the ground that she was the widow of the workman and not the workman himself and, therefore, her application was not maintainable. In an application for writ before the Bombay High Court the contention of the petitioner to maintain an application u/s 33C(2) of the Act was upheld. It was observed that all civil rights of every kind vested in a deceased person in all cases in that connection except those which are not capable of surviving after his death survived to his heirs. The right to claim benefits accrued to his heirs and, therefore, application, by her or assignee of a deceased workman was entitled to maintain an application under Sub-section (2) of Section 33C of the Act.

7. Learned Counsel for the petitioner relied upon the case of *Yad Ram (Deceased) through his Lrs. Vs. Bir Singh and Another*, in support of the proposition that an application by an heir or assignee of a workman must file an application before the appropriate Government and not before the Labour Court. The decision has taken a view contrary to the Bombay case (*Supra*). Paras, 19 to 24 are relevant in this connection. According to their Lordships of the Delhi High Court the question of right to sue surviving in the heirs was an irrelevant consideration for deciding whether the application had been made in terms of Sub-section (1) or Sub-section (2) of Section 33C of the Act. I have failed to appreciate why the question of survivor of the right to sue is irrelevant. I will prefer to adopt the Bombay view in this regard. In regard to the forum for filing application by an heir or assignee of a deceased workman the Delhi case proceeds upon the footing that the Central Government Industrial Rules referred to three distinct forms for filing applications. Their Lordships observed that in terms of the Rule 62 of the said rules an application by a workman to the appropriate Government in Form K 1; an application by a workman to the appropriate Government in Form K. 2 and an application by an heir or an assignee of a deceased workman in Form K 3. I wonder how far the rights or the forms made thereunder can provide a good guide for determining the ambit of Sections 33C(1) and (2) in regard to forum for filing application. Apart from the fact that the forms prescribed under the Rules are not mandatory but merely directory. The Rules cannot control the provisions of the Act. That would be placing the cart before the horse. If the section does not place any restriction as contemplated by the Rules, I fail to appreciate how they can curtail the right of a workman of his heirs in regard to the forum for filing applications u/s 33C(2) of

the Act. Even if that line of reasoning were to be accepted as providing a valid foundation for the ratio of the Delhi case, it has no relevance to the present case, since this State has not framed any rule or created forums akin to Rule 62 and forms prescribed thereunder of the Central Rules. I would, therefore, prefer to adopt the Bombay view as more sound and one more rightly to advance the benefit and suppress the mischief.

The reasons given by the Delhi High Court based upon the forms prescribed under the Central Rules were considered and rejected in the Bombay case as well while considering the case of the U.P. Electric Supply Co. Ltd. v. Meena Chatterji (1969) 36 F.J.R. 308 (All). With utmost respect to their Lordships of the Delhi High Court, I do not feel persuaded to accept the view propounded by them in Yad Ram's case (supra). In my view, Section 33C(1) of the Act is concerned only with laying down the person or persons who may file an application to the appropriate Government without in anyway limiting the right of a workman or his heirs or assignees to move the Labour Court where right has to be adjudicated and the quantum of money value has to be adjudicated.

8. It will be appreciated that both the subjections open with the expressions "where any money is due to a workman (Sub-section (1))" and "Where any workman is entitled (Sub-section (2))". The law as it stood prior to 1904 clearly indicated that the basic distinction lay in the fact whether rights and money value had been adjudicated or not who was the applicant was not the distinguishing feature. So must it be now. If the adjudication and quantification had to be done the application had to be in terms of Sub-section (2) and where adjudication and quantification had been completed, the application had to be in terms of Sub-section (1) Section 33C of the Act. That essential feature has not been given a go-by after the amendment. I am, therefore, of the view that the application by the respondent before the Labour Court was perfectly in order, since it required quantification of the money value which the workman was entitled to receive. The submission urged in this behalf by learned Counsel for the petitioner is, therefore, without substance and must be rejected.

9. Learned Counsel for the petitioner placed reliance upon National Building Construction Corporation Vs. Pritam Singh Gill and Others, , Management of the Tiruchi-Srirangam Transport Co. Private Ltd. Vs. Labour Court, Madurai and Another, & Employers in Relation to Patherdih Colliery of Patherdih Sudamdih Colliery Private Ltd. Vs. General Secretary, Bihar Koyla Mazdoor Sabha and Others, . The question which falls for consideration in the present case did not arise in those cases and, therefore, they are of no assistance to the petitioner.

10. Learned Counsel for the petitioner also contended that the respondent not having been granted succession certificate in terms of Section 306 of the Indian Succession Act, the Labour Court could not have directed the petitioner to pay him the sum which was due to the deceased workman. I regret, I cannot accept thin submission for the simple reason that Section 306 of the Indian Succession Act places restriction upon Court and not upon a Tribunal like the Labour Court, it

is also contended by learned Counsel for the petitioner that in the absence of any material to show who were the heirs of the deceased workman, the Labour Court could not have passed the impugned order in favour of the respondent. To counteract this submission, the respondent has annexed to his counter-affidavit Annexures B, B/1 and B/2 by his two brothers and mother authorising respondent Bhirgo Nath Sharma to receive the sum due to the deceased workman Harinandan Sharma. These authorisations had been filed before the Labour Court and, therefore, the latter had no difficulty in passing the order in favour of the respondent.

11. learned Counsel for the petitioner also contended that the respondent himself having claimed Rs. 16,451.49 paise, the Labour Court could not have passed an order for payment of Rs. 19,487.54. This submission is fallacious. Respondent in his application u/s 33C(2) of the Act annexed a schedule of money which he was entitled to get. The total amount was shown in the schedule as Rupees 19,487.54. That is the sum granted by the Labour Court. Out of the sum, the respondent deducted Rs. 3,036.05 leaving a balance of Rs 16,451.49. The reduction of Rs 3,036.05 was on an account of the fact. That during the pendency of M.J.C. No. 813 of 1963 disposed of on 25.2.1966 the respondent had received that sum in terms of interim orders passed by the High Court. Thus the claim of the respondent was only rupees sixteen thousand and odd. The order of the Labour Court should have mentioned that figure. However, in view of the fact that the respondent has received part of the claim, the order of the Labour Court must be read as being for Rs. 16,451.49. The error on the part of the Labour court is purely mathematical or clerical and does not vitiate the entire impugned order of the Labour Court.

12. For the reasons stated above, I find no merit in this application and it is accordingly dismissed. Since the petitioner has managed to thwart the award of the Labour Tribunal passed in 1963 it is essential that costs must be awarded to respondent No. 1. The application is, therefore, dismissed with costs, tearing fee Rs. 250 payable to respondent No. 1.

R.P. Sinha, J.

I agree.