

(1990) 03 KL CK 0009
In the High Court Of Kerala
Case No : O.P. No. 8071/90 J

Karunakaran, M.

APPELLANT

Vs

Grassim Industries Ltd. and Another

RESPONDENT

Date of Decision : 21-03-1990

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 62(2)
Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (1990) 03 KL CK 0009

Hon'ble Judges : P.A. Mohammed, J

Bench : Single Bench

Advocate : M. Ramachandran, for the Appellant; C.M. Devan and Antony Dominic and K. Raghu, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P.A. Mohammed, J.—This writ petition has been filed seeking to quash Ext. P-1 order of the Labour Court, Kozhikode in C.P. No. 16/19 dated 13th March 1990. The Petitioner is a Compounder attached to the field hospital of M/s Grassim Industries Limited, Mavoor. The first Respondent is the Personnel Manager of the said company. The Petitioner filed the above petition u/s 33C(2) of the Industrial Disputes Act, 1947 (for "short the Act") claiming the arrears of salary of Rs. 67,171.75 in respect of the period from 13th July 1985 to 31st October 1988. His case is that there was an agreement between the management of the Gwalior Rayons Staff Association on 13th July 1985 by which the management had agreed to pay the salary of the entire members of the staff who are not directly involved in the strike. Though he is entitled to receive the aforesaid salary, it was not disbursed to him inspite of repeated requests. That was the background for approaching this Court by the Petitioner with this writ petition.

2. Section 33C(2) of the Act is ectyped hereunder for elucidating the points at issue:

33 C. Recovery of money due from an employer.-

(1) * * * * * 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 within a period not exceeding three months:

Provided that where the presiding officer of a Labour Court considers it necessary to expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

Under the above provision, the Labour Court is authorised to decide the dispute between the workman and employer if two conditions are fulfilled. Those contentions are (1) The workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and (2) The question arises as to the amount of money due or as to the amount at which such benefit should be computed. When the above question arises, the workman may apply to the Labour Court for determination of the amount due or as the case may be, the amount at which such benefit, should be computed under Rule 62(2) of the Industrial Disputes (Central) Rules, 1957. The fundamental requisite for attracting the provisions contained in Section 33C(2) and Rule 62(2) is that the workman is entitled to receive any money or any benefit which is capable of being computed in terms of money from the employer. Then the Labour Court shall decide the question as to the amount of money due or as to the amount to which such benefit should be computed. In this context the difference between the words "any money" and "amount of money due" as also the words "any benefit which is capable of being computed in terms of money" and "amount at which such benefit should be computed", may be noted. When we say "any money" or "any benefit" it presupposes the existence of a right to "money or benefit". When such right exists, the Labour Court shall quantify "amount of money due" or amount at which such benefit should be computed. In other words, in the absence of a pre-existing right to "any amount" or "any benefit" the Labour Court has no Jurisdiction to entertain a dispute between workman and employer u/s 33C(2) of the Act.

3. The Supreme Court in Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, has considered the nature of the proceeding u/s 33C(2) of the Act. It said:

It is now well-settled that 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.

As observed earlier what is envisaged is there must be a pre-existing right to money or benefit. It would otherwise mean, the question whether the workman is entitled to the money or benefit will not come within the terms of Sub-section (2) of Section 33C. This position is crystalline in view of the decision of the Supreme Court in *Municipal Corporation of Delhi Vs. Ganesh Razak and Another*, . In the said decision the Court observed:

The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workman to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding u/s 33C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power u/s 33C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power u/s 33C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.

4. In view of the above legal premise, the Labour Court is not authorised to decide the question of entitlement of the Petitioner for the arrears of salary claimed in respect of the period from 13th July 1985 to 31st October 1988. Before approaching the Labour Court u/s 33C(2) of the Act, there must be an adjudication or decision by a competent authority on the question of entitlement for the arrears of salary claimed by the Petitioner. In the present proceeding the question canvassed by the Petitioner cannot be entertained since the Labour Court has no jurisdiction to decide such question u/s 33C(2) of the Act.

5. The exposition of the above legal position, will not however, totally obliterate the rights of the Petitioner to claim entitlement for the arrears of salary through any adjudicatory process available under law. Once the right is so established the workman has power to approach the Labour Court u/s 33C(2) of the Act for quantification and recovery of the amount due. Therefore, the Petitioner is free to approach appropriate forum to establish his right to arrears of salary as claimed in the petition. Subject to the above observation this writ petition is dismissed. No order as to costs.