

(1965) 01 AP CK 0001
In the Andhra Pradesh High Court

Katta Lakshmayya

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 12-01-1965

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33C

Citation : (1966) 1 LLJ 813

Hon'ble Judges : Gopalakrishna Nair, J

Bench : Single Bench

Judgement

Gopalakrishna Nair, J.—Petitioner asks for a writ of certiorari to quash the order passed by the labour court, Hyderabad, on 25 September 1963, The petitioner is a workman employed in Singareni Collieries Company, Ltd. (respondent 2). The designation of his post is "munshi" which is one of the posts belonging to grade III as listed in appendix XVI of the All-India Industrial Tribunal Collieries Disputes Act, 1956. He filed an application to the labour court (respondent 1) u/s 33C(2) of the Industrial Disputes Act claiming that from the year 1956 he had been performing the duties and undertaking the responsibilities of a "munshi-in-charge" and that therefore he must be recognized as "munshi-in-charge" and paid the salary on that footing.

2. "A munshi-in-charge," otherwise called "a traffic-in-charge," is one of the grade II posts listed in appendix XVI to the Industrial Tribunal Collieries Disputes award. The claim of the petitioner was that he must be held to belong to a grade II post and not to the grade III post which was given to him by his employer.

3. The petitioner's application before the labour court was resisted by respondent 3 on the ground that he was only a "munshi" belonging to grade III and not a "munshi-in-charge" or "traffic-in-charge" belonging to grade II. They further stated that the petitioner had not been doing the work or shouldering the responsibility of a "munshi-in-charge" at any time and that such work and responsibility were undertaken only by the manager.

4. The other contention, which is more material to the present case, raised by the employer was that the labour court had no jurisdiction u/s 33C(2) to go into the application of the petitioner who, in truth and substance, was asking for a promotion with retrospective effect from grade III to grade II.

5. The labour court held in favour of the employer on the question of the jurisdiction. According to it, the relief asked for could be obtained by the petitioner only by raising an industrial dispute and not by an application u/s 33C(2). It is this order that is now challenged in this writ proceeding.

6. Strong reliance is placed by the learned Counsel for the petitioner on the decision of the Supreme Court in *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, . In that case a clerk claimed special allowance for doing the work of a copyist. That was resisted by the management on the ground that such a claim did not fall within the purview of Section 33C(2). That objection was eventually overruled by the Supreme Court. This decision was considered and distinguished by a Division Bench of the Madras High Court, in two writ appeals in *Natarajan v. Lakshmi Mills Company* 1964 II LL.J. 296 The facts in Writ Appeal No. of 1962 which was one of the two writ appeals disposed of by the judgment in *Natarajan v. Lakshmi Mills Company* 1964 II L.L. J. 296 (vide supra). appear to be quite close to the facts of the instant case. There a person who was designated as clerk of a bank filed an application before the labour court, Madurai, u/s 33C(2) claiming that in spite of his designation as clerk, the nature and character of the work done by him was that of a cashier and that he should therefore be placed in the grade which carried the salary fixed for a cashier under the agreement entered into by the management and the workers in May 1948. The management resisted this claim on the ground that the duties of the cashier were being performed by a member of a firm of managing agents and that the applicant was nothing more than a clerk who was assisting the managing agents in that behalf. They also contended that the relief claimed by the clerk did not fall within the scope of Section 33C(2) and that the labour court had no jurisdiction to grant it. The division Bench held that the remedy of the applicant was by raising an industrial dispute and not by resorting to Section 33C(2). This decision is very strongly relied upon by the learned Counsel for the employer. The learned Counsel for the petitioner has not been able to distinguish this decision or to show that it is erroneous. If the present case were one where a "munshi" claimed that he was also performing the duties of a "munshi-in-charge" and should therefore be paid extra remuneration, he would have come within the purview of the ruling of the Supreme Court in *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, (vide supra) and the labour court would have had jurisdiction u/s 33C(2) to go into the claim and decide it on merits. But what the worker claims is virtually that he must be declared to have occupied a higher grade than what had been assigned to him by the management for a long number of years and that he should during the years be given the higher salary which the higher grade carried. I think this claim does not fall within the ambit of Section 33C(2). It is in effect and substance claiming a promotion to a higher

grade with retrospective effect. A claim like this can effectively and properly be agitated and got adjudicated upon only in an industrial dispute. This is the ratio of the decision of the Division Bench of the Madras High Court already referred to, and I am not shown any ground to disagree with it. The view taken by the Madras High Court is also in conformity with the entries in Schedule III to the Industrial Disputes Act which catalogues the matters which fall within the exclusive jurisdiction of an industrial tribunal. In view of the foregoing I think the impugned order cannot successfully be assailed.

7. The learned Counsel for the petitioner as also the counsel for the employer says that the labour union of which the present petitioner is a member has already sent up a representation to the Government for making a reference regarding the petitioner's complaint to the industrial tribunal u/s 10 of the Act. But the grievance of the learned Counsel is that the Government has not yet taken any action in this matter. This circumstance cannot affect the true scope and interpretation of Section 33C(2) of the Industrial Disputes Act. it is for the labour union to take necessary action to cause the Government to make reference of the dispute to the industrial tribunal at an early date. I do not think there is any ground to apprehend that the Government will arbitrarily decline to take appropriate action in the matter.

8. In view of what I have stated above, this writ petition fails and is dismissed. But I do not make any order as to costs because the management in this case has resisted the petitioner's claim on the technical ground that it is a case for a reference to an industrial tribunal and not one falling u/s 33C(2) Instead of asking for a decision on merits and agreeing to give the workman higher remuneration, if he has really been doing the work relating to a post borne on a higher grade.