

(1991) 10 KL CK 0026

In the High Court Of Kerala

Case No : Original Petition No's. 7764 of 1987-Y and 2042 of 1988-R

K.V. Joseph

APPELLANT

Vs

Pierce Leslie India Ltd. and Others

RESPONDENT

Date of Decision : 10-10-1991

Acts Referred:

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

Citation : (1995) 3 LLJ 391

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Advocate : M.P.R. Nair, for the Appellant; J.B. Koshy, N.N. Mohd. Nazeer, Govt. Pleader and B.S. Krishna, for the Respondent

Final Decision : Dismissed

Judgement

P. Pillay, J.—The petitioners were engaged in works connected with loading and unloading, movement or storage of cargo, etc., in Cochin Port and Dock Area and in connection with the business of the first respondent as clearing and forwarding agents, shipping agents, exporter and merchant. Their contention is that they are entitled to wages of 52 Sundays of each year during the period of their continuous service. The Labour Court dismissed the applications filed by the petitioners holding that the applications u/s 33C(2)(2) of the Industrial Disputes Act, are not maintainable. It also refused to entertain the state claims.

2. Section 33C(2) can be invoked by any workman if he is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money. If any question arises as to the amount of money due or as to the amount at which such benefit should be computed, the Labour Court is empowered to consider it. Right of any workman to approach the Labour Court, if he is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money, is beyond any controversy. But an application under this section must have reference to an existing right referable to an award, settlement, provisions of the Act or a subsisting contract. The

petitioners were unable to relate their claim to any award, settlement or provisions of the Act. Nor they could relate it to a subsisting contract. As the petitioners do not base their claim on any award, settlement or provisions of the Act or contract, their application under the section was ill conceived.

3. Proceedings u/s 33C(2) are akin to execution proceedings. Amount due to the workmen cannot be determined by the Labour Court on an application u/s 33C(2) as the claim is not based on any existing right under an award, settlement, provisions of the Act or subsisting contract. In other words, the petitioners cannot invoke the aid of Section 33C(2) with regard to a claim not based on an existing right. It is useful to refer to *Central Inland Water Transport Corporation Ltd. v. Their Workmen* 1974 II LLN 78, where the Supreme Court held thus in Para 13, at page 84:

"It is well settled that proceedings u/s 33C(2) are in the nature of execution proceedings and, therefore, this does not involve a right of plaintiffs to relief and the corresponding liability of the defendant, i.e. whether the defendant is at all liable or not. These two functions are normally regarded as functions of a suit and not of execution proceedings. To call determination of such points as incidental to execution proceedings will be a perversion. So, when a claim is made before the Labour Court u/s 33C(2) that Court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions—say of an Industrial Tribunal which alone is entitled to make such adjudications. The workmen cannot put forward a claim in an application u/s 33C(2) in respect of a matter not based on an existing right."

4. As the petitioners do not have any existing right, they are not entitled to move the Labour Court u/s 33C(2) of the Act.

5. Even though there is no period of limitation u/s 33C(2), the second respondent was justified in dismissing the state claims of the petitioner. If state claims are allowed, it would lead to undesirable results including financial anarchy and chaos in the industrial field. Unless there is a satisfactory explanation for the delay, the Labour Court is not expected to entertain petitions especially when it would have far-reaching pecuniary consequences on the employers. In the present case, the claims are made after a long lapse of time. Whether a claim has become state or not depends upon facts of each case and hard and fast rule cannot be laid down one way or the other. In *Inder Singh & Sons Ltd. v. Their Workmen* 1961 II LLJ 89, the Supreme Court held:

"On the other hand, it is well-accepted principle of industrial adjudication that over-state claims should not generally be encouraged or allowed, unless there is satisfactory explanation for the delay. Apart from the obvious risk to industrial peace from the entertainment of claims after a long lapse of time, it is necessary also to take into account the unsettling effect this is likely to have on the employer's financial arrangements. Whether a claim has become too state or not will depend on the circumstances of each case. While there is no absolute

proposition of law that in no case relief could be granted for a period prior to the demand, the Industrial Tribunal ought to pay particular attention to the date on which the demand was first made."

6. The rejection of the applications by the second respondent is right and proper.

7. The impugned orders of the second respondent do not warrant interference. The original petitions are dismissed. No costs.