

(2006) 02 MAD CK 0104

In the Madras High Court

Case No : Writ Petition No. 2153 of 1997

Management, Eiko Computers Pvt. Ltd.

APPELLANT

Vs

C.K. Jeyachandran and Another

RESPONDENT

Date of Decision : 01-02-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 33C(2)

Citation : (2006) 110 FLR 1033 : (2006) 2 LLJ 579 : (2006) 1 MLJ 468

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : D.J. Millo, for P. Rathinadurai, N. Premkumar and D. Saravanan, for the Appellant;

Final Decision : Allowed

Judgement

R. Sudhakar, J.—This writ petition has been filed challenging the order passed by the Principal Labour Court, Chennai dated August 19,

1996 in C.P. No. 816 of 1994.

2. The case of the petitioner is that the first respondent was appointed as a senior marketing executive on probation for 6 months on a basic pay of

Rs. 1200 and was later promoted as area co-ordinator (Marketing) from April 7, 1991 and later as assistant manager-marketing from April 1,

1992 on a basic pay of Rs. 1650/-. On September 20, 1993, the first respondent tendered his resignation stating as follows:

As I got a better offer, I hereby submit my resignation from the post of assistant manager marketing. I am ready to serve the notice period of thirty

days and kindly relieve me on October 19, 1993 and settle my dues at the earliest.

However, the first respondent did not attend office after September 20, 1993.

Therefore, on the next day i.e., on September 21, 1993, the resignation of the first respondent was accepted and was relieved of his duty by letter dated September 21, 1993. Thereafter, in November 1994, the first respondent filed C.P. No. 816 of 1994 u/s 33-C(2) of the Industrial Disputes Act, 1947 stating that he is a workman doing clerical work and that he has resigned and that his wages for August and September 1993 together with other benefits were not paid to him in spite of repeated personal requests to the petitioner. Therefore, in the claim petition, a sum of Rs. 33,833 was claimed by the first respondent.

3. The writ petitioner/management filed a counter statement denying the claim of the first respondent. It was contended that since the first respondent was working as an assistant marketing manager, he falls under the managerial category and therefore, he cannot be treated as a workman as contemplated u/s 2(s) of the Industrial Disputes Act. Before the Labour Court, the writ petitioner has denied all the claims made in the claim petition, including the computation of wages, bonus, etc. No notice was served on the writ petitioner before the claim petition was filed. The monetary benefits claimed in the petition were disputed as being illegal, wrong and fabricated with an intention to make wrongful gain against the writ petitioner.

4. The Labour Court proceeded to adjudicate the case based on the oral and documentary evidence available before it, in particular, the evidence of the first respondent and the representative of the writ petitioner and came to conclusion that the first respondent did not have the power to grant leave, operate the bank account, take disciplinary action or participate in board meetings and take policy decisions as per the evidence of the respondent in the claim petition. The Labour Court concluded that though the first respondent was appointed as a senior marketing executive, he did not work as a senior marketing executive. The Labour Court rejected the writ petitioner's contention that the petition u/s 33-C(2) is not maintainable. The Labour Court, therefore, proceeded to determine the amount payable as claimed by the first respondent at Rs. 4000 as wages for the month of August and Rs. 3000 from September 1 to September 21. The Labour Court also proceeded to grant other reliefs claimed in the petition towards earned leave, bonus, and conveyance allowance. In all, a sum of

Rs. 31,133/- has been determined as due and payable to the first respondent and the petitioner was directed to deposit the said amount. As against the order, the writ petition has been filed.

5. The contention of the counsel for the petitioner is that the second respondent/ Labour Court failed to take into consideration that it had no

jurisdiction to entertain the petition u/s 33-C(2) of the Industrial Disputes Act without there being an adjudication of the dispute relating to the first

respondent's claim. According to the learned Counsel, the petition filed u/s 33-C(2) is not maintainable in law and is without jurisdiction. The

counsel for the petitioner would also contend that appointment order of first respondent will show that he does not fall under the definition of

"workmen" as contemplated u/s 2(s) of the Act. Learned Counsel for the petitioner would draw the attention of the Court to the appointment

order dated March 30, 1991, where first respondent has been clearly designated as senior marketing executive (II)(a) grade with basic salary Rs.

1180 together with House Rent Allowance and medical benefits. From April 1, 1991, first respondent's salary was revised and his basic was fixed

at Rs. 1260, H.R.A. at Rs. 375, L.T.A. at Rs. 105, Conveyance at Rs. 540, Telephone at Rs. 165. Once again, on September 5, 1991, the salary

of the first respondent has been revised to Rs. 2060 consolidated. Further, in the petition filed by the first respondent before the Labour Court, he

has claimed a sum of Rs. 4000 as wages for the month of August and a sum of Rs. 3000 for the month of September 1993. Therefore, the counsel

for the petitioner would contend that in terms of the definition u/s 2(s) of the Act, the first respondent cannot claim to be a workmen. In any event,

by nature of his duties and reason of his managerial nature of occupation, he cannot be termed as a workmen.

6. The counsel for the petitioner submitted the following judgments in support of the contention that unless and until the claim of the workmen is

adjudicated as provided under the Act, the application u/s 33-C(2) will not be maintainable. Learned Counsel relied on the following judgments in

support of her case:

State of U.P. and Anr. v. Brijpal Singh 2005 III LLJ 1003 (SC), Union of India v. Babu Lal 1998 I LLJ 787 , Municipal Corporation of Delhi Vs.

Ganesh Razak and Another, , Laxmikant Pranshanker Shukla Vs. Chief Executive,

Lalbhai Group Rural Development Fund, Ahmedabad, ,

Searsole Chemicals Limited Vs. H.C. Shah and Others, .

7. In Union of India v. Babu Lal (supra), it has been held as follows 1998 I LL 787 :

5. It is alleged in these petitions that the Presiding Officers have very limited jurisdiction u/s 33-C(2) of the Industrial Disputes Act. The Presiding

Officers could not have arrogated to themselves the functions of the Industrial Tribunal in a reference u/s 10 by the proceeding to determine the

workmen's right instead of computing the claims under the valid order of the competent authority. It was argued that there has been no

adjudication or recognition of the claims of the workmen, therefore, the Labour Court in these proceedings u/s 33-C(2) of the Act, could not have

decreed their claims.

7. In The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., , the Constitution Bench of the Supreme Court clearly pointed out that the sole

purpose of Section 33-C(2) is the implementation or execution of the award and that the power of the Labour Court in a proceeding u/s 33-C(2)

being akin to that of the Executing Court, the Labour Court would be within its rights to interpret the award or settlement on which a workman

bases his claim u/s 33-C(2) like the power of the Executing Court to interpret the decree for the purpose of execution. To the same effect is the

judgment of the Supreme Court in Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others, . That the right to the benefit which is sought to be

computed u/s 33-C(2) must be one already adjudicated upon or provided for and that, while acting under the provision, the Labour Court cannot

arrogate itself the functions of adjudication of the dispute relating to the claim, was made further clear by the Apex Court in Chief Mining Engineer

East India Coal Co. Ltd. Vs. Rameswar and Others, and Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, .

10. Admittedly, in these petitions the claims of the workmen, who were daily rated/casual workmen, to be paid wages at the same rate as the

regular workers, had not been earlier settled by adjudication or recognised by the employers and the claims were disputed. Since the claims in

these petitions were disputed, therefore, there could be no occasion for computation of the benefit u/s 33-C(2) and consequently the applications

preferred by the workman u/s 33-C(2) of the Act were not maintainable.

8. In *Laxmikant Pranshanker Shukla Vs. Chief Executive, Lalbhai Group Rural Development Fund, Ahmedabad*, :

9...Unless the rights of the parties are crystallised in the form of an award or order, no application u/s 33-C(2) would lie as they are in the nature of

execution proceedings. For that, reliance was placed on decisions of *Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another*, and

Full Bench decision of this Court in *Nizammuddin Suleman v. New Shorrock Spinning and Manufacturing Mills Company Limited, Nadiad* 20

G.L.R. 290. In the above cases, it was held that an application u/s 33-C(2) would lie only after the rights of the parties are crystallised. In the

instant case, an action was taken against the appellant but the said action was not challenged by taking any proceeding and the said action was not

declared illegal or bad in law and directly an application u/s 33-C(2) was filed. Such application was, therefore, not maintainable.

9. In the instant case, the Labour Court has proceeded to adjudicate the petition filed u/s 33-C(2) in spite of the fact that the management has

disputed the fact that the first respondent is not a workman, but a senior marketing executive and would not fall under the definition of Section 2(s)

of the Act. When the petitioner has categorically disputed this fact, the Labour Court ought not to have proceeded to adjudicate the petition u/s

33-C(2) Even as per the claim petition and the letter of appointment, it is clear that the first respondent cannot claim to be a workman as

contemplated u/s 2(s) of the Act. The order of the Labour Court passed u/s 33-C(2) without jurisdiction as no award has been passed in favour of

the first respondent. The rights of the first respondent is not crystallised and therefore, the claim petition u/s 33-C(2) is premature and not

sustainable in law. The writ petitioner has also challenged this issue in the counter filed before the Labour Court, which has been casually rejected.

10. In view of the fact, that the claim petition has been filed u/s 33-C(2) even before adjudication of the issue as to whether the first respondent is a

workman or not and whether by the nature of his appointment, the first respondent will be entitled to claim the right as workman as defined u/s

2(s), the order of the second respondent has to be set aside as without jurisdiction.

11. In the result the order impugned is set aside The writ petition is allowed. No costs.