
(1969) 02 MAD CK 0054
In the Madras High Court

Management of Gillanders Arbuthnot and Company Ltd.

APPELLANT

Vs

D. Ramachandran and Another

RESPONDENT

Date of Decision : 06-02-1969

Acts Referred:

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

Citation : (1969) 82 LW 599 : (1969) 2 MLJ 384

Hon'ble Judges : P. Ramakrishnan, J

Bench : Division Bench

Judgement

P. Ramakrishnan, J.—The petitioner, in this writ petition, under Article 226 of the Constitution is the Management of Messrs. Gillanders Arbuthnot and Company, Limited Madras. The second respondent, the Presiding Officer of the Labour Court, Madras, decided a claim petition filed u/s 33-C (2) of the Industrial Disputes Act by the first respondent, D. Ramachandran, and awarded him gratuity, computed at a certain rate. It is against this order awarding gratuity that the petitioner has filed this Writ Petition.

2. Though notice was given in the writ petition to the first respondent, he has not appeared and the matter was heard and decided ex parte.

3. It is urged by the learned Counsel for the petitioner that for the petitioner-concern, there is, in existence, a gratuity scheme. It provides for the payment of gratuity only in the contingencies of normal retirement at the age of 55 or over if there is an approved extension of service, or discontinuance of service due to death or as a result of physical disablement which permanently incapacitates the worker from further employment. In the case of the first respondent, none of these contingencies arose. What arose on the other hand was a dispute between the worker and the management in the following circumstances. According to the management, the worker was employed as a cooly whose duties also involved the dragging of handcarts. The Commissioner of Police introduced a rule which made it obligatory for pullers of handcarts to obtain a licence, which would also contain within it, a photograph of pass-port size for their identification. When the

management asked Ramachandran to supply them with such photograph, Ramachandran demurred and claimed that his duties did not involve the pulling of handcarts, but that on the other hand he was a packer, That claim was refuted by the management and he was discharged from service for refusing to comply with their demand to produce the photograph. Thereafter, Ramachandran went before the Labour Court with the claim petition u/s 33-C (2) for award of gratuity to him. The management contend that under the provisions of the scheme in force gratuity will not be payable in a case of termination of employment, for the reasons mentioned above. It is also urged by the management as an alternative that in the computation of gratuity the scheme provides only for basic salary being taken into account but not the other allowances, whereas the Labour Court has included the other allowances also.

4. In the award passed by the Labour Court, it has clearly recognised the limitations which the scheme for gratuity, has imposed for the award of gratuity. But the Labour Court was prepared to meet the difficulty, by the observation that " any rule disentitling a worker from claiming gratuity, even though he becomes eligible by reason of the completion of the required period of service cannot be considered to be fair or just ". The Labour Court observed that even in cases of misconduct, the Supreme Court had held that as the gratuity is earned by the employee and has accrued to his credit, his right cannot be forfeited because of any restraint placed in the Scheme. The decision to which the Labour Court referred for this purposes is *The Garment Cleaning Works Vs. Its Workmen*, .

5. After making the above observations, the Labour Court proceeded to consider the circumstances preceding the termination of the worker's service by the management and came to the conclusion that the dismissal of the worker could not be held to be on valid ground. Thereafter the Labour Court held that the worker was entitled to gratuity as a right which had accrued to him.

6. To begin with, it may be stated that the Supreme Court decision in *The Garment Cleaning Works Vs. Its Workmen*, , referred to by the Labour Court as an authority, deals with a case where the propriety of the clauses of a scheme for gratuity came before the Labour Court for specific consideration. It is in that context that the Supreme Court observed that a scheme (as in that case) which provided for payment of gratuity even in cases of dismissal from service for misconduct could not be considered be out of place. But it is pointed out by the learned Counsel for the petitioner that the Labour Court was not called upon in the present case to adjudicate on the merits of the gratuity scheme itself or amplify its scope. For that purpose an independent issue should be raised if necessary, u/s 10(1) of the Act. But it cannot enter into the merits of the Scheme and amplify it when a claim is brought before it on the basis of the existing Scheme, u/s 33-C (2) of the Act. This contention appears to me to be a Valid one. and it has to be accepted.

7. There are certain decisions wherein the Supreme Court has explained the principles which should be borne in mind when a Section 33-C (2) application is

considered by the Labour Court. In *Central Bank of India v. Rajagopalan* (1963) 2 L.L.J. 80, the Supreme Court held that if an employee is dismissed or demoted and it is his case that the dismissal or demotion is wrongful, it would not be open to him to make a claim for the recovery of his salary or wages u/s 33 (C) (2). His demotion or dismissal may give rise to an industrial dispute which may be properly tried. But once it is shown that the employer has dismissed or demoted him, a claim that the dismissal or demotion is unlawful and therefore the employee continues to be the workman of the employer and is entitled to the benefits due to him under a preexisting contract cannot be made u/s 33-C (2). In *State Bank of Bikaner and Jaipur v. Khandelwal* (1968) 1 L.L.J. 589. the Supreme Court at page 592 held that the decisions made it clear that a workman could not put forward a claim in an application u/s 33-C (2) in respect of a matter which was not based on an existing right and which could be properly the subject-matter of an industrial dispute only requiring reference u/s 10 (1) of the Act.

8. What the workman has done in essence in the present case is to get an adjudication from the Labour Court, that the termination of his service by the management was unlawful, and that in that event, he would be entitled to be paid a certain sum of money by way of gratuity. But that is not a claim which will fall within the strict terms of Section 33-C (2) which, as the section itself indicates, assumes the pre-existence of a right to claim a benefit which is capable of being computed in terms of money. Decisions have held that the Labour Court can go into the question whether such a right exists or not, and if it exists, it can thereafter compute its value in terms of money. But it is a different thing when the Labour Court is called upon u/s 33-C (2) to decide the issue whether the dismissal of workman is lawful or not and then proceed to award a certain sum as gratuity, which will be really compensation which he would be entitled to for wrongful dismissal. From this point of view it appears to me that the Labour Court's decision in the present case is without jurisdiction.

9. The other point about the quantum of the gratuity does not arise for consideration in view of the above decision.

10. The Writ Petition is therefore allowed. No order as to costs.