

(1965) 09 KAR CK 0010
In the Karnataka High Court
Case No : Writ Petition No. 2010 of 1963

Mascarenhas (J.H.)

APPELLANT

Vs

Ubban Estate, Sakleshpur and Another

RESPONDENT

Date of Decision : 01-09-1965

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 10 (1), 33 C (2)

Citation : (1967) 1 LLJ 649

Hon'ble Judges : K.S. Hegde, J;C. Honniah, J

Bench : Division Bench

Judgement

Hegde, J.—In this writ petition under Art. 227 of the Constitution, the petitioner contends that the order of respondent 2 in Application No. 74 of 1962 on its file suffers from errors of law apparent on the face of the records and, therefore, we should quash the same.

2. Application No. 74 of 1962 was an application under S. 33C(2) of the Industrial Disputes Act, 1947, to be hereinafter referred to as the Act. The petitioner was an employee under respondent 1. There is dispute between the parties as to his length of service under respondent 1. According to him, he served respondent 1 for a period of 23 years, whereas, according to respondent 1, he was his employee only for a period of about 15 years. This controversy is not very material for the decision of this case.

3. On 24 March, 1958, an agreement was entered into between the Planters' Association and the Estates Staffs' Union of South India. As per that agreement, the age of superannuation of an employee was fixed at 55 years. But in exceptional circumstances, the management "may extend the said age by a single period of two years to 57." The term "retirement" was defined in the agreement as follows :

"Retirement means retirement on reaching the age of superannuation or on discharge from service on medical grounds or resignation after five years of

continuous service."

4. The petitioner reached the age of superannuation on 26 August, 1961. But, the management granted him an extension of service by two years which means that he was to retire on 26 August, 1963. On 28 February, 1962, the visiting manager of respondent 1 served on the petitioner the following notice :

"Telegram : Claims Saklespur. Station : Saklespur O./A. 12 Miles. Coffee Lands and Industries (Mysore), Ltd. (Incorporated in Mysore) Saklespur P.O. Hassan Dist. Date : 28 February, 1962. Ref. : Sri J. H. Mascarenhas, Superintendent, Ubban Estate through : The Group Manager, Bargudi Ubban Group.

Dear Sir,

It has become necessary to review the conditions under which you were given an extension of service past the age of 55.

I now consider, in the light of present-day working difficulties and the labour situation, that we cannot expect a man of 56 to give the active supervision in the field and meticulous attention to office and drying-ground which are now required unless his physique, activity and other factors are quite exceptional,

It is, therefore, with some regret that I am forced to advise you of your necessary retirement by the end of May, 1962, thus giving you three clear months of notice.

We hope to be able to pay you all the normal benefits and deal with your retirement as generously as possible if you on your part realize the pressing need which exists to get younger men into those more active jobs and make an all out drive for economy and efficiency.

Yours faithfully,

(Sd.) -, Visiting Manager.

Copy to :

The Secretary, C.L. & I. (M) Ltd., Pollibetta"

5. In view of this notice, the petitioner's services stood terminated as from 1 June, 1962. Sometime thereafter, the petitioner filed an application before respondent 2 under S. 33C(2) of the Act for computing in terms of money the benefits due to him on the termination of his services. At this stage, it may be mentioned that it was not the case of the petitioner that he had been retrenched from service. His case was that his services were wrongfully terminated and, therefore, he was entitled to the benefits detailed in his petition.

6. In his petition, he claimed the following benefits :

Rs. "(1) Salary for 14 months from July 1962 to August 1963 : Rs. 250 + 68.87

+ 35 = 353.87 x 14 ... 4,954.18 (2) Way expenses : 96 miles at 8 np. Per mile for 2 members : 96 x 2 = 192 x 8 = 1,536 x 2 ... 30.72 (3) Employer's contribution to provident fund : Rs. 25 x 14 ... 350.00 (4) Boots allowance for 1962-63 at Rs. 25 ... 25.00 (5) Firewood allowance for 1962-63 at Rs. 24 ... 24.00 (6) 3 1/2 bushels of imperial gleanings of allowance on coffee at Rs. 38 per bushel : 3 1/2 x 38 ... 133.00 (7) Bonus that will be declared by the company for the years 1961-62 and 1962-63 (accounting years from April to March : (8) Gratuity for retirement for 23 years of service at half month's basic salary : Rs. 250 x 11 1/2. 2,875.00 (9) Provident fund up to date including company's contribution

7. From these details, it is clear that what the petitioner was claiming was not any retrenchment compensation or any benefit which he was entitled to receive from the employer which are capable of being computed in terms of money. In truth, he was claiming damages for the wrongful termination of his services. The petition was resisted on behalf of the management. They contended that the petitioner was not entitled to any of the claims made in items 1 to 7. As regards item 8, the case of the management was that the petitioner had only put in a service of fifteen years under that management and he could claim gratuity for that period only. Coming to item 9, they admitted the petitioner's claim up to 1 June, 1962, i.e., actual date of termination.

8. The labour court came to the conclusion that the petition was not maintainable. Therefore, it did not go into the details of the petition. In arriving at the conclusion, it is true, it considered the scope of the clause relating to superannuation. It is contended on behalf of the petitioner that the interpretation placed by the labour court is not in accordance with law. We do not think it necessary to go into that question as we are of the opinion that the labour court was right in dismissing the petition as not being maintainable. That does not mean that we accept the interpretation placed by the labour court. That question will have to be examined afresh in appropriate proceedings.

9. Now, coming to the maintainability of the petition, as seen earlier, the pith and substance of the grievance of the petitioner was that his services had been wrongly terminated. Can such a question be gone into in an application under S. 33C(2) of the Act ? This question is concluded by the decision of the Supreme Court in *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, . After considering what claims fall within the ambit of that section, Gajendragadkar, J. (as he then was), speaking for the Bench, stated as follows at p. 97 :

". . . We would, however, like to indicate some of the claims which would not fall under S. 33C(2), because they formed the subject-matter of the appeals which have been grouped together for our decision along with the appeals with which we are dealing at present. 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 under S. 33C(2). His demotion or dismissal may give rise to an industrial dispute which may be

appropriately 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 pre-existing contract, cannot be made under S. 33C(2) . . ."

10. From the above passage, it is clear that the legality of a dismissal or a termination of service cannot be the subject-matter of a dispute in an application under S. 33C(2). If that question is put into issue, the proper course for the concerned workman is to either have recourse to S. 10(1) of the Act or to sue for necessary relief in the ordinary Courts of law or to take any other proceedings permissible under law. Quite clearly, S. 33C(2) can give him no assistance.

11. For the reasons mentioned above, we are of the opinion that this petition should be dismissed and we order accordingly. No costs.