
(1966) 11 KAR CK 0011
In the Karnataka High Court
Case No : Writ Petition No. 1824 of 1964

Minerva Mills Ltd.

APPELLANT

Vs

Labour Court, Bangalore and Others

RESPONDENT

Date of Decision : 16-11-1966

Acts Referred:

Industrial Disputes Act, 1947 — Section 25 F (2), 33 C (1), 33 C (2)

Citation : (1967) 15 FLR 385 : (1967) ILR (Kar) 525 : (1967) 2 LLJ 134 :
(1967) 1 MysLJ 112

Hon'ble Judges : B.M. Kalagate, J;A.R. Somnath Ayyar, J

Bench : Division Bench

Judgement

Somnath Ayyar, J.—The petitioner before us is the Minerva Mills, Ltd. We are asked to restrain the labour court, which is respondent 1 before us, by a writ of prohibition from proceeding to make an adjudication under S. 33C(2) of the Industrial Disputes Act on the three applications presented to it by three workmen of the mills who are respondents 2 to 4.

2. It is undisputed that there was a consent award between the mill and the workmen which contains a provision that a workman could be retired on his attaining the age of sixty years. Respondents 2 to 4 alleged that they were retired even before they attained the age of sixty years while the mills asserted that that age had been reached and that the retirement was ordered on the workmen reaching the age of superannuation.

3. In that situation, the jurisdiction of the labour court to proceed to make an adjudication under S. 33C(2) was called in question by the mills. The labour court pronounced against the mills on that matter, and the mills contend in this writ petition that that view taken by the labour court cannot be supported.

4. The submission made by Sri Narasimhamurthi for the mills is that even if it is true as alleged by the workmen that they were retired before they reached the age of superannuation fixed by the consent award. The termination of their

service in that way would amount to a wrongful dismissal which is outside the orbit of S. 33C(2) of the Industrial Disputes Act. So, he contends that the claim for retrenchment compensation made by the workmen under the provisions of that sub-section could not be investigated by the labour court.

5. Sub-sections (1) and (2) of S. 33C read :

"33C. (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chap. V-A, the workman may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

(2) Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under this Act, be determined by such labour court as may be specified in this behalf by the appropriate Government, and the amount so determined may be recovered as provided for in Sub-section (1)."

6. The effect of the pronouncement of the Supreme Court in *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, is that a proceeding under S. 33C(1), for the recovery of any sum of money to which that sub-section refers, has to be preceded by an adjudication under Sub-section (2) of that section. It is that adjudication that produces a claim which could be enforced by the adoption of the procedure prescribed by Sub-section (1).

7. Respondents 2 to 4 contended that they were entitled to retrenchment compensation under S. 25F, and that since that section occurs in Chap. V. A. of the Industrial Disputes Act, the claim falls within Sub-section (1) and that therefore, the labour court had power to make an adjudication on the claim under Sub-section (2). Section 25F which is in Chap. V-A reads :

"25F. No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice :

Provided ...

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months ..."

8. The compensation claimed by the workmen before us was claimed under

Clause (b) of this section. Now the word "retrenchment" occurring in this section is defined by S. 2(oo) which reads :

"2. (oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -

* * * b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or ..."

9. While the mills contend that the retirement of the workmen was properly made on their reaching the age of superannuation, and so their retirement did not amount to retrenchment as provided by Clause (b) of this definition, the workmen contend that their services were terminated even before the age of superannuation was reached. So, it is maintained on behalf of the mills that the controversy between the mills and the workmen, raises, if at all, an industrial dispute and does not produce a claim for retrenchment compensation. It was argued that the order of termination of the workmen purports to be and is ex facie an order of retirement, on the workmen reaching the age of superannuation, and that if the workmen repudiated the truth of the allegation that they had reached the age of superannuation, their claim would be one resting on an allegation of wrongful dismissal or termination and not a claim founded on retrenchment.

10. It seems to us that this is not a case where the workmen could succeed in their contention that they were retrenched, even if their allegation that they had not reached the age of superannuation be true. Retrenchment is a process by which the number of workers is reduced for a permissible reason and does not take within it the retirement of a workman before he reaches the prescribed age of superannuation. Such termination would amount to a wrongful dismissal or wrongful termination producing an industrial dispute for proper adjudication.

11. That was the view taken by the Supreme Court in the case of The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., in which their lordships observed that a demotion or dismissal may give rise to an industrial dispute which may be appropriately tried, but could not form the foundation of a claim for the recovery of money under S. 33C(2) of the Industrial Disputes Act. This is what their lordships observed at p. 97 :

"... 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) ..."

12. We are of the opinion that this enunciation which was not correctly comprehended by the labour court is equally applicable to a case where retrenchment compensation is claimed on the ground that there was wrongful retrenchment before the workman reached the age of superannuation. Such retirement, if true, would amount to wrongful dismissal, and so is not within S. 33C(1).

13. The labour court did not, in our opinion, have the jurisdiction to proceed with the investigation which respondents 2 to 4 wanted it to make. So, we issue a writ of prohibition restraining the labour court from proceeding with the adjudication which it proposes to make.

14. In the circumstances, no costs.