

(2003) 10 KAR CK 0061
In the Karnataka High Court
Case No : Writ Petition No. 36070 of 1998

North West Road Transport Corporation	APPELLANT
Vs	
M.S. Hanchinal, since deceased by L.R. and Another	RESPONDENT

Date of Decision : 21-10-2003

Acts Referred:

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

Citation : (2004) 101 FLR 793 : (2004) ILR (Kar) 1509 : (2004) 2 KCCR 714

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : L. Govindraj, for the Appellant; Ramesh B. Anneppanavar, for R1, for the Respondent

Judgement

N. Kumar, J.—The first respondent- workman was initially appointed as a Conductor in the year 1969-70, according to him, on temporary basis. His services were terminated on the ground of unsuitability. The said order of termination was not challenged by the respondent -workman in a manner known to law. But when the Supreme Court in the case of S. Govindaraju Vs. Karnataka S.R.T.C. and Another, has delivered the judgment on 15.4.1996 holding that the order of termination of a Badali Conductor was in violation of principles of natural justice. Though the respondent had not challenged his termination, the KSRTC appointed the respondent as a Badali Conductor on 27.2.1988 and subsequently he was absorbed as a permanent employee. It is in the year 1994 the respondent made an application u/s 33-C(2) of the Industrial Disputes Act, 1947, claiming a sum of Rs. 1,71,823.21 towards back wages, difference in wages from 11.3.1977 to 31.3.1994 with interest at 18% p.a. His grievance was that though he was appointed in terms of the order of the Supreme Court, the management held that it was not a case of reinstatement, but a case of fresh appointment therefore he has been denied back wages, denied the seniority, denied the continuity of service and the difference in wages. The petitioner - KSRTC contested the said claim contending that the respondent - workman was appointed only as a Badali Conductor and he was removed from service on the

ground of unsatisfactory service. As he was appointed as a Badali Conductor and his name was not included in the list of candidates, before terminating his service he is not entitled to the relief sought for. More over, the respondent never challenged the order of termination and even though he was reinstated he did not claim these benefits after his appointment and only in the year 1994 he has put forth his claim. Therefore, the entire claim of the respondent -workman was denied. It was also contended that as there is no award or settlement under which the amounts are due to the respondent, his application u/s 33-C(2) of the Act itself is not maintainable and therefore they contend that the application is liable to be dismissed. Thereafter an enquiry was conducted, evidence was recorded and on appreciation of both the oral and documentary evidence, the Labour Court has categorically recorded a finding that in the absence of any documentary evidence by either of the parties it is not possible to hold that the applicant was entitled to the benefit of the order of the Supreme Court. More over the respondent has not challenged the order of termination. When the claim of the respondent is denied by the petitioner and admittedly there is no order of settlement, the application u/s 33-C(2) of the Act is not maintainable. After recording the said categorical finding, in the last portion of the order, the Labour Court proceeds on the assumption that the respondent was reinstated in services and though he is not entitled to the benefits particularly from 11.3.1977 to 27.2.1988, the day on which he was reappointed he is entitled to the benefit of difference in wages on such appointment and therefore it has directed the petitioner - Corporation to pay a sum of Rs. 48, 059.43. It is this portion of the order which is challenged by the petitioner in this Writ Petition.

2. Learned Counsel for the petitioner contends that in the absence of an award of settlement in favour of the respondent -workman and when it is contended that the respondent is not entitled to the benefit of the order of the Supreme Court and that he was not reinstated as contended by him, the Labour Court cannot go into the question of nature of appointment, payment of back wages and continuity of service. Therefore, the order passed by the Labour Court awarding a sum of Rs. 48,059.43 is one without jurisdiction and is liable to be quashed. In support of his contention, the learned Counsel for the petitioner relies on the decisions in the case of The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., , in the case of Municipal Corporation of Delhi Vs. Ganesh Razak and Another, , in the case of AIR 1994 552 (SC) and in the case of Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another, and contends that the application filed by the respondent-workman was not maintainable.

3. Per contra, the learned Counsel appearing for the respondent -workman contends that the Labour Court has rightly denied the back wages from the date of termination till the date of reappointment, but awarding of difference in wages by the Labour Court from the date of reappointment till the date of application is fully justified and though it is termed as reappointment, in substance it is nothing but reinstatement. As such he is entitled to the benefit. Once the calculation sheet is filed by the respondent giving details of the workman which

is not disputed by the other side the Labour Court was fully justified in awarding the said amount. Therefore he submits no case for interference by this Court is made out.

4. In so far as the scope of enquiry u/s 33-C(2) of the Act, the law is well settled. The Supreme Court in the case of THE CENTRAL BANK OF INDIA LIMITED v. P.S. RAJAGOPALAN ETC., has held as under:

"Though in determining the scope of Section 33C Industrial Disputes Act, care must be taken not to exclude cases which legitimately fall within its purview, it must also be borne in mind that cases which fall within Section 10(1) of the Act for instance cannot be brought within the scope of Section 33C.

When Sub-section (2) of Section 33-C refers to any workman entitled to receive from the employer any benefit there specified, it does not mean that he must be a workman whose right to receive the said benefit is not disputed by the employer. Section 33-C(2) takes within its purview cases of workman who claimed that the benefit to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers. The claim u/s 33-C(2) clearly postulates that the determination of the question about computing the benefit of terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by Sub-section (2). *Kasturi and Sons (Private) Ltd. Vs. N. Salivateeswaran and Another*, and *Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another*, Ref. to Observations in *Savatram Ramprasad Mills Co. Ltd. Vs. Baliram Ukandaji and Others*, , held obiter and not justified.

For the purpose of making the necessary determination u/s 33-C(2) it would, in appropriate cases be open to the Labour Court to interpret the award or settlement on which the workman's right rests. When the Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing Court to interpret the decree for the purpose of execution. It is, of course, true that the executing Court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court, but like the executing Court, the Labour Court would also be competent to interpret the award of settlement on which a workman bases his claim u/s 33-C(2).

The fact that the legislature introduced Section 33C as well as Section 36A together by the Amending Act, 36 of 1956 cannot be an indication that questions of interpretation fall only within Section 36A and therefore outside Section 33-C(2). The scope of Section 36A is different from the scope of Section 33-C(2), because Section 36A is not concerned with the implementation or execution of the award at all, whereas that is the sole purpose of Section 33-C(2). Whereas

Section 33-C(2) deals with cases of implementation of individual rights of workmen falling under its provisions, Section 36A deals merely with a question of interpretation of the award where a dispute arises in that behalf between the workmen and the employer and the appropriate Government is satisfied that the dispute deserves to be resolved by reference u/s 36A."

5. In the case of MUNICIPAL CORPORATION OF DELHI v. GANESH RAZAK AND ANR. (supra) the Supreme Court has held as under: -

"Where the very basis of the claim or the entitlement of the workman to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding u/s 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power u/s 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation or endorsement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power u/s 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of the execution. The power of the Labour Court u/s 33-C(2) extends to interpretation of the award or settlement on which the workman's right rests.

In the present case the claim of the respondent - workmen who were all daily rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of "equal pay for equal work" being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing Writ Petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in the Writ Petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication ensuring to the benefit of these respondents as well. The Writ Petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. Therefore, the applications made u/s 33-C(2) of the Act by these respondents are not maintainable."

6. Therefore, it is clear that where the very basis of the claim or the entitlement of the workman to a certain benefit is disputed, there being no earlier

adjudication or recognition thereof by the employer the dispute relating to entitlement is not incidental to benefit to the claimant and is therefore clearly outside the scope of proceeding u/s 33-C(2) of the Act. In other words, when the entitlement of the amount is disputed by the employer, the Labour Court cannot for the first time decide entitlement of the amount claimed in a proceeding u/s 33-C(2) of the Act. Only in a case where the entitlement of benefit is recognized by the employer and thereafter for the purpose of implementation or enforcement thereof, if there is any ambiguity and it requires interpretation such interpretation is treated as incidental to the Labour Court's power u/s 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution. It is virtually exercising execution powers in some cases and it is well settled that it is open to the Execution Court to interpret the decree for the purpose of execution. It is, of course, true that the Executing Court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court, but like the Executing Court, the Labour Court also would be competent to interpret the award of settlement on which a workman bases his claim u/s 33-C(2). In fact, we can go one step forward and say that the power of the Labour Court u/s 33-C(2) is even more than that of Executing Court in some cases and it would be akin to the powers of a Court in a final decree proceeding where the terms of preliminary decree are sought to be worked out. But under no circumstances, it cannot be beyond that. If the foundation of the claim is disputed or denied the Labour Court is precluded from holding any enquiry to decide the said right, for the first time in order to give relief to the workman.

7. Applying the aforesaid law to the facts of the case, the applicant contends that after terminating his services on 11.3.1977, though the said order was not challenged by him he was reinstated to the very same post on 27.2.1988 but the consequential benefits such as back wages, difference in pay, continuity of service were not accorded to him. The specific case of the management is that when he was terminated on 11.3.1977 on the ground of unsuitability of the service as the said termination was not challenged, it has become final. He was appointed as a fresh candidate on 27.2.1988 and thereafter he was put on probation and after successful completion of probationary period he was absorbed as permanent employee and whatever monetary benefit that he is entitled to for that post has been paid from 11.3.1977 till 27.2.1988, and it is not reinstatement. Therefore the applicant is not entitled to the benefits on the basis that it is a reinstatement. The Labour Court has categorically recorded a finding that firstly the dispute cannot be gone into in these proceedings. Secondly, it held that it is not a reinstatement. Thereafter it has committed an error in granting the relief by treating fresh appointment as reinstatement and granting the claim of the applicant from the date of his appointment till the date of application u/s 33-C(2) of the Act. As the said amount is not due to the workman under any settlement or any award and when his entitlement to that relief is disputed by the other side and when a categorical finding is recorded by the

Labour Court that he is not entitled to the said relief, while granting the ultimate relief the Labour Court ought not to have granted the relief which it has granted. Therefore it is one without jurisdiction. Hence, I pass the following order:-

Rule is made absolute. The impugned order passed by the Labour Court awarding a sum of Rs. 48,059.43 to the respondent-workman is hereby quashed. Parties to bear their own costs.