

(2015) 03 KL CK 0095

In the High Court Of Kerala

Case No : Writ Petition(C). No. 32750 of 2008 (W)

Sabumon M.C.

APPELLANT

Vs

The Managing Director, Mangalam Publications India (P) Ltd.
and Others

RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

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

Citation : (2015) 2 ILR Ker 789 : (2015) 3 SCT 628

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : C.S. Manilal, for the Appellant; V. Krishna Menon, U.K. Devidas and Prinsun Philip, Advocates for the Respondent

Final Decision : Allowed

Judgement

K. Vinod Chandran, J.—The only issue to be considered in the above writ petition is as to whether the petitioner is a workman under the Industrial Disputes Act, 1947 to invoke Section 33C(2). The petitioner contends that he was an employee of the 1st respondent, who had been so employed between 20.04.1990 and 18.03.2001, on the latter date of which he resigned from the service. The petitioner's employment was one covered under the Bechawath Award and he claimed that the amounts paid were not in accordance with the Bechawath Award, which was accepted by a settlement between the management and the representative unions of the 1st respondent.

2. The Labour Court under Section 33C(2) first considered the issue as to whether the petitioner was a workman entitled to invoke the provisions of Section 33C(2). The Labour Court relied on a Division Bench decision of this Court in Everestee v. District Labour Officer (1999 (2) KLT 560) to find that the petitioner is not a workman. The learned counsel would however contend that a later decision of another Division Bench of this Court in Thomas P.K. Vs. Sahithya Pravarthaka Co-op. Society, would indicate that even retired

employees would come within the ambit of the definition of "workman" for the purpose of invoking Section 33C(2).

3. The latter Division Bench decision also noticed *Everestee*, (supra). *Thomas P.K* (supra), was on the question of whether a retired workman could invoke Section 33C(2). It was found that the definition under Section 2(s) does not fetter the right of a retired workman to invoke Section 33C(2). *Everestee*, (supra), was a case in which the workman had tendered resignation pursuant to a Scheme for voluntary retirement and had gone out of the employment, as per the terms of the Scheme. The specific finding of the Division Bench was that the employee having voluntarily tendered his resignation pursuant to a retirement scheme and the resignation having been accepted by the management he cannot be treated as a workman to invoke the jurisdiction under Section 10 of the Industrial Disputes Act, 1947.

4. The decision in *Everestee*, (supra), was on the question of whether a reference could be made under Section 10 and herein, the question is whether there could be a claim raised under Section 33C(2). The division Bench in *Thomas P.K*, (supra), followed the judgment of the Hon'ble Supreme Court in *National Building Construction Corporation Vs. Pritam Singh Gill and Others*, wherein it was held that Section 33C was designed to suppress the difficulties faced by individual workers in getting relief in respect of their existing rights without having resort to Section 10 of the Act. Therein an employee, who was terminated had approached the Labour Court under section 33C and had sought for computation of benefits in terms of money.

5. The Labour Court relied on *Everestee*, (supra), to hold that as in the case of a voluntarily retired employee, an employee who has resigned from the service of the establishment has by his voluntary action of resignation gone out of the definition of a "workman" under Section 2(s). However, the Labour Court failed to notice that, that was a case in which a voluntarily retired employee had sought for a reference under Section 10. The Division Bench held that, he would not be a workman under Section 2(s) to enable such a reference. This substantially distinguishes the aforesaid case from *Thomas P.K*, (supra).

6. The Hon'ble Supreme Court in *National Building Construction Corporation Vs. Pritam Singh Gill and Others*, holds so in paragraph 7:

"To accept the argument of the appellant, it would always be open an unfair, unsympathetic and unscrupulous employer to terminate the services of his employee in order to deprive him of the benefit conferred by Section 33C and compel him to have resort to the lengthy procedure by way of reference under Section 10 of the Act thereby defeating the very purpose and object of enacting this provision. This in our view, quite clearly brings out the repugnancy visualised in the opening part of Section 2 of the Act and such a position could hardly have been contemplated by the Legislature. In order to remove this repugnancy Section 33C(2) must be so construed as to take within its fold a workman, who

was employed during the period in respect of which he claims relief, even though he is no longer employed at the time of the application. In other words the term "workman" as used in Section 33C(2) includes all persons whose claim, requiring computation under this sub-section, is in respect of an existing right arising from his relationship as an industrial workman with his employer. By adopting this construction alone can we advance the remedy and suppress the mischief in accordance with the purpose and object of inserting Section 33C in the Act." 7. Hence, this Court is of the opinion that Thomas P.K, (supra), which followed the afore cited Supreme Court judgment, would be more apposite in the present case. Retirement, though not a voluntary action, occurs on attaining a certain age. The superannuated employee also receives certain benefits on retirement and there would be nothing wrong in such retired employee approaching the Labour Court under Section 33C(2) for claiming any benefits computable in terms of money, which arose during the period of his employment. The fact that the employee had retired from the service of the company would not take such person out of the definition of "workman" as contemplated under Section 33C is the established position going by the aforesaid decisions.

8. A person who was resigned from the service of an establishment, according to this Court, is in an identical situation. A workman placed in a disadvantageous position, when in employment, would not many a time take cudgels against the management while in employment, for threat of a vindictive action on the part of the management. Having gone out of the service of the management, the said person could definitely claim any benefit computable in terms of money, which he was entitled to during the course of his employment, under Section 33C(2). To avail of the benefits under Section 33C and to invoke such provision, a terminated workman cannot be said to stand on a better footing than a resigned employee. Termination, resignation and retirement would have to be treated similarly insofar as the eligibility to invoke the provision under Section 33C. Whether the workman at the time of resignation had received some amounts in full and final settlement of the claims would be a question of fact, which is to be decided by the Labour Court.

9. The Labour Court in the instant case, by the impugned award, rejected the same on the ground that the resignation of the workman stood against his claim under Section 33C(2) for reason only of his having gone out of the definition of "workman" under Section 2(s) of the Industrial Disputes Act, 1947. The binding precedents as noticed above would indicate that the definition of a workman under Section 2(s) of the Industrial Disputes Act, 1947 would be applicable only in the case of a reference sought under Section 10. The definitions in the Industrial Disputes Act, 1947 are not conclusive insofar as Section 2(s) starts with the caveat "unless there is anything repugnant in the subject or context". The subject under Section 33C is a legally admissible benefit computable in terms of money, and the context is a speedy remedy provided to an individual to claim for it. To say that only a person continuing in employment could seek a reference would be repugnant to the subject and context of Section 33C. Going

by the indentment of Section 33C, a much wider definition has to be imported into the definition of a workman, as specifically contemplated by the legislature.

10. This Court is of the opinion that a resigned employee would also be entitled to invoke the provisions under Section 33C. The impugned order, hence, would stand set aside. The matter shall be remanded to the Labour Court. The parties shall appear before the Labour Court and the matter shall be disposed of within six months from the date of production of the certified copy of the judgment. The matter shall be considered on merits and disposed of in accordance with law.

Writ Petition allowed.