

(1962) 08 BOM CK 0009

In the Bombay High Court

Case No : Special Civil Application No's. 360, 381 and 382 of 1961

Sawatram Ramprasad Mills Company Ltd., Akola

APPELLANT

Vs

Baliram

RESPONDENT

Date of Decision : 25-08-1962

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 16, 2, 25, 25A

Citation : AIR 1963 Bom 189 : (1963) 65 BOMLR 91 : (1963) ILR (Bom) 594 : (1963) 1 LLJ 400

Hon'ble Judges : N.L. Abhyankar, J;D.G. Palekar, J

Bench : Division Bench

Judgement

Abhyankar, J.—The order in this application will also govern Special Civil Applications Nos. 381 and 382 of 1961.

2. The petitioner in Special Civil Application No. 360 of 1961 is Sawatram Ramprasad Mills Company, and the contesting respondent is one of their workers, Baliram. In the other two petitions Nos. 381 and 382 of 1961, the petitioner is Rai Saheb Rekchand Mohota Spinning and Weaving Mills at Hinganghat, and in each the contesting respondent is one of the workers in the mill. In all the three cases an employee of the mills, which are all textile mill, in Vidarbha region, filed an application before the presiding officer of the labour court, Bombay, at Nagpur. The claim in each of the applications was for payment of lay-off compensation on the ground that the worker was illegally laid off by the employer and was entitled to compensation under S. 25A of the Industrial Disputes Act, 1947. Specific amounts have been claimed as lay-off compensation. The workers claimed the amount by making an application under S. 33C of the Industrial Disputes Act, 1947, which shall be hereafter referred to as the Central Act.

3. In each of these cases the mills raised preliminary objections to the jurisdiction of the labour court to entertain the application or to adjudicate on the same. The mills denied the liabilities. They also denied that any of the claimants

was entitled to make the application or that the period during which the worker was not on duty was a period of lay-off or that there was any lay-off. In respect of the Sawatram Ramprasad Mills at Akola, it was contended that the closure of the mills was brought about by a huge gathering of the mill employees surrounding the general office. The gathering of the employees started shouting slogans. The inmates were not allowed to go to their residence for rest and were illegally confined. The employees denied this allegation about demonstration by shouting of slogans and threats. Thus, as a result of the situation created by the employees a notice was put up on the next day under standing order 19 by which all the employees were laid off as working had become impossible.

4. The tenability of the application and the jurisdiction of the labour court to adjudicate the issues raised were treated as preliminary issues. The labour court held that it had jurisdiction to entertain the application and adjudicate on the matter and that the applicants in each case were entitled to make this application under S. 33C of the Central Act.

5. Against this order the mills have come up to this Court under Arts. 226 and 227 of the Constitution. In support of the petitions two points were raised and argued at length :

(1) Whether the Industrial Disputes Act, 1947 (Act XIV of 1947), is applicable to the textile industry in Vidarbha region in view of the local Act, viz., the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, being in operation in this region.

(2) Whether the labour court appointed under S. 7 of the Central Act has power either under Sub-section (1) or (2) S. 33C of the Central Act to adjudicate on the issues raised by the mills when the amount payable to the claimants as lay-off compensation has not been previously determined by any competent authority.

6. We shall deal with these contentions in the same order.

7. To understand the first contention it is necessary to consider the history of legislation by the Central Legislature and the State Legislature when the Industrial Disputes Acts were put on the statute book.

8. The Industrial Disputes Act, 1947 (XIV of 1947), passed by the Dominion Legislature of India came into force in the whole of India on 1 April, 1947. As the preamble to the Act shows, the Act was passed because it was considered expedient to make provision for the investigation and settlement of industrial disputes and for certain other purposes. It is not disputed that the Act applied to textile industry according to the definition of "industry" in S. 2(j) of the Central Act. The legislature of the Central Provinces and Berar passed an Act called "Central Provinces and Berar Industrial Disputes Settlement Act (Act XXIII of 1947)" and this Act came into force in Central Provinces and Berar on 2 June, 1947. But on that date only the first section of the Act came into force because the Provincial Government had to issue a notification for bringing the remaining

sections or any of them into force in any area or in any industry on a specified date. The preamble to the Central Provinces and Berar Act also shows that it was put on the statute book because it was expedient to make provision for the peaceful settlement of industrial disputes by conciliation and arbitration and for certain other purposes. By a notification dated 20 November, 1947, issued by the Provincial Government, the remaining sections, viz., Ss. 2 to 61 of the Central Provinces and Berar Act, were brought into force from 21 November, 1947, in all the industries except the textile industry. Thus, the position was that so far as textile industry was concerned, it was outside the purview of the Central Provinces and Berar Act. However, by a subsequent notification issued by the State Government on 22 February, 1951, the provisions of Ss. 2 to 61 of the Central Provinces and Berar Act were also made applicable to textile industry from 1 March, 1951. This latter notification is to be found at p. 105 of the Madhya Pradesh Labour Manual, Vol. I.

9. The Central Act was amended several times since its enactment in 1947, but it will be necessary here to notice the amendment to the relevant provisions with which we are concerned in this petition. The Parliament passed Act XLIII of 1953, by which a new chapter called Chap. VA comprising of Ss. 25A to 25J, was added to the Central Act. By the same Act a definition of "lay-off" was incorporated in S. 2(kkk) of the principal Act. The next important amendment of the Central Act was effected under the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (Act XXXVI of 1956). By virtue of this amendment a new forum called the labour court was constituted under the provisions of S. 7. Section 25I of the Act, which was in Chap. VA of the Central Act, was omitted. A wholly new section, S. 33C(1), (2) and (3), was added instead. Section 39 which empowered Government to delegate its powers was also amended enlarging the ambit of delegation by appropriate Government. By virtue of the power under the amended S. 39 of the Central Act the State Government has issued a notification on 30 September, 1957, authorizing specified officers to exercise its powers under S. 33C(2) of the Central Act. Under this notification the presiding officer of the second labour court, Nagpur, is authorized to exercise the powers of the State Government under S. 33C(1) of the Central Act also in the districts in Vidarbha region.

10. Now, the material provisions of Chap. VA of the Central Act, which provide for lay-off compensation, as they now stand on the date of the application, are to be found in the following sections, namely, Ss. 25A, 25B, 25C, 25D, 25E, 25FFF and 25J.

12. It is not disputed that there is no provision in the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, for payment of any lay-off compensation. It is true that the worker who has been laid off under the provisions of the standing order settled in respect of a particular mill may raise a claim in respect of the period of lay-off, but such a claim is not capable of being taken before any authority by individual worker under the provisions of the

Central Provinces and Berar industrial Disputes Settlement Act. The only remedy under the Central Provinces and Berar Act so far as the right of an individual employee to make an individual grievance and obtain relief before a competent authority constituted under that Act is concerned, is by an application under S. 16 or 41 of the Act. Under S. 16 of the local Act the specified authority which is the Labour Commissioner or his Assistant, has the power to decide an industrial dispute touching the dismissal, discharge, removal or suspension of an employee. If it is found that the dismissal, discharge, removal or suspension was in contravention of any provisions of the Act or any standing order made under that Act, a complete machinery for adjudication of such claim on behalf of an individual employee and also for payment of wages or compensation payable is provided in S. 16 of the Central Provinces and Berar Act. It is also not disputed that an individual worker will not be entitled to make an application under any provision of the Central provinces and Berar Act for payment of lay-off compensation as an individual grievance.

13. Mr. Bobde's contention regarding the first point is that Central provinces and Berar Industrial Disputes Settlement Act, 1947, is a State Act on a subject in the Concurrent List. This legislation is referable to item 22 of List III which is in the Concurrent List in the Seventh Schedule of the Constitution. Under that item legislation is permissible either by the parliament or by the State Legislature in respect of trade unions or industrial and labour disputes. Actually the original statutes were enacted by the Dominion Legislature and the Provincial Legislature in 1947 in exercise of identical powers in item 29, Part II, of the Third List of the Seventh Schedule to the Government of India Act, which is also for trade unions and industrial and labour disputes. According to Mr. Bobde, the Central Act may have been applicable to the textile industry till 1 March, 1951, but on and from that date the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, was made applicable to the textile industry in Vidarbha region by the appropriate Government. The effect of that notification was to put into eclipse and to make inapplicable on and from that date any provisions of the Central Act. From that date, according to Mr. Bobde, the field of industrial disputes was exclusively held by the statute passed by the Provincial Legislature and made applicable to textile industry. As the legislation was on the same subject in the Concurrent List, provisions of Art. 254(2) had to come into operation and, therefore, the State Law, being repugnant to the provisions of the Central Act, holds the field. Now the provisions of Art. 254 of the Constitution on which reliance is placed are to the following effect :-

"(2) Where a law made by the legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in the State :

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the legislature of the State."

14. It is pointed out that the Central Provinces and Berar Industrial Disputes Settlement Act was reserved for the assent of the Governor-General and his assent was given on 23 May, 1947, and that assent was first published in the Central Provinces and Berar Gazette of 2 June, 1947. Provisions identical to Art. 254 of the Constitution in most respect are to be found in S. 107 of the Government of India Act, 1935. Under S. 107(1), if any provisions of a provincial law is repugnant to any provision of the Dominion law which the Dominion Legislature is competent to enact, with respect to one of the many matters enumerated in the Concurrent List, then Dominion law is to prevail whether passed before or after the Provincial law. To this main provision an exception is carved out in Sub-section (2). That exception is that where a Provincial law with respect to one of the matters enumerated in the Concurrent List, contains any provision repugnant to the provisions of the earlier Dominion law, and if such Provincial law has been reserved for consideration by the Governor-General and received assent of the Governor-General, then the Provincial law prevails in that province. But even this exception can be made nugatory if there is a "further legislation" with respect to the same matter by the Dominion Legislature.

15. Under Art. 254 of the Constitution, powers of the Parliament to make law overriding the provisions of a State law which would otherwise prevail under Clause (2) of Art. 254 are slightly larger than they were under S. 107(2) of the Government of India Act. Under the proviso added to Art. 254(2) it is provided that nothing in Clause (2) of Art. 254 shall prevent the Parliament from enacting any law at any time with respect to the same matter, and further the parliament has been given the power of adding to, amending, varying or repealing the law made by the legislature of the State on the same subject.

16. Mr. Bobde's contention is that the Central Provinces and Berar Industrial Disputes Settlement Act is a complete code in respect of settlement of industrial disputes and includes specified rights of an individual worker to ventilate his grievance. By reference to S. 25J of Chap. VA of the Central Act it is contended that the effect of the provisions of Sub-section (2) of S. 25J is to incorporate all the provisions of Chap. VA into any State legislation with respect to industrial disputes. According to him, one must read all the provisions of Chap. VA into the Central Provinces and Berar Industrial Disputes Settlement Act, 1947 as if they form a substantive part of State legislation. According to him, that is the effect of S. 25J(2) in Chap. VA. By adopting this construction of the effect of S. 25J of Chap. VA of the Central Act the petitioners contend that the new rights created by Chap. VA have been as if incorporated in the Central Provinces and Berar Industrial Disputes Settlement and a worker having any claim in respect of lay-off or retrenchment compensation, can raise an industrial dispute. It is admitted that an individual worker cannot raise an industrial dispute in respect of his

individual grievance, so far as his claim for lay-off compensation or retrenchment compensation is concerned. The right given to an individual worker under the Central Provinces and Berar Industrial Disputes Settlement Act is limited to relief for a specified grievance, namely, his dismissal, discharge, removal or suspension in contravention of the provisions of that Act or standing orders sanctioned under that Act. In view of this difficulty it is argued that there is nothing to prevent either the representative of the employees or a recognized union to raise an industrial dispute in respect of the claim to lay-off compensation payable to a single worker before the authorities created under the Central Provinces and Berar Industrial Disputes Settlement Act. During the arguments it was not made clear by what procedure such a dispute could be raised even by a recognized union or a representative of the employees except perhaps by a notice under S. 32 of the Central Provinces and Berar Act. Under that section a representative of the employee desiring a change in any standing order or in respect of other industrial matter, is entitled to give fourteen day's notice in the prescribed manner for making a claim. By reference to this section it is urged that the definition of the word "industrial matter" in the Central Provinces and Berar Act was wide enough to include the claim of individual worker for lay-off compensation. In our opinion, it is difficult to construe S. 32 as giving any such right. But in any case such a right is available to a recognized union or a representative of the employees and not an individual worker. This lacuna in the State Act will have a bearing in considering whether the Central legislation and the State legislation are really in respect of the same matter or operate in the same field.

17. Now, it is not disputed that under the Central Act if provisions of S. 33C are application to the claim in respect of any benefit, then an individual employee or workman will be entitled to make an application. Section 33C(1) provides the machinery for recovery of money due to a workman either by a settlement or by an award or under the provisions of Chap. VA. Thus, any money due to workman as lay-off compensation can be recovered by the workman making an application to the appropriate Government. There is no such provision as shown above in the State legislation.

18. We have also found it difficult to accept the contention on behalf of the petitioners that S. 25J(2) of the Central Act has the effect of transposing the provisions of Chap. VA into the State Acts relating to industrial disputes. The difficulty of accepting this construction would be obvious when it is found that the definition of "workman" under the Central Act is considerably wider than the corresponding definition of an employee given in the Central provinces and Berar Act. Moreover, such an artificial construction is bound to lead to other difficulties in the application of the provisions of Chap. VA. What is contended by Mr. Bobde is that only the provisions of Chap. VA must be taken to have been incorporated in the State Act and not other provisions of the Central Act. It is difficult to see how, without having recourse to the definition of "lay-off" or "workman" given in S. 2(kkk) or S. 2(s) of the Central Act, it will be possible in a given case to

decide whether there has or has not been a lay-off. If rights are to be worked out according to the provisions of Chap. VA and if Chap. VA has to have overriding effect as stated in S. 25J, then other provisions of the Central Act to which reference must necessarily be made for interpretation of Chap. VA must also be deemed to be incorporated in the State Act. In our opinion, there is no principle of construction of statutes which would enable us to adopt this mode of interpretation. On the other hand, it must be held that the overriding effect of the provisions of Chap. VA which creates special rights in respect of an individual workman must be given effect to independently of any State legislation. We, therefore, reject the contention of the petitioners that Chap. VA of the Central Act should be deemed to have been incorporated in the Central Provinces and Berar Act.

19. Once it is found that the provisions of Chap. VA cannot be taken to have been grafted on the State legislation. Mr. Bobde's contention based on Art. 254 of the Constitution or on S. 107 of the Government of India Act, must fail.

20. In *The State Vs. Zaverbhai Amaldas and Others*, on a difference of opinion between Mr. Justice Bavdekar and Mr. Justice Chainani (as he then was) the matter came up before Chief Justice Mr. Chagla. The learned Chief Justice agreed with Chainani, J., and observed, in his opinion, as follows (pp. 402, 403) :

". . . In my opinion it is correct that as far as our Constitution is concerned, the doctrine of occupied field cannot be applied, if that doctrine means that if Parliament legislates on a particular subject and thereby occupies the field, the State Legislature is completely debarred from legislating on the same subject. The very fact that a particular subject is in the Concurrent List means that both Parliament and the State Legislature are entitled to legislate with regard to that subject. Therefore, Parliament cannot exclude or oust the State Legislature merely by legislating on any particular subject. Our Constitution clearly recognizes the right of both Parliament and the State Legislature to legislate concurrently with regard to a subject mentioned in the Concurrent List, and therefore the doctrine of repugnancy we must apply here is not so stringent as would be applied in other countries where the constitutional position is different. In my opinion, the repugnancy that has got to be found is the repugnancy in the actual provisions of the two laws and not with regard to the subject-matter of the two laws. Therefore, the proper test is what was suggested by Mr. Justice Sulaiman, viz., whether effect can be given to the provisions of both the laws or whether both the laws can stand together. If effect cannot be given to both the laws and both the laws cannot stand together, then the law made by Parliament must prevail as against the law made by the State Legislature."

21. In that case it was found that the Parliament had made a later law which paled into inactivity the earlier provisions of the State law. This decision of the Bombay High Court was examined by the Supreme Court in *Zaverbhai Amaldas Vs. The State of Bombay*, we find the following observations :-

". . . If the later legislation deals not with the matters which formed the subject of the earlier legislation but with other and distinct matters though of a cognate and allied character, then Art. 254(2) will have no application. The principle embodied in S. 107(2) and Art. 254 is that when there is legislation covering the same ground both by the Centre and by the Province, both of them being competent to enact the same, the law of the Centre should prevail over that of the State."

22. Applying the principles of this decision to the instant case, there is no doubt in our mind that Chap. VA incorporated in the Central Act in 1953 is a law with respect to other and distinct matters not covered by any provisions of the Central Provinces and Berar Industrial Disputes Settlement Act. It is urged on behalf of the petitioners that the topic of legislation is industrial disputes and settlement of industrial disputes in both the Acts. It is, therefore, urged that whether one kind of right or another is created will not be a matter for distinction in considering whether the legislation is with respect to other and distinct matters. In our opinion, this contention is not well founded. Even with regard to this aspect of the matter, namely, the content, object and vision of the Central Act and the Central provinces and Berar Act, their lordships of the Supreme Court had occasion to pronounce. In *Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan*, it is observed at p. 31 that even though the two enactments are pieces of what is termed labour legislation, their objects and their vision are different. Mr. Bobde relied on the observation in the judgment of their lordships of the Supreme Court in *Deep Chand v. State of Uttar Pradesh* AIR 1959 S.C. 668. In Para. 29 the three tests of inconsistency or repugnancy referred to by Nicholas in his book of Australian Constitution are referred. They are :

- (1) there may be inconsistency in the actual terms of the competing statutes;
- (2) though there may be no direct conflict, the State law is intended to be a complete exhaustive code; and
- (3) even in the absence of intention, a conflict may arise when both the State and the Centre seek to exercise their power over the same subject-matter.

23. It is then observed that the Supreme Court in *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, accepted the same rules as useful guides to test the question of repugnancy. In our opinion, in the instant case no occasion arise for applying the second test, namely, complete occupation of identical field by the State Act inasmuch as we have come to the conclusion that there is no State legislation with regard to individual right of a workman to claim a lay-off and retrenchment compensation. We have already rejected Mr. Bobde's contention that the provisions of Chap. V-A should be deemed to be incorporated in the State Act, and even then an individual workman must be left to have his rights worked out through an industrial dispute to be raised by a recognized union or a representative of the employees by notice under S. 32. It is not

possible to accept this construction of the provisions of the State Act or of the Central Act which to our mind is not only laboured but untenable taking into consideration the scheme of the two Acts.

24. There is another aspect of the question. It may be possible for the petitioner to argue that so far as industrial disputes are concerned, as soon as the Central Provinces and Berar Act was made applicable to the textile industry with regard to those provisions, namely, constituting a tribunal for settlement of industrial disputes within the meaning of Ss. 2(k) and 10 of the Central Act, it was no longer possible for an employee in the textile industry to have recourse to the Central Act from 1 March, 1951. But it is pointed out on behalf of the respondent that the addition of Chap. V-A to the Central Act in 1953 has the effect of the Parliament enacting a law on the same matter at a later date. In fact, it would appear from the facts in *Zaverbhai case* which was the subject-matter of the decision in *Zaverbhai Amaldas v. State of Bombay* (vide supra), that the contention which was accepted in the High Court and Supreme Court was that the later amendment, made to the Essential Supplies (Temporary Powers) Act (Act XXIV of 1946) by substituting S. 7 regarding punishment, superseded or made void the provisions of the Bombay Act XXXVI of 1947 regarding the maximum punishment. On parity of reasoning, therefore, it is contended on behalf of the respondent that by the addition of Chap. V-A to the Central Act, the Parliament has made a new law on a subject in the Concurrent List under item 22 and, therefore, that being a later law the provisions of earlier law, namely, the Central Provinces and Berar Industrial Disputes Settlement Act so far as this region is concerned cannot prevail. We find considerable substance in this contention.

25. We may at this stage notice another contention of Mr. Bobde as to the availability of the procedure of S. 33C to a workman having a claim under Chap. V-A to recover his dues. The petitioners would have us exclude the operation of S. 33C also on the same reasoning. It is not possible to accede to this contention especially because by the amending Central Act XXXVI of 1956, by which S. 33C with its three sub-sections was added, original S. 25I was deleted. We shall have occasion to deal with the history of the provisions providing machinery for enforcement of rights under industrial law when we consider the other contention of Mr. Bobde. At this stage it is sufficient to notice that so far as the Central Act is concerned there is no other section providing the machinery except S. 33C to work out the rights of the individual workman or what is due to him under a settlement or an award or under the provisions of Chap. V-A of the Central Act. That being the admitted position, we have no doubt that all the provisions of the Act apply to a workman in Vidarbha region as well so far as his rights under the Act are concerned.

26. It is also possible to meet the objections of the petitioners from another angle. Even assuming that the petitioners are right in contending that with the application of the provisions of the Central Provinces and Berar Industrial

Disputes Settlement Act to textile industry from 1 March, 1951, identical provisions with respect to the same matter in the Central Act became repugnant and void under Clause (2) of Art. 254 of the Constitution it cannot be reasonably contended that the effect of so applying the provisions of the State Act to textile industry was to make the provisions of the Central Act nugatory or that the Central Act was wiped off from the Statute so far as this region is concerned. Article 13(1) of the Constitution also uses similar words providing that all laws in force in the territory of India immediately before the commencement of the Constitution in so far as they are inconsistent with the provisions of this part, shall, to the extent of such inconsistency, be void.

27. Now, what is meant by "void" in such context is considered in some decisions of the Supreme Court. In *Bhikaji Narain Dhakras and Others Vs. The State of Madhya Pradesh and Another*, it is pointed out that the true effect of Art. 13(1) is to render an Act which is inconsistent with a fundamental right, inoperative to the extent of the inconsistency; it is overshadowed by the fundamental right and remains dormant but is not dead. This principle is sometimes described as a doctrine of eclipse of earlier law by later law. The majority view of their lordships of the Supreme Court in *Deep Chand v. State of Uttar Pradesh* is stated as under (pp. 652-653) :

". . . A post-Constitution law may infringe either a fundamental right conferred on citizens only or a fundamental right conferred on any person, citizen or non-citizen. In the first case the law will not stand in the way of the exercise by the citizens of that fundamental right and, therefore, will not have any operation on the rights of the citizens, but will be quite effective as regards non-citizens. In such a case the fundamental right will, qua the citizens, throw a shadow on the law which will nevertheless be on the statute book as a valid law binding on non-citizens and if that shadow is removed by a constitutional amendment, the law will immediately be applicable even to the citizens without being re-enacted. The decisions in *Wilkerson v. Rahrer* [(1891) 140 U.S. 545; 35 L. Ed. 572 cited by our learned Brother is squarely in point. In other words, the eclipse as explained by this Court in *Bhikaji Narain Dhakras v. State of Madhya Pradesh* also applies to a post-Constitution law of this kind."

28. Thus, after the amendment effected in 1953 by addition of Chap. VA, the Central Act, which was in shadow came out and began to operate with full force and vigour in respect of rights under Chap. VA.

29. If the test laid down in *Deep Chand v. State of Uttar Pradesh* is applied to the instant case, it can be said that with the application of the State Act to the textile industry in 1951 the Central Act may be said to have been put into shadow, but the moment a new chapter creating new rights was added as Chap. VA in the Central Act in 1953, which is a later law, what was dormant with respect to the subject-matter covered by the State legislation became alive and fully efficacious so far as the rights created by the new amendment and cognate matters were concerned. It revived the Act and made the Central Act wholly applicable in

respect of the rights conferred by Chap. VA at any rate to all workmen in Vidarbha region in spite of the existence of the operation of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, in this region. We, therefore, hold that the provisions of the Central Industrial Disputes Act, 1947, are available to the respondents-workers and that there is no repugnancy between any provisions of the Central Provinces and Berar Industrial Disputes Settlement Act and the Industrial Disputes Act, 1947, as amended by Parliament so far as the questions raised in the application of the workers are concerned.

30. The petitioners invited our attention to a decision of the Supreme Court in *Newspapers, Ltd. v. State Industrial Tribunal* [1957 - II L.L.J. 1] in which it is held that so far as the Central Act is concerned, the grievance of a single individual is not within the ambit of "industrial dispute" as defined in S. 2(k) of the Central Act and no reference can be made under S. 10 in respect of such industrial dispute by the Government. It is undoubtedly true that so far as machinery for settlement of industrial disputes is concerned, the rights and obligations in respect of an industrial disputes can only mean a collective dispute, i.e., a dispute in which more than one worker are interested, or a dispute even though regarding the grievance of a single individual is adopted as a cause of industrial dispute by the union or representative of the employees, raising it to the status of a collective dispute. But we do not think, and it could not be seriously contended, that the rights and obligations created under Chap. VA of the Industrial Disputes Act, 1947, can only be worked out as a collective dispute. As far as we can see, every individual workman is entitled to lay-off compensation or retrenchment compensation. For availing of the provision of Chap. VA, a workman is not required to depend for enforcement of his rights under that chapter on the will of the union or to make it a collective dispute before he can get relief. In our opinion, the reference in S. 25J(1) to any other law including the orders made under the Industrial Employment Standing Orders Act, 1946, clearly show that even though either legislation of the State or of the Centre may create rights and create machinery for their enforcement in favour of an individual worker, the rights created by Chap. VA have to be worked out according to the provisions of that chapter and those rights are the rights of each and every individual workman. We, therefore, do not think that the fact that an industrial dispute contemplated under the Central Act has to be a collective dispute is an impediment in a workman enforcing his individual rights created under Chap. VA by the machinery provided by the Act.

31. One more argument was pressed on us, based on the provisions of Sub-section (2) of S. 25J. It was contended that the rights and liabilities of employers and workmen in so far as they relate to a lay-off are determined in accordance with the provisions of this chapter. There is no provision in any of the sections of Chap. VA, after S. 25J was deleted therefrom, which provides for the forum or prescribes the powers and jurisdiction of any authority which will work out or determine the rights and liabilities of employers and workmen in respect of lay-off and retrenchment. It is, therefore, contended that Chap. VA alone being made

applicable to all workmen wherever they may be, and there being no machinery provided in Chap. VA creating either a forum or authority to adjudicate in respect of these rights and liabilities, the provisions of the chapter are incomplete by themselves unless recourse is had to a State Act for enforcement of the rights. This contention is not well founded. We have already held that it is not only Chap. VA which is applicable to a workman after its addition, but all the provisions of the Act are available including S. 33C which is a specific provision creating machinery for recovery of benefits available to a workman. Section 33C cannot be read in isolation. In fact, the Act which added S. 33C to the Central Act, i.e., Central Act XXXVI of 1956, itself deleted S. 25I from the principal Act. It would therefore, be clear from this that whereas prior to additions of S. 33C some kind of machinery was provided by S. 25I after the omission of that section and addition of new S. 33C in the Act the legislature has taken care to see that the rights and liabilities which are created under Chap. VA are duly enforced even at the instance of an individual workman by making use of the machinery under S. 33C.

32. Mr. Bobde also invited our attention to the following decisions in support of his interpretation that it is the State Act not the Central Act which should hold the field. *Stewart v. Brojendra Kishore* 1939 AIR Cal. 628, *Nagalinga Nadar Sons v. A.T.H.L.C.W.U.* AIR 1951 T.C. 203 and *Ayyaswami Nadar v. Joseph* AIR 1952 T.C. 371. These precedents are of no assistance to the petitioner inasmuch as we have rejected the contention of the petitioners that there is any repugnancy between the provisions of the State Act and the Central Act in the absence of any provision for lay-off and retrenchment compensation in the State legislation.

33. Now, this takes us to the second point urged by the petitioners, namely, the powers and jurisdiction of the labour court to adjudicate on the merits of the claim in the instant case. In this connexion it is to be observed that the Industrial Disputes Act, 1947, until it was amended in 1953 and 1956, did not provide any machinery or did not constitute any forum for enforcement of individual rights of a workman, or to give assistance for recovery of any amount due to a workman on account of any benefits. For comparison we may refer to the provisions of S. 16 of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, which not only created a right in favour of an individual workman against dismissal, discharge, removal or termination of service contrary to the Act or standing orders, but also provides a complete machinery for adjudication of a claim made by an individual workman if he were so dealt with by the employer. The section also provides for determination of an amount of back-wages or compensation due and its recovery as an arrear of land revenue.

34. The Central Legislature passed an Act called "the Industrial Disputes (Appellate Tribunal) Act" (Act XLVIII of 1950), which came into force on 23 May, 1950. Section 20 of that Act was in the following terms :

"20. Recovery of money due from an employer under an award or decision. -

(1) Any money due from an employer under any award or decision of an industrial tribunal may be recovered as arrears of land revenue or as a public demand by the appropriate Government on an application made to it by the person entitled to the money under that award or decision.

(2) Where any workman is entitled to receive from the employer any benefit under an award or decision of an industrial tribunal which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to the rules made under this Act, be determined by that industrial tribunal, and the amount so determined may be recovered as provided for in Sub-section (1).

(3) For the purpose of computing the money value of a benefit, the industrial tribunal may, if it so thinks fit, appoint a commissioner, who shall, after taking such evidence as may be necessary, submit a report to the industrial tribunal, and the said tribunal shall determine the amount after considering the report of the commissioner and other circumstances of the case."

35. The Supreme Court had to deal with the question of ambit of jurisdiction of the authority entertaining a claim for recovery of money under S. 20(2) in the case of S.S. Shetty Vs. Bharat Nidhi, Ltd., . It observed as follows at p. 702 :

"The purpose of the enactment of S. 20(2) of the Act is not to award to the workman compensation or damage for a breach of contract or a breach of a statutory obligation on the part of the employer. Any money which is due from an employer under the award can, by virtue of the provisions of S. 20(1) of the Act, be recovered by the appropriate Government on an application made to it by the workman. Where however any benefit which is not expressed in terms of money is awarded to the workman under the terms of the award, it will be necessary to compute in terms of money the value of that benefit before the workman can ask the appropriate Government to help him in such recovery. Section 20, Sub-section (2), provides for the computation in terms of money of the value of such benefit and the amount at which such benefit should be computed is to be determined by the industrial tribunal to which reference would be made by the appropriate Government for the purpose. Such computation has relation only to the date from which the reinstatement of the workman has been ordered under the terms of the award and would have to be made by the industrial tribunal having regard to all the circumstances of the case. The industrial tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of the termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial tribunals in the event of industrial disputes arising between the parties in the future."

36. Mr. Bobde also invited our attention to a decision of the Calcutta High Court

in Rifle Factory Co-operative Society Ltd. (Stores Branch) Vs. Fourth Industrial Tribunal and Others, . In that case a view was taken that computing a benefit in terms of money is not construction of a previous award so as to give it a meaning that the award should have retrospective effect and not prospective effect. It was held that the tribunal must take the award as it is and proceed to translate the benefit thereunder in terms of money and do nothing to enlarge or restrict the nature and scope of the award. Under Sub-section (2) of S. 20 of the Act the tribunal could only evaluate the award in terms of money and could do no more. Mr. Bobde has also relied upon the interpretation put on the ambit of enquiry under S. 25I in the Chap. VA of the Central Act in certain other decisions. He has invited our attention to Sree Beharaji Mills Ltd. Vs. State of Bihar and Others, . It was held in that case that the right of the Government to order recovery of the amount from an employer springs into existence only when there is an ascertainment of the liability of the employer by a competent authority. The State Government has no power to make an enquiry into the liability to pay compensation under S. 25F if there was a dispute between the employer and the workman whether there was retrenchment or not. There was no such machinery provided in the Act under S. 25I.

37. In our opinion, the interpretation put on S. 25I of the Industrial Disputes Act, 1947, or S. 20(1) of the Industrial Disputes (Appellate Tribunal) Act of 1950 will not be of assistance in determining the ambit of jurisdiction of the authority created under S. 33C(2). The history of legislation already noticed shows that so far as the Central Act is concerned, there is a progressive enlargement of remedies being made available for enforcement of the right of individual workman under each amendment. The Central Act XLIII of 1953 amended certain provisions of the Industrial Disputes Act, 1947. It is this Act which introduced Chap. VA in the Central legislation. This was the first attempt made amendment of the Central Act to provide machinery of a limited character for recoveries of moneys due from the employers in respect of claim under Chap. VA and that provisions is to be found in the original S. 25I of Chap. VA introduced in the Act. The next step was deletion of S. 25I and introduction of S. 33C in the Central Act. It appears that for some time twofold remedies may have been available to an individual workman to recover his dues or have benefits to which he was entitled computable in terms of money adjudicated and paid, under S. 25I of the Central Act and also under S. 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950. This latter Act was, however, repealed on 28 September, 1956, and this has resulted in the provisions of S. 33C of the Central Act alone being on the statute book so far as Parliament is concerned, for adjudication and recovery of benefits available to an individual worker, in certain cases.

38. Now, Mr. Bobde's contention objecting to the jurisdiction of the labour court to adjudicate on merits of the claim for a benefit by an individual worker is founded on the contention that the labour court cannot claim greater powers under Sub-section (2) than those exercisable by such court under Sub-section (1) of S. 33C. It is urged that under S. 33C(1) what can be recovered by

Government by coercive process is only an ascertained sum of money. Until it is ascertained how much money is due by previous adjudication by a competent tribunal whether under a settlement or award or under the provisions of Chap. VA, there is no power in the Government or its delegate to order recovery of any amount as the money due to a worker. In our opinion, this contention is well founded so far as the ambit of jurisdiction of the authority empowered to recover any amount due to a workman under S. 33C(1) is concerned. Mr. Bobde has invited our attention in this respect to the decision of the Madhya Pradesh High Court in *Bengal Nagpur Cotton Mills Ltd. Vs. State of Madhya Pradesh and Others*, . In that case it has been held that an amount due means an amount which has been ascertained and has become payable. Section 33C(1), therefore, deals with a recovery of the amount which has already been ascertained and not ascertainment of the amount payable to an employee.

39. When we come to S. 33C(2), however, the words of that sub-section do not appear to bear any analogy to the words of Sub-section (1). In order to accept the contention of Mr. Bobde that the jurisdiction of the Court in terms empowered under Sub-section (2) to determine the amount at which any benefit, capable of being computed in terms of money, accrued, we must restrict the computation merely to conversion of the benefit into money or its quantification. Though it is undoubtedly true that every quantification is in terms of money, in our opinion, it is not permissible so narrowly to construe the sub-section which provides determination by a labour court when the next sub-section permits appointment of a commissioner to take evidence and submit a report to the labour court, and then requires the labour court to determine the amount after taking the report of the commissioner and other circumstances into consideration. In the instant case the petitioner mills have joined issues at the very threshold. The mills say that there was no lay-off within the meaning of Chap. VA that if there was any stoppage of work it was wholly due to the intransigent and hostile attitude taken by the labourers, that individual labourers did not put in one year's service within the meaning of the law, and that, therefore, the application is not tenable at all. Thus, what in effect is contended is that the claim itself is not tenable and the claim not being tenable the labour court had no jurisdiction to adjudicate on the tenability of the claim or the merits of the claim. Thus, the question that falls for our consideration is whether the ambit of powers given to the labour court under Sub-secs. (2) and (3) of S. 33C is so narrow and limited as to oust its jurisdiction to decide whether the claimant is a workman at all within the meaning of the Act or whether he has established conditions which are to be satisfied in order that the title to the benefit may arise. In all these cases the benefit claimed by the worker is lay-off compensation. The petitioners say that there is no lay-off and there the matter ends. The question is whether jurisdiction of a tribunal can be ousted merely because the opponents deny the very existence of facts or circumstances which would give jurisdiction to that Court.

40. There is no doubt that there is some divergence of judicial opinion as to the

ambit of jurisdiction of the labour court under Sub-secs. (2) and (3) of S. 33C of the Act. Mr. Bobde has invited our attention to a decision of the Madras High Court in Daniel Dorairaj Vs. Management of the Buckingham and Carnatic Co. Ltd., Madras and Another, . In that case claim was founded on an award made under the provision of the Indian Arbitration Act. The Court held that the words "any benefit" in Sub-section (2) of S. 33C of the Act means only that which flows from a settlement or an award or under the provisions of Chap. VA of the Industrial Disputes Act. In our opinion, so, far as the present dispute is concerned, this case does not come in the way of the workers getting any benefit.

41. The next decision on which Mr. Bobde relies is another decision of the same High Court by the same learned Judge, in Management of the Lakshmi Mills Co. Ltd. Vs. Presiding Officer, Labour Court, Coimbatore and Another, . The view taken in that case by Mr. Justice Veeraswami, no doubt, supports the contention of the petitioners. In that case there was an award fixing different scales of wages for workers among whom respondent 2 was working as a fitter. He applied for benefit under S. 33C(2) of the Act. The employer opposed the application and contended that the respondent was working only as a fitter-helper. It was held that where the award between the parties fixed the scale of wages for a fitter without laying down or describing the duties and nature of work of a fitter, a workman could not invite the labour court to decide the question whether he is performing the duties of a fitter and as such entitled to the benefit of the scale of wages of a fitter, in an application under S. 33C(2) of the Act, where the nature of the work done by him was in dispute. According to the learned Judge, the question whether the claimant was a fitter or fitter-helper not having been raised as a dispute did not form part of a prior award. According to this view that question could not be regarded as ancillary or incidental question. In our opinion, there are indications as to the principle of interpretation of S. 33C(2) at least in two decisions of the Supreme Court and decisions of this Court and other decisions of the Madras High Court, which lead us to the contrary conclusion.

42. The matter came up before the Supreme Court, though indirectly, in Kasturi and Sons (Private) Ltd. Vs. N. Salivateeswaran and Another, . In that case an application was made under S. 17 of the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, and the question was whether the State Government or the authority specified by it under S. 17 of the Act had jurisdiction to examine and decide the merits of the claim preferred under S. 17 of the Act. Their lordships compared the provisions of S. 17 with the provisions of S. 33C(1) of the Industrial Disputes Act, 1947. Their lordships observed that the provisions of S. 17 of the Working Journalists Act, which were analogous to Sub-section (1) of S. 33C of the Industrial Disputes Act, 1947, show that the enquiry contemplated by S. 17 is a summary enquiry of a very limited nature as to what amount is actually due to be paid to the employee under the decree or other valid order after establishing his claim in that behalf. In emphasizing the limited scope of the enquiry both under S. 17 of that Act and under S. 33C(1) of the Industrial Disputes Act, 1947, their lordships compared the provisions of the two

sub-sections of S. 33C and as a result of this comparison the following observations were made at p. 531 :

"In this connexion, we may also refer to the provisions of S. 33C of the Industrial Disputes Act 14 of 1947. Sub-section (1) of S. 33C has been added by Act 36 of 1956 and is modelled on the provisions of S. 17 of the present Act. Section 33C, Sub-section (2), however, is more relevant for our purpose. Under S. 33C, sub-section (2) where any workman is entitled to receive from his employer any benefit which is capable of being computed in terms of money, the amount at which such benefit may be computed may, subject to any rules 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 should be recovered as provided in Sub-section (1). Then follows Sub-section (3) which provides for an enquiry by computing the money value of the benefit in question. The labour court is empowered under this sub-section to appoint a commissioner who shall, after taking such evidence as may be necessary, submit a report to the labour court, and the labour court shall determine the amount after considering the report of the commissioner and other circumstances of the case. These provisions indicate that, where an employee makes a claim for some money by virtue of the benefit to which he is entitled, an enquiry into the claim is contemplated by the labour court and it is only after the labour court has decided the matter that the decision becomes enforceable under S. 33C(1) by a summary procedure."

43. In our opinion, this is a clear pronouncement for the proposition that these provisions indicate that where an employee makes a claim for some money by virtue of the benefit, to which he claims title, an enquiry into the merits of the claim by the labour court is contemplated and not mere computation. The respondents have also relied on another decision of the Supreme Court in Punjab National Bank Limited Vs. K. L. Kharbanda, . In that case even though the principal question canvassed was regarding interpretation of the provisions of Sub-section (2) of S. 33C as computing monetary as well as non-monetary benefits, the actual dispute related to the category in which the workman making the claim fell. The nature of this dispute is pin-pointed at p. 237 where it is observed as follows :

". . . The respondent was appointed on the initial basic salary of Rs. 120 per mensem. The dispute between the parties is that the respondent claims that his basic salary should be fixed under Para. 292(7) according to the supervisors' scale for the purpose of the proviso while the appellant claims that it can only be fixed at the highest on the scale for graduate clerks, and the appellant fixed the respondent's pay on that basis, and that led to the respondent's making the present application under S. 33C(2) of the Act ..."

44. Thus, one of the questions which fell for consideration before the labour court was whether the claimant was in one category or the other according to the award, and that question was found to be within the ambit of the powers of

adjudication by the labour court.

45. It appears that even in the Madras High Court a view of the law favourable to the view canvassed by the respondents has been taken, in *South Arcot Electricity Distribution Co. Ltd. Vs. Elumalai and Others*, in a dispute between the South Arcot Electricity Distribution Company and one of its workers. Mr. Justice Balakrishna Ayyar, J., held that S. 33C(2) covers monetary benefits which require computation or determination; that the provisions of Sub-section (3) of S. 33C do not suggest that the section is limited to non-monetary benefits; and that the line of division between Sub-secs. (1) and (2) of S. 33C would be analogous to that between execution proceedings and trial proceedings. The learned Judge further observed that it could not be contended that the use of the word "entitled" in S. 33C(2) related to the stage when the title of the workman to receive the money has been already established and that where there is a controversy about the claim of the workman, some competent authority must have previously decided that his claim is good, and that it is only thereafter that the labour court can proceed to determine how much the amount due is. One purpose of the Industrial Disputes Act is to set up a complete machinery which would expeditiously dispose of the disputes between the employers and the workman. We respectfully agree with this interpretation of the provisions of S. 33C, Sub-secs. (2) and (3).

46. The same view has been taken by Mr. Justice Rajagopala Ayyangar in the Madras High Court in *Railway Employees' Co-operative Bank v. Labour Court* 1960 I L.L.J. 345. In that case the claim was founded on a right to compensation acquired under the Madras Shops and Establishments Act. That Act also provided for machinery for adjudication of disputes under the Shops Act. The proceedings before the labour court were sought to be prohibited by an appropriate writ on the ground that the ambit of enquiry under S. 33C must be confined to an award or settlement or a claim under Chap. VA of the Industrial Disputes Act and cannot include adjudication regarding a benefit under some other law. This contention was repelled, and it was observed at p. 348 as follows :

" . . . I hold that the jurisdiction of a tribunal or of the labour court under S. 33C(2) extends to the computation in terms of money not merely of all benefits which workman are entitled to receive from the employer under a settlement or award under the Industrial Disputes Act but also any benefit to which they might be entitled in their character as workmen under contract or by virtue of any other enactment."

47. We are referring to this decision not with a view finally to determine the ambit of subject-matters which may be within the jurisdiction of the labour court but only to show that this view does not restrict the jurisdiction of the labour court under Ss. 33C(2) and (3) to merely a monetary computation of a liability which is already admitted and not disputed. We are not called upon in this case to decide whether the jurisdiction of the labour court under S. 33C(2) also embraces benefits under other laws or even under a contract between an

employee and his employer. We are concerned here with the claim to lay-off compensation claimable under Chap. VA of the Central Act, and, we are clear in our minds that so far as the claims under the Act are concerned, the jurisdiction of the labour court is not restricted. In this Court the matter came up before a Division Bench in the case in Shree Amarsinhji Mills Ltd. Vs. Nagrahna (M.N.) and Others, . A reference was made to the decision of the Madras High Court in South Arcot Electricity Distribution Co. Ltd. Vs. Elumalai and Others, . This court observed at p. 583 as follows :-

" . . . We should have set out those observations and discussed the reasons which found favour with Mr. Justice Balakrishna Ayyar in some detail but we do not think it is necessary to do so, since we prefer to found our judgment not on any argument based on analogy but by reading the Sub-section (2) of S. 33C for ourselves, and, as we have already observed, the expression "benefit" is one of wide import and connotation."

48. It was also observed that one thing is certainly very clear that there is nothing in the language of Sub-section (1) which in any manner controls or affects the ambit and operation of Sub-section (2). Further, this Court observed as follows Shree Amarsinhji Mills Ltd. Vs. Nagrahna (M.N.) and Others, :

" . . . We have to see what is the meaning that can be attributed to the material language of Sub-section (2) relating to a claim in respect of any benefit which is capable of being computed in terms of money. To accede to the argument of learned counsel, it seems to us, would be to give a very limited and rigid construction to the expression "any benefit." This expression "benefit" is of amplitude and one of wide import. Under modern concept of industrial relations, numerous benefits are conferred upon and recognized in favour of the workmen and this, at times, apart from any principles of social justice. It would be impossible to enunciate or catalogue what those benefits will be, and we do not think any attempt has been made by any Court or would be made to do so. One other consideration which must weigh with the Court is that in interpreting this sub-section, it must bear in mind the object of the legislation and the scheme of the enactment. If the object of the legislation and the scheme of the Act is to be regarded as important consideration, there is every reason why this Sub-section (2) should be interpreted in a broad general manner and not in a restricted and cramped manner, as Mr. Gandhi asks us to do . . . Considered in the light of these few observations which we have made, it seems to us that the words "any benefit which is capable of being computed in terms of money" would certainly include a claim for compensation by a workman who is laid off. That it is a benefit, in our opinion, is manifest. That it is capable of being computed in terms of money is equally manifest."

49. In a still later decision of this Court in Abdul Raheman D. Lambe Vs. Kulkarni R.N. and Another, it is held that under S. 33C(2) of the Industrial Disputes Act the labour court has jurisdiction to entertain an application to determine the amount due to a workman under S. 25FFF of the Act and that it is open to the

Court to determine not only the monetary value of non-monetary benefits but also the actual amount due where it is alleged that certain monetary benefits are not given.

50. The respondents have also urged that liberal construction ought to be put in interpreting provisions of Chap. VA of the Industrial Disputes Act. 1947. The statute is designed to relieve hardship and in this connexion our attention is invited to the decision of their lordships of the Supreme Court in *The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen*, . In Para. 2 at p. 9 it is observed that the right of workman to lay-off compensation is obviously designed to relieve the hardship caused by unemployment due to no fault of the employee; involuntary unemployment also causes dislocation of trade and may result in general economic insecurity; therefore, the right is based on grounds of humane public policy and the statute which gives such right should be liberally construed, and when there are disqualifying provisions, the latter should be construed strictly with reference to the words used therein.

51. The respondents also contend that the provisions of the Payment of Wages Act and the ambit of jurisdiction of the Payment of Wages Authority created under that Act are in pari materia with the provisions now under discussion. The provisions of the Payment of Wages Act have been interpreted in considering the ambit of jurisdiction of the Payment of Wages Authority. The respondents rely on three decisions of this Court in *A.D. Divekar Vs. Dinesh Mills Ltd. and Others*, , *Valajibhai Avcharbhai and Others Vs. Chimanlal Hemraj Joshi and Another*, and *Balakrishna v. A. S. Rangnekar* 1958 I L.L.J. 215. In *Divekar* case it was held that retrenchment compensation payable to the employees under S. 25F(b), Industrial Disputes Act, is also remuneration payable to the employees on the termination of their services, and therefore "wages" as defined in the Payment of Wages Act. It was further held that S. 15 of the Payment of Wages Act does not limit the jurisdiction of the authority under the Act to entertain admitted claims arising out of deductions from wages or delay in payment of wages. In *Valajibhai* case 1957 II L.L.J. 180 (vide supra) it was observed that there is no warrant for holding that the jurisdiction of the authority under S. 15 is of a summary character; it is not limited to entertaining admitted claims arising out of deductions from wages or delay in payment of wages; therefore the fact that the employer denies liability and sets up some ground in support of the denial does not deprive the authority of his jurisdiction to decide the claim if it is one relating to unlawful deductions or delay in payment of wages. It is to be noted that the Payment of Wages Authority had to decide the question whether the establishment was governed by the Factories Act or the Bombay Shops and Establishments Act. We consider the pronouncement of this view as important inasmuch as it indicates the wide ambit of jurisdiction of the Payment of Wages Authority to determine the claims made under the Act. Similarly in *Balakrishna* case 1958 I L.L.J. 215 (vide supra) it is observed that the true position in law under the Payment of Wages Act is that the Payment of Wages Authority has

jurisdiction to determine every question which is relevant to the determination of the amount payable to the employee, whether the dispute is as to the contractual terms or whether it is factual.

52. This question was also considered in a slightly different form in *Balaram Abaji Patil and Others Vs. M.C. Ragojiwalla and Another*, . The question raised there was whether the remedy of the worker under the Payment of Wages Act is barred if the same worker has also a remedy under the Minimum Wages Act. It was held that there is no such bar. This decision meets a point made by Mr. Bobde that the interpretation canvassed by the respondents will lead to multiplication of tribunals or duplication of remedies available to a workman. In our opinion, whether or not any other remedy is available to a workman to work out his rights and recover the amount claimable as a benefits, there is no doubt that the provisions of S. 33C(2) empower the labour court to adjudicate on the merits of the claim when the tenability of the application is disputed by the employer either because the jurisdiction facts such as a lay-off having taken place or the workman being a workman within the meaning of the Act or having put in one year's continuous service are put in issue by the contentions of the respective parties. In this connexion reference may also be made to the decision of their lordships of the Supreme Court regarding the ambit of jurisdiction of the Payment of Wages authority. In the case in *Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another*, the following observations are to be found (p. 8) :-

". . . It [definition of "wages" in S. 2(vi)] also provided that the word "wages" did not include five kinds of payments specified in Cls. (a) to (e). Now, if a claim is made by an employee on the ground of alleged illegal deductions or alleged delay in payment of wages, several relevant facts would fall to be considered; Is the applicant an employee of the opponent ? And that refers to the subsistence of the relation between the employer and the employee. If the said fact is admitted, then the next question would be : What are the terms of employment ? Is there any contract of employment in writing or is the contract oral ? If that is not a point of dispute between the parties, then it would be necessary to enquiry what are the terms of the admitted contract. In some cases a question may arise whether the contract which was subsisting at one time had ceased to subsist and the relationship of employer and employee had come to an end at the relevant period. In regard to an illegal deduction a question may arise whether the lockout declared by the employer is legal or illegal. In regard to contracts of service sometimes parties may be at variance and may set up rival contracts, and in such a case it may be necessary to enquire which contract was in existence at the relevant time."

53. If we are right in our view that the question of jurisdiction of the authority under the payment of Wages Act and the provisions of that Act are in *pari materia* with the ambit of jurisdiction of the labour court and the provisions of S. 33C of the Industrial Disputes Act, in our opinion, the interpretation put on the provisions of the payment of Wages Act in this Court and in the supreme Court

would lead to the conclusion that the jurisdiction of the labour court under S. 33C, Sub-secs. (2) and (3), is wide enough to permit adjudication of all relevant and incidental questions and that the enquiry and determination are not limited to quantification of money value of an admitted claim.

54. The same result will follow if the scheme of Sub-secs. (2) and (3) of S. 33C and the words used therein are properly scrutinized. The first fact that strikes anyone is that the forum for adjudication is labour court. The powers of the labour court created under S. 7 are given in sufficient detail in S. 11. The labour court has been invested with the same powers as are vested in the civil Court under the CPC when trying a suit in respect of enforcing attendance, compelling production of documents, issuing commissions and other matters as may be prescribed. In addition to those powers, Sub-section (3) empowers the labour court to appoint a commissioner, to take evidence and submit a report. The labour court is then required to determine the amount after taking into consideration this report of the commissioner and other circumstances of the case. In our opinion, this latter expression "other circumstances of the case" indicates that the jurisdiction and ambit of enquiry before the labour court are of a wider amplitude and not restricted as contended by the petitioners. It is also significant that the words "which is capable of being computed in terms of money" appearing immediately after the word "benefit" are descriptive of the benefit to which a workman is entitled and lays a claim. A workman will have to establish first his title to the benefit. He will have also to establish that he is a workman entitled to the benefit within the meaning of the Act. It was not seriously disputed that the question whether a particular claimant is or is not a workman entitled to the benefit is not beyond the jurisdiction of the labour court under Sub-section (2). In our opinion, it cannot also be disputed that whenever a question as to the title of the workman to any benefit is disputed by the opposite party, that question will also be required to be decided by the labour court. In the instant cases the petitioners have denied that there has been any lay-off at all within the meaning of Chap. VA. Thus, at the very threshold of the enquiry the petitioners challenged the jurisdiction of the Court to entertain the application on the ground that there is no lay-off at all. It cannot be disputed that a labour court when a claim is made in respect of a benefit arising out of a lay-off will have no jurisdiction to give relief unless it is first established that there has been a lay-off. It is also to be established that the workman making the claim satisfies the requirements of Chap. VA and other provisions of the Act which entitles such a workman to claim lay-off compensation. We fail to see how any benefit or its monetary value can be determined unless these questions when disputed are first determined. In our opinion, it is not possible, therefore, to accept the contention of the petitioners that the only enquiry that can be made by the labour court is quantification of a benefit capable of being computed in terms of money and not whether or not the claimant has a right to that benefit or whether or not facts and circumstances exist which gave rise to that right. As observed by this Court in *Shree Amarsinhji Mills Ltd. Vs. Nagrashna (M.N.)* and

Others, the ambit of enquiry under Sub-section (2) is of much wider amplitude than under Sub-section (1) of S. 33C which is strictly limited to a recovery of a claim already adjudicated and quantified by competent authority. It is also significant to note that after the claim is so determined, the procedure for recovery available under Sub-section (1) is available for recovery of the amount determined by the labour court, for which express provision is made Sub-section (2) of S. 33C.

55. Relying on the observations in the two Madras cases which favour a wider interpretation of S. 33C, Sub-section (2) and (3), at one stage it was urged on behalf of the respondents that benefits which can form the subject-matter of enquiry before a labour court under Sub-secs. (2) and (3) of S. 33C are not necessarily benefits which arise out of an award or a settlement or under the provisions of Chap. VA of the Central Act. In our opinion, we are not called upon to decide this question in these petitions, and the respondents have not pressed the argument further. As far as we can see, only those claims to benefits can be taken by a workman before the labour court for computation which arise under the Industrial Disputes Act. In particular, in the absence of an award or a settlement, specific rights created in favour of a workman under chap. VA are well within the category of benefits which a workman can claim to receive under the Act if they are capable of being computed in terms of money. We, therefore, hold that the jurisdiction of the labour court in an application under S. 33C(2) covers the jurisdiction to adjudicate on every question which is necessary to be decided in order to give relief to a workman in respect of a benefit which he can claim under any of the provisions of the Central Act, and in particular under the provisions of Chap. VA of the Act.

56. Thus, the result is that both the contentions raised by the petitioners in each of these petitions fail. The petitions are, therefore, dismissed with costs in each case.