
(1978) 11 KL CK 0019
In the High Court Of Kerala

Secretary, S.N. Trusts

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 24-11-1978

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 25F, 33C

Citation : (1979) 1 LLJ 335

Hon'ble Judges : K. Bhaskaran, J

Bench : Single Bench

Judgement

K. Bhaskaran, J.—Exhibit P.1. order passed by the first respondent, the Labour Court, Quilon on an application filed by the second respondent u/s 33C(2) of the Industrial Disputes Act, 1947, for short the Act, is under challenge in this writ petition. The petitioner is the Secretary, Sree Narayana Trusts, Quilon; and the second respondent was an employee under the petitioner.

2. The second respondent entered service under the petitioner as a Demonstrator in Zoology in Sree Narayana College, Quilon, in July, 1949. In 1953 he was appointed the Superintendent of the Marine Station at Thangasseri, started by the petitioner to function as a quasi-educational unit, but which in actual working developed itself into a commercial establishment, having no academic pretensions. He was fully relieved of his teaching duties and was absorbed as a full-time employee of the Marine Station in 1955. Towards the middle of 1967 the Marine Station was wound up; and he was designated Superintendent of the Sree Narayana Trusts Scientific Works, the object of which was to manufacture and trade in scientific equipments and materials. His service was terminated on 24-7-1970. It was to claim the benefits due to him consequent on his termination, which he described as retrenchment, that the petition u/s 33C(2) of the Act was filed. The first respondent has decided the matter in favour of the second respondent, determining the benefit due to him at Rs. 10,416.

3. The main, if not the sole, contention raised by the petitioner before the first

respondent was that the petitioner was not engaged in any industry attracting Section 2(j) of the Act, and the petitioner was not an employer as defined in Section 2(g) of the Act. This contention was considered by the first respondent in paragraphs 6 and 7 of Ext. P1 order; in paragraph 9 it also discussed the question whether the second respondent was a workman within the meaning of Section 2(s) of the Act and the findings recorded are in the affirmative; in favour of the second respondent. These findings, on their merits, are not seriously disputed before me not only for the good reasons given by the first respondent during the course of the discussion, but, presumably, also for the reason that that contention is no longer available to the petitioner in view of the decision of the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, .

4. What is urged during the course of the argument in this Court by the counsel for the petitioner centred round the two points of law raised as additional grounds amending the pleadings in the writ petition. The first of those grounds is that the first respondent ought to have held that in an application u/s 33C(2) of the Act it had no jurisdiction to decide the questions as to whether the petitioner was an "employee", the second respondent was a "workman", and the activity carried on by the petitioner was that of "industry", as defined in the relevant provisions of the Act. It is argued that the jurisdiction of the Labour Court to determine the benefits due to the employee u/s 33C(2) is analogous to that of a civil Court in execution proceedings under Order XXI of the Code of Civil Procedure, and that in the present case, when the very basis or foundation of the claim is in dispute on account of the contention that what is carried on by the petitioner is not "industry" as defined in Section 2(j) of the Act, the petitioner is not an "employee" as defined in Section 2(g) of the Act and the 2nd respondent is not a "workman" as defined in Section 2(s) of the Act, the first respondent-Labour Court ought not to have arrogated to itself the functions of the Industrial Tribunal which alone has jurisdiction to deal with such question on a reference by the Government u/s 10 of the Act. Reliance was placed on the decision of the Supreme Court in Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, . That was a case where the employees of the old company who were not absorbed by the transferee Corporation claimed benefits u/s 33C(2) of the Act from the transferee Corporation. It is evident that in such circumstances a detailed investigation to ascertain whether the workmen had any right to the benefits claimed was necessary; and it could not be considered as an investigation merely incidental to the main business of computation. It is not conceivable that the Legislature intended to oust the jurisdiction of the Labour Court u/s 33C(2) of the Act the moment a dispute with respect to the workman's right to claim the benefit is raised by the management without regard to the tenability of the contention. There could be no doubt that the denial of the right of the workman to claim benefit by the employer by itself would not take away the jurisdiction of the Labour Court to decide the question. In State Bank of Bikaner and Jaipur Vs. R.L. Khandelwal, , the Supreme Court

found that the claim of the workmen for the supervisory allowance during the period for which they were not in fact either holding a post or working in a post involving the work of a supervisory nature, could not be decided by the Labour Court dealing with an application u/s 33C(2) of the Act, as it was not a matter which was based on the existing right, but that is a claim which could be more appropriately the subject-matter of an industrial dispute requiring reference u/s 10 of the Act. It is now well-settled, as the petitioner himself appears to have realised of late, that the establishment in the nature of one in which the second respondent was employed at the time of the termination of his service would fall within the definition of "industry" contained in Section 2(j) of the Act. No elaborate investigation, not more than a preliminary enquiry, would be required to decide the questions as to whether the petitioner was an "employer", the second respondent was a "workman" and the establishment in which the second respondent was employed by the petitioner was an "industry", within the meaning of the relevant provisions of the Act, so as to enable the second respondent to invoke Section 33C(2) of the Act. The counsel for the petitioner wanted to rely on a recent decision of this Court in O.P. No. 1849 of 1978-C (1978) KLT Short Notes, Case No. 125. That was a case where, on the attainment of the age of 58, the concerned employees received gratuity and other benefits due to them and left the service, and thereafter filed an application u/s 33C(2) of the Act before the Labour Court for computing the benefit by way of retrenchment, compensation alleged to be due to them. So, the complicated question before the Labour Court was whether the termination of the services of the petitioners amounted to retirement on attaining the age of superannuation, or to retrenchment simpliciter. In this case no such complicated question arises. It is not disputed that at the time when the service of the second respondent was terminated, he had not attained the age of superannuation. His service was terminated because it was no longer required by the petitioner. This is a clear case of retrenchment as defined in Section 2(oo) of the Act, and lucidly illustrated by the Supreme Court in *The State Bank of India Vs. Shri N. Sundara Money*, . The contention that as the petitioner had chosen to contest the second respondent's claim that he was a workman under the petitioner-employer and that the establishment in which he worked was an industry, the first respondent Labour Court had no jurisdiction to entertain the petition for determining the benefits, has only to be rejected, and I do so.

5. The second of the additional contentions raised as a result of the amendment to the pleadings, is that, at any rate, the first respondent Labour Court was in error in proceeding to determine the retrenchment compensation. The argument of the counsel is that in order to call the termination of service retrenchment, certain conditions like the giving of one month's notice in writing, or the payment in lieu of such notice, and the payment of retrenchment compensation, have to be satisfied. It is pointed out by him that the very caption of Section 25F of the Act is "Conditions precedent to retrenchment of workman" Reliance was also placed on the decision of the Supreme Court in *The State of Bombay and*

Others Vs. The Hospital Mazdoor Sabha and Others, , wherein Gajendragadkar, J., has observed as follows in paragraph 6 at page 613:

On a plain reading of Section 25F(b) it is clear that the requirement prescribed by it is a condition precedent for the retrenchment of the workman. The section provides that no workman shall be retrenched until the condition in question has been satisfied. It is difficult to accede to the argument that when the section imposes in mandatory terms a condition precedent, non-compliance with the said condition would not render the impugned retrenchment invalid.

Basing his argument on the above observation, the counsel submitted that in either case the second respondent is not entitled to claim retrenchment compensation in as much as, if the retrenchment compensation alleged to be due to him had not been paid, there was no valid retrenchment, and the question of retrenchment compensation, therefore, could not arise; and if, on the other hand, there was a valid retrenchment, it implies that the claim for retrenchment compensation has already been satisfied and, therefore, there was nothing left to be claimed. This argument appears to be a little ingenious, and, if accepted, would mean that in no case where a workman is retrenched without paying retrenchment compensation, he would be entitled to enforce his claim for obtaining that benefit. This is far from what is contemplated by the Legislature. The petitioner's case is that there was a valid termination of the service of the second respondent paying him his dues (by which the petitioner appears to mean his provident fund amount and one month's notice pay). No doubt, it was open to the second respondent to seek an alternate remedy, to have the order of termination set aside on the ground that it was invalid in as much as the conditions precedent to the retrenchment in accordance with Section 25F have not been satisfied, to have him reinstated in service, and to pay him the emoluments as though he continued in service without break. This does not, however, deprive him of a right to seek the remedy of claiming the relief which flows from the retrenchment, the validity of which he does not intend to challenge in a reference to the Industrial Tribunal for adjudication u/s 10 of the Act.

6. Where the workman does not want to challenge the act of termination of his service by the management, which falls within the ambit of Section 2(oo) of the Act, choosing to rest content with the receipt of the benefits arising from such termination, for the determination of such benefits it is not necessary for him to approach the Industrial Tribunal through the Government with a reference u/s 10 of the Act, in as much as it is a benefit to which he is entitled u/s 25F in Chapter V-A of the Act, which benefit, in terms of Section 33C(2) of the Act, could be got computed through the Labour Court. When the employer terminates the service, which in terms of Section 2(oo) of the Act amounts to retrenchment, he incurs the liability to pay retrenchment compensation. The fact that the employer terminated the service without actually paying the retrenchment compensation due to the workman u/s 25F of the Act, does not and cannot mean that the

workman has been deprived of that benefit. If the payment has not already been made, it only means that it has been deferred. Serious complications requiring a reference to the Industrial Tribunal u/s 10 of the Act would arise only where the validity of the termination or retrenchment itself is in dispute. In this case the second respondent has accepted the termination as valid. What he seeks is the computation of the benefits, which flow from the termination which in effect and in law is retrenchment u/s 2(oo) of the Act, and which remain without being satisfied. On the facts and in the circumstances stated above, the first respondent Labour Court has jurisdiction to entertain the application and grant relief after due enquiry. The second additional point raised by the petitioner also is, therefore, devoid of merits.

7. The result is that the writ petition fails and is dismissed, however, in the circumstances of the case, without any order as to costs.