

(1960) 01 BOM CK 0008

In the Bombay High Court

Case No : Special Civil Application No. 1111 of 1959

Shree Amarsinhji Mills Ltd.

APPELLANT

Vs

Nagrashna (M.N.) and Others

RESPONDENT

Date of Decision : 08-01-1960

Acts Referred:

Industrial Disputes Act, 1947 — Section 20, 25C, 33C, 33C(2), 7

Citation : (1961) 1 LLJ 581

Hon'ble Judges : V.S. Desai, J;S.T. Desai, J

Bench : Division Bench

Judgement

S.T. Desai, J.—This petition raises a question of some importance affecting the jurisdiction of the labour court under S. 33C(2) of the Industrial Disputes Act, 1947. The petitioners are textile mills operating at Wankaner in the Saurashtra. Respondents 2 to 6, at all material times, were workmen employed by the mills. According to the petitioners, there was failure of the power plant in the mills between 23 December, 1957 and 26 February, 1958, and the mills had to be closed for a period of about 27 days in shift A and for about 26 days in shift B. During those days, respondents 2 to 6 and some other workers had presented themselves at the premises of the mills but were not given any employment owing to the failure of the power plant. Respondents 2 to 6 claimed that they were entitled to lay-off compensation and that position not having been accepted by the mills, they preferred applications to the respondent 1 praying for ascertainment of the amounts payable to them as such compensation for the period during which the mills had been closed. Their contention was that they were laid off and were entitled to lay-off compensation under the provisions of the Act. The mills, the petitioners before us, raised various contentions in opposing those applications. It was contended that the respondent 1, the labour court, had no jurisdiction to entertain the applications. It was further contended that the claims were illegal and improper. It was also contended that S. 25C of the Act which relates to lay-off compensation is ultra vires the Constitution as being repugnant to Art. 19(1)(g). The labour court allowed the applications and

ordered the mills to pay the five workmen certain amounts mentioned in the order. It is that order which is challenged by the petitioner-mills on this petition before us. The question, as we have already mentioned, is of some importance. The respondents to the petition have not appeared before us, and we have not had the advantage of any arguments on their behalf. But Mr. Gandhi, learned counsel for the petitioner-mills, has fairly and fully stated before us all the aspects of the matter and we are thankful to him for the manner in which he has done so. He has also drawn our attention to certain decisions which would seem to go against his clients.

2. The first contention urged before us by Sri Gandhi is that the labour court was in error in construing S. 33C(2). In order to appreciate the argument, it is necessary to set out the provisions of S. 33C :

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

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

(3) For the purpose of computing the money value of a benefit, the labour court may, if it so thinks fit, 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."

3. It is argued by counsel that the respondents 2 to 6 should have approached the Government under Sub-section (1) of S. 33C, and were not entitled to go to the labour court under Sub-section (2) of S. 33C. Reliance has been placed on the words "or under the provisions of Chap. VA" in Sub-section (1). Reliance has also been placed on the words "any benefit which is capable of being computed in terms of money" in Sub-section (2). It has been urged that the words "any benefit which is capable of being computed in terms of money" cannot and do not include any money claim. It is also said that Sub-secs. (2) and (3) must be read together and so read, Sub-section (2) must be understood to refer only to benefits which are other than monetary benefits but which may be computed in terms of money. The right of a workman to claim compensation for being laid off is recognized in S. 25C of the Act. In the petition before us, it has not been

disputed that and could not be disputed that the workmen were entitled to compensation for being laid off. The arguments is confined not to the merits of the claim but to the jurisdiction of the labour court.

4. The argument founded on reference to Chap. VA in Sub-section (1) may be briefly disposed of. In terms Sub-section (1) rules that

"the workman may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him."

5. Therefore, 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). It may also be observed that Sub-section (1) is purely an enabling provision. Therefore, 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 "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. Of course, we must not wrest with the language of the section in doing so, and we must see that we do not put a meaning which is beyond the plain and ordinary meaning of the expressions used in the context in which the sub-section appears in the Act. 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. But says Mr. Gandhi the sub-section must be read only as applicable to benefits other than monetary benefits. We do not think we would be justified in reading the section in that restricted and narrow manner. The question being one of construction of the material words of Sub-section (2), the point obviously lies in a narrow compass and it is not capable of any elaboration.

6. We have so far considered the matter on general principles and in the light of ordinary canons of construction. Now, let us see whether there is any authority

which deals with the question which has arisen for our judgment. Mr. Gandhi, as we have already mentioned, has drawn our attention to some authorities having a bearing on Sub-section (2). In the first of those cases *Sree Behariji Mills Ltd. Vs. State of Bihar and Others*, , the Court had to consider the position before the amendments by Act 36 of 1956. The learned Chief Justice and Mr. Justice Raj Kishore Prasad made reference in that case to the newly inserted S. 35C(1) and observed that the case was not governed by the new section. The facts were quite different from the facts before us and besides S. 35C(1) had no application to the facts of that case. There are one or two observations in that judgment to which our attention has been drawn by Mr. Gandhi. We do not think those observations afford us any guidance in interpreting Sub-section (2).

7. Another decision to which our attention has been drawn by Mr. Gandhi is a judgment of Mr. Justice Balakrishna Ayyar in *South Arcot Electricity Distribution Co. Ltd. Vs. Elumalai and Others*, Mr. Gandhi has very rightly stated that this decision goes against his contention which is based on the point of jurisdiction. He has, however, urged that the reasoning on which that decision is founded should not be accepted by us. The view taken by the learned Judge in that case is that Sub-section (1) is of the nature of provision relating to enforcement and execution of any order which may be made under Sub-section (2). In support of that view, the learned Judge has relied on the analogy of S. 20 of the Industrial Disputes (Appellate Tribunal) Act of 1950 and a decision of Mr. Justice Rajagopalan in 1956 I L.L.J. 37. The learned Judge has also referred to certain observations of their lordships of the Supreme Court in *Kasturi and Sons (Private) Ltd. Vs. N. Salivateeswaran and Another*, . 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.

8. Another decision to which also our attention has been drawn by Mr. Gandhi is the judgment of Mr. Justice Khosla in *The Malout Transport Company (Private) Ltd. Vs. The State of Punjab and Others*, . Mr. Justice Khosla has there expressed the view that S. 33C(2) clearly lays down that the determination of the benefit which is capable of being computed in terms of money can be done by a labour court, and the learned Judge has taken the view that the expression "benefit" would include a monetary benefit. We find ourselves in agreement with the conclusions reached by Mr. Justice Balakrishna Ayyar and Mr. Justice Khosla in the decisions of the Madras and Punjab High Courts referred to above.

9. Another argument urged before us by Mr. Gandhi is really another face of the same contention. It is said that the construction which we are inclined to put on Sub-section (2) would run counter to the scheme of the Act and would also not be in accordance with the provisions of S. 7 of the Act and the Sch. II to the Act. Section 7 empowers the appropriate Government by a notification to constitute

the labour courts for adjudication of industrial disputes and it says that labour courts should be constituted for adjudication of industrial disputes "relating to any matters specified in the Sch. II and for performing such other functions as may be assigned to them under this Act." Referring to the Sch. II, Mr. Gandhi has urged that matters specified in the Sch. III are outside the purview of the Sch. II. We agree that such is the position. Then, it is said that matters relating to bonus and retrenchment find express mention in the Sch. III. The argument is that a claim for compensation for retrenchment or a claim for bonus or a claim for compensation for being laid off are claims of a similar nature and claims relating to bonus and compensation for retrenchment would, on a reading of the section and the Sch. III together, be outside the jurisdiction of the labour court constituted under S. 7. The conclusion sought to be drawn from the language of S. 7 and the two schedules is that only matters which are specified in the Sch. II are within the jurisdiction of the labour court. In effect, the argument had to go to the length of saying that S. 7 must control the ambit and operation of Sub-section (2) of S. 33C. We are unable to accede to this argument. Section 33C in terms confers jurisdiction on the labour court to deal with certain matters, and there is no canon or construction which requires that in any such case S. 7 would control the operation and effect of Sub-section (2) of S. 33C. Incidentally, we may mention that S. 33C was incorporated in the statute by the Amending Act of 1956. Of course, if the language of S. 7 were in such terms as would restrict or control the operation of S. 33C, we would certainly have felt bound to give effect to the same. But, in the absence of any such language, we see no reason why S. 7 should be read as in any manner detracting from the ordinary meaning and effect of Sub-section (2) of S. 33C. We may also mention that S. 7 itself says that the labour courts can be constituted "for performing such other functions as may be assigned to them under the Act." These words also go counter to the present contention of Mr. Gandhi.

10. One more contention indicated by Mr. Gandhi when he opened the petition before us was that S. 25C is ultra vires the provisions of Art. 19(1)(g) of the Constitution. That contention has not been pressed before us and it is not necessary to discuss the same.

11. In the result, the petition fails. Rule will be discharged.