
(1976) 09 OHC CK 0022
In the Orissa High Court

Shyamsundar Sahu and Co.

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 17-09-1976

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25FF, 33C

Citation : (1977) 43 CLT 77 : (1977) 1 LLJ 363

Hon'ble Judges : S. Acharya, J;B.K. Ray, J

Bench : Division Bench

Judgement

S. Acharya, J.—This petition is directed against the order of the Labour Court, dated 31-3-75, passed on an application u/s 33C(2) of the Industrial Disputes Act (hereinafter referred to as the "Act" filed by Sridhar Sahu, opposite party No. 2 (hereinafter referred to as O.P. No. 2) in that Court. The petitioner is a partnership firm registered under the Indian Partnership Act, 1932. The O.P. No. 1 was appointed in the petitioner's firm as a salesman since the year 1956.

2. According to the petitioner, O.P. No. 2 was in the habit of remaining absent unauthorisedly. In the years 1972 and 1973 the O.P. No. 2 remained absent respectively for 152 and 141 working days. All warnings and requests to O.P. No. 2 for rectifying himself in that direction proved futile. O.P. No. 2 unauthorisedly remained absent for most parts of the months of October and November, and for whole of December, 1973. In January, 1974 he came to the petitioner's establishment and expressed his desire not to continue in the employment of the petitioner and wanted his dues with some ex gratia payment. He was offered his full pay for the month of November, 1973, even though he was absent for 20 days in that month, and was also offered the month's pay as ex gratia. O.P. No. 2 refused to accept the same and demanded Rs. 3,000 to which the petitioner's management did not agree. O.P. No. 2 on various dates and occasions appeared before the petitioner and demanded fantastically heavy amount on the threat that if such amounts were not paid he would carry the matter to Court. The petitioner at one stage agreed to pay him a month's pay and Rs. 500 as ex

gratia payment, but O.P. No. 2 did not agree to accept that amount. Thereafter O.P. No. 2 made a petition before the Assistant Labour Commissioner, Cuttack demanding Rs. 5,000 as his dues from the petitioner. The petitioner refuted the claims of O.P. No. 2 before the Assistant Labour Commissioner as illegal, fictitious and not maintainable in law, and asserted that the petitioner never removed O.P. No. 2 from service, and maintained that it was O.P. No. 2 who himself remained unauthorisedly absent from his duties and requested the Asst. Commissioner to direct O.P. No. 2 to report to his duties within a reasonable time, failing which he would be deemed to have lost his lien in service under the petitioner. A copy of the petitioner's statement filed before the Assistant Labour Commissioner was sent to O.P. No. 2 but he never chose to join his employment in the petitioner's firm. The application of O.P. No. 2 before the Assistant Labour Commissioner was dismissed, and thereafter he on 19-10-74 made an application before the Labour Court purporting it to be u/s 33C(2) of the Act alleging therein termination of his service by the petitioner and on that basis claiming benefits as mentioned in the statement attached thereto. The said application of O.P. No. 2 was registered as Industrial Dispute Misc. Case No. 109/74 before the Labour Court. The petitioner opposed that petition inter alia on the ground that it was not maintainable in law and the amount claimed was fictitious. It was also asserted that O.P. No. 2's service was never terminated and so his claim to retrenchment benefits was absurd and frivolous. The Labour Court proceeded to decide the dispute and contested fact about the termination of service of O.P. No. 2. and by its order dated 31-3-75 it partly allowed O.P. No. 2's claim holding, that he is entitled to get Rs. 1,330 from the petitioner as retrenchment allowance u/s 25F of the Act. The petitioner by this writ application has challenged the above-mentioned order of the Labour Court as illegal and without jurisdiction.

3. Mr. Nanda, the learned Counsel for the petitioner, contends that in the proceeding initiated on the petition u/s 33C(2) of the Act filed by O.P. No. 2 the Labour Court did not have the jurisdiction to decide the disputed and contested fact as to whether the services of O.P. No. 2 were terminated or if he was retrenched from service by the petitioner, as such matters are to be adjudicated exclusively by the Industrial Tribunal on a reference as contemplated under the Act,

On the other hand, Mr. Misra, the learned Counsel for O.P. No. 2, contends that the Labour Court's jurisdiction u/s 33C(2) to compute the benefits of O.P. No. 2 is not ousted merely because his employer disputed the above facts. According to Mr. Misra the said facts being incidental to the claim in question the Labour Court in order to ascertain the claim made u/s 33C(2) has to decide the said facts even though disputed by the employer.

4. In *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, it has been pointed out that a workman who is dismissed by his employer would not be entitled to seek relief u/s 33C(2) by merely alleging that his dismissal being wrongful, benefits should be computed on the basis that he had continued in service. In

that case it was observed that:

His...dismissal may give rise to an industrial dispute which may be appropriately tried, but once it is shown that the employer has dis. missed., him, a claim that the dismissal...is unlawful and, there. fore, the employee continues to be the workman of the employer and is entitled to the benefits due to him under a pre-existing contract cannot be made u/s 33C(2).

In Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, , their Lordships have observed that:

12. It is now well-settled that a proceeding u/s 33C(2) is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceed to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudged, or. otherwise, duly provided fur. In Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others, , it was rate-rated that proceedings u/s 33C(2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the benefit claimed by workmen is in such cases in the position of an executing Court. It was also reiterated that the right to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman and his employer.

(Emphasis is ours)

XX XX XX XX By merely making a claim in a loaded form the workmen cannot give the Labour Court jurisdiction u/s 33C(2). The workman who has been dismissed would no longer be in the employment of the employer. It may be that an Industrial Tribunal may find on an investigation into the circumstances of the dismissal that the dismissal was unjustified. But when he comes before the Labour Court with his claim for computation of his wages u/s 33C(2) he cannot ask the Labour Court to disregard bib dismissal as wrongful and on that basis compute his wages.

16. In such cases, a determination as to whether the dismissal was unjustified would be the principal matter for adjudication, arid computation of wages just consequential upon such adjudication. It would be wrong to consider the principal adjudication as "incidental" to the computation. Moreover, if we assume that the Labour Court had jurisdiction to make the investigation into the circumstances of the dismissal, a very anomalous situation would arise. The Labour Court after holding that the dismissal was wrongful would have no jurisdiction to direct reinstatement u/s 33C(2). And yet if its jurisdiction to compute the benefit is conceded it will be like conceding its authority to pass orders awarding wages as many times as the workman comes before it without

being reinstated. Therefore, the Labour Court exercising jurisdiction u/s 33C(2) has got to be circumspect before it undertakes an investigation, reminding itself that any investigation it undertake is, in a real sense incidental to its computation of a benefit under an existing right, which is its principal concern.

In U.P. Electric Supply Co. Ltd. Vs. R.K. Shukla and Another, etc., , it has been held that:

Where, however, the right to retrenchment compensation which is the foundation of the claim itself a matter which is exclusively within the competence of the Industrial Tribunal to be adjudicated upon on a reference, it would be straining the language of Section 33C(2) to hold that the question whether there has been retrenchment may be decided by the Labour Court. The power of the Labour Court is to compute the compensation claimed to be payable to the workmen on the footing that there has been retrenchment may be decided by the Labour Court. The power of the Labour Court is to compute the compensation claimed to be payable to the workmen on the footing that there has been retrenchment of the workmen. Where retrenchment is conceded, and the only matter in dispute is that by virtue of Section 25FF no liability to pay compensation has arisen the Labour Court will be competent to decide the question. In such a case the question is one of computation and not of determination, of the conditions precedent to the accrual of liability. Where, however, the dispute is whether workmen have been retrenched and computation of the amount is subsidiary or incidental, in our judgment, the Labour Court will have no authority to trespass upon the powers of the Tribunal with which it is statutorily invested.

5. In this case O.P. No. 2 at first approached the Assistant Labour Commissioner with similar allegations and claim. The petitioner there disputed the claim and also the alleged basis for the claim. The said petition was dismissed. Thereafter O P No 2 filed the petition in question before the Labour Court again alleging that his services were illegally terminated by the petitioner on 5-2-74 without any notice and without payment of his arrear salary and other legal dues, such as retrenchment benefits, gratuity, pay in lieu of notice and leave salary. The said benefits were claimed on the basis of illegal termination of service as alleged by O P. No. 2. The petitioner disputed and challenged not only the claim but also the very basis on which the claim was founded. On behalf of the petitioner it was inter alia asserted that the services of O.P. No. 2 were never terminated nor was he ever retrenched from service and that his claim was entirely fictitious and frivolous. The maintainability of that petition before the Labour Court and consequentially the jurisdiction of that Court to adjudicate the matters alleged in that petition were challenged. On such conflicting and contradictory stand taken by the parties to that proceeding the Presiding Officer of the Labour Court formulated the following two issues for adjudication and directed the parties to lead evidence on those issues:

(1) If the services of the petitioner were terminated by the opposite party, and

(2) If he is entitled to retrenchment benefits and any other legal dues, and if so, to what extent?

In this case, the computation of the benefits claimed by OP. No 2 would very much depend on the adjudication of the principal questions as to whether the services of O P. No. 5 were terminated by the petitioner or whether he (O.P. No 2) was retrenched from service. If any of the two questions is found in the affirmative, then it is also to be decided whether the said termination or retrenchment was justified or not. Only on the adjudication of those principal matters in favour of O.P. No. 2, one can proceed to compute the benefits which may arise there from. So. the determination of the above-mentioned contested questions of fact is the condition precedent to the accrual of the liability and computation of the amount is subsidiary thereto. So the basis on which computation of benefits was sought for before the Labour Court was not an existing one nor had the same been adjudicated before. As the employer has been persistently disputing the basis of the claim, and different aspects relating to this matter would require an elaborate enquiry, that becomes the principal matter for adjudication, and in this case computation of the benefits prayed for is just a subsidiary matter for adjudication. The basis and foundation of the claim in this case is a matter which is exclusively within the competence of the Industrial Tribunal to be adjudicated upon on a reference. However a proceeding u/s 33C(2) being in the nature of an execution proceeding the Labour Court in a proceeding under this section has only to calculate the amount of the benefits as provided under the said section, and this Court should not decide matters which are not for the executing Court to decide. As adjudication of the basis and foundation of the claim is the principal function and concern of the Industrial Tribunal, the Labour Court should not trespass upon the powers of the Tribunal and arrogate to itself the jurisdiction of the Tribunal to decide such matters. It is of course true that in a proceeding u/s 33C(2) the mere denial of the right of the workman by the employer would not take away the jurisdiction of the Labour Court. If the denial of the workman's right by his employer appears to the Labour Court to be frivolous and or incorrect on the faces of the records, or assessment of that question does not engage the Court in an elaborate enquiry and can be ascertained easily on a preliminary enquiry, then a determination of that question can be done only as incidental to the computation of the benefits. But where the basis and foundation of the claim is seriously contested and determination of that basic factor of the case will involve an elaborate process such a matter being the principal function and concern of the Industrial Tribunal, the Labour Court cannot proceed to decide that matter by dubbing the same as incidental to the computation of the benefits u/s 33C(2).

6. Mr. Misra, the learned Counsel for opposite party No 2, cited the decisions reported in *Central Kan If of India v. P.S. Rajagopalan* A.I R. 1964 S.C. 543, and *Payment of Wages Inspector Vs. Surajmal Mehta and Another*, and submitted that as per the said decisions even in the cases where the right of a workman is disputed and the employer denies his liability to pay any compensation, the

Labour Court could go into the question as to whether the workman had a right to receive such a benefit. The decision on the above point in the case reported in *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, , has only been followed in the case reported in *Payment of Wages Inspector Vs. Surajmal Mehta and Another*, Their Lordships while deciding the point in question in the case reported in *U.P. Electric Supply Co. Ltd. Vs. R.K. Shukla and Another, etc.*, , referred to the decision on the point in *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, , and stated that the latter decision makes it clear that all disputes arising out of claims which may be computed in terms of money are not necessarily within the terms of Section 33C(2). Again while laying down the law on the point in question in the case reported in *Central Inland Water Transport Corporation Limited Vs. The Workmen and Another*, , their Lordships also referred to the decision in *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, . Their Lordships in the case reported in *U.P. Electric Supply Co. Ltd. Vs. R.K. Shukla and Another, etc.*, . have approved of the view taken in *Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others*, , to the effect that in order that a claim may be adjudicated upon u/s 33C(2) there must be an existing right, and the right must arise under an award, settlement or under the provisions of Chapter V A. or it must be a benefit provided by a statute or a scheme made thereunder and there must be nothing contrary under such statute or Section 33C(2). But the possibility of a mere claim arising under Chapter V A cannot confer jurisdiction upon the Labour Court to decide matters which are essentially within the jurisdiction of the Industrial Tribunal. As the law on the point has been laid down in the afore-said two latter cases on a consideration of the view taken by that Court in the two earlier cases cited by Mr. Misra, we prefer to follow the ultimate decision of that Court in the latter two cases. *U.P. Electric Supply Co. Ltd. Vs. R.K. Shukla and Another, etc.*, and *Central Inland Water Transport Corporation Limited Vs. The Workmen and Another*, .

7. The main question for determination in the instant case are whether the services of O.P. No. 2 were terminated, and if so. whether the said termination was justified or not. The said questions, for reasons stated above, are to be adjudicated at first by the Industrial Tribunal in accordance with the provisions in the Act, and the Labour Court did not have the jurisdiction to decide these matters on the petition u/s 33C(2) of the Act filed before it. As the Labour Court has assessed the retrenchment compensation after an elaborate enquiry and adjudication of the above basic issues involved in this case, and in so doing it trespassed upon the jurisdiction of the Industrial Tribunal, the impugned order has to be treated as without jurisdiction and as non est, and has to be quashed on that account A writ of certiorari be issued to the above effect.

8. In the result, the writ application is allowed. As O.P. No. 2 was a low-paid employee under the petitioner, we do not like to saddle him (O.P. No. 2) with costs of this writ petition.

B.K. Ray, J.

9. I agree.