

(1969) 03 MAD CK 0027

In the Madras High Court

Case No : Writ Petition No. 2029 of 1966

Sri R. Pandhubhai c/o. State Labour Union, Madras

APPELLANT

Vs

Management, Bombay Cycle Importing Co., Madras and
Another

RESPONDENT

Date of Decision : 03-03-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Industrial Disputes Act, 1947 — Section 33C(2)

Citation : AIR 1970 Mad 474 : (1971) 21 FLR 296 : (1970) 2 LLJ 559

Hon'ble Judges : Sadasivam, J

Bench : Single Bench

Advocate : S. Ramaswami, for the Appellant; A.N. Rangaswami, for the Respondent

Final Decision : Dismissed

Judgement

Sadasivam, J.—Petitioner was employed by the first respondent Management on a monthly salary of Rs. 50/- and his services were

wrongfully terminated on 13-7-1960 without any reasonable cause. There- upon he preferred an appeal u/s 41 of the Madras Shops and

Establishments Act before the appellate authority prescribed under the said Act. The appellate authority passed an order on 5-7-1961 holding that

the termination of the petitioner's services was illegal and set aside the order of termination. Thereafter, the petitioner approached the first

respondent Management for reinstating him in service. But the first respondent refused to do so. The petitioner then preferred an application C. P.

No. 440 of 1961, before the Labour Court, Madras, u/s 33-C(2) of the Industrial Disputes Act, (hereinafter referred to as the Act) Act XIV of

1947 claiming wages for the period from 13-7-1960, the date of dismissal, till

18-8-1961 the date of the filing of the petition,

The Labour Court held that the claim for wages made by the petitioner would, not come under the clause "any benefit which is capable of being

computed in terms of money" within the meaning of Section 33-C(2) of the Act, and, consequently, dismissed the petition. According to the

petitioner, the law was subsequently made clear by the pronouncement of this court, that the Labour Court has got jurisdiction to compute the

benefits arising out of an order passed u/s 41 of the Madras Shops and Establishments Act setting aside an order of dismissal by the .

Management, and therefore, he preferred another claim petition No. 139 of 1964, to the Labour Court, Madras claiming wages for the period 13-

7-1960 to 29-2-1964 the date of petition, amounting in all to Rs. 2,200/- towards wages, which he would be entitled to had he remained in

service.

The Labour Court found that the petitioner would be entitled to a sum of Rs. 2,200/- towards the back wages claimed by him, but held that the

prior order passed in C. P. 440 of 1961 on the file of the Labour Court would operate as res judicata and in the result, dismissed the petition.

Aggrieved by the said order of the Labour Court, the second respondent herein, the petitioner has filed this writ petition under Article 226 of the

Constitution of India for the issue of a writ of certiorari to quash the order.

2. Section 33-C(2) of the Act has been amended on 19-12-1964 by the addition of the words "any money or" before the clause ""any benefit

which is capable of being computed in terms of money"". Under the section as amended, the claim for back wages would clearly fall u/s 33-C(2) of

the Act. But the amendment cannot have any retrospective effect. The learned Advocate for the petitioner, however, urged that even Section 33-

C(2) of the Act, as it originally stood, has been held to be comprehensive enough to include a claim for back wages, though a narrow construction

could be placed on the said Section as it originally stood, so as to exclude back wages. In Kays Construction Co. (P) Ltd. Vs. State of Uttar

Pradesh and Others, In construing Sub-sections (1) and (2) of Section 6-H of the Uttar Pradesh Industrial Disputes Act, 1947, corresponding to

Clauses (1) and (2) of Section 33-C of the Act, the antithesis between "money due" and "benefit which must be computed, in terms of money" is

pointed out.

Thus it is clear from the decision that it is obvious that there is some difference between the two sub-sections and that it arises from the fact that the

benefit contemplated in Sub-section (2) is not "money due" but some advantage or perquisite which can be reckoned in terms of money. This

decision was made in the appeal preferred against the decision in Regional Conciliation Officer Vs. Kays Construction Company (Private) Ltd.

and Another, and it affirmed that decision. It was held in that decision that wages which a workman gets could not be equated with benefit. But

there are decisions of this court and the Supreme Court which have held that a claim for back wages would clearly fall u/s 33-C(2) of the Act. In

M.S.N.S. Transports, Tiruchirapalli Vs. K. Rajaram and Another, it was held that it could not be contended that an application u/s 33-C(2) of the

Industrial Disputes Act for computing the benefits of back wages payable to a workman under an award of a Labour Court is not competent.

3. In The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., the Supreme Court has held that the word benefit used in Section 33-C(2) of the

Act is not confined merely to non-monetary benefits which could be converted in terms of money, but it takes in all kinds of benefits, which may be

monetary as well as non-monetary if the "workman is" entitled to them and in such a case, the workman is given the remedy of moving the

appropriate Labour Court with a request that the said benefits be computed, or calculated in terms of money and that once such computation or

calculation is made u/s 33-C(2) of the Act the amount so determined has to be recovered as provided in Sub-section (1).

4. In Claim Petition No. 440 of 1961 the Labour Court has held that the back wages claimed cannot be construed to be a benefit within the

meaning of Section 33-C(2) of the Act and that the Labour Court has no jurisdiction to entertain a claim for back wages. In view of the above

discussion, I shall proceed on the footing that the Labour Court erroneously construed Section 33-C(2) of the Act as it then stood in declining to

entertain the claim for back wages in C. P. No. 440 of 1961.

5. In Burn and Co., Calcutta Vs. Their Employees, the Supreme Court has held that the rule of res judicata enacted in Section 11, Civil P. C. is in

terms inapplicable, but the principle underlying it is founded on sound public

policy and is of universal application and that there are good reasons why the principle should be applicable to decisions of Industrial Tribunals also. In *C.K. Iypunny Vs. R.N. Kulkarni and Another*, it has been held that the principles analogous to *res judicata* have been applied to proceedings - under the Industrial Disputes Act on grounds of public policy in the general interest of finality of decision. It has been held that the remedy u/s 33-C(2) of the Act is in addition to the remedy provided for under the relevant provisions of the Bombay Industrial Relations Act, 1946 but if an application is made under either of the Acts and fails on merits, a similar second application would be barred.

In *Upendra Subhanna Prabhu Vs. First Labour Court, Bombay and Another*, it was held that the dismissal of a claim petition u/s 33-C(2) of the Act in the presence of the petitioner on the ground that he did not let in any evidence in support of his claim, would operate as *res judicata*. In the *Super Surgical Co. Vs. S. Desikan and Another*, it has been held that as neither in the Industrial Disputes (Central) Rules nor in the Madras industrial Disputes Rules, the Labour Court is empowered to grant leave to withdraw an application with permission to file a fresh application on the same grounds, the Labour Court cannot permit the withdrawal of a claim petition filed u/s 33-C(2) of the Act and entertain a fresh application and that the fresh application would be barred by *res judicata*.

It cannot be disputed that even an erroneous decision on a question of law would operate as *res judicata* as between the same parties in a subsequent proceeding when the same question is raised. Thus the question raised in *C. P. No. 440 of 1961* whether the petitioner is entitled to claim back wages as benefit u/s 33-C(2) of the Act as it originally stood, would operate as *res judicata* in the subsequent claim petition, *C. P. No. 139 of 1964* in which the same question arises for consideration.

6. The learned Advocate for the petitioner urged that the claim for back wages from 13-7-1960 to 15-8-1961 which formed the subject matter of *C. P. No. 440 of 1961* would alone be barred and that he could claim the back wages for the subsequent period from 16-8-1961 to 29-2-

1964. He relied on the decisions in *In re Tata Iron and Steel Co., Ltd.* (1950) II LLJ 1043 (Mad) and in *Balasundara Mudaliar v. Ellappa*

Mudaliar, (1957) 1 MLJ 7 in support of his contention that where the termination

of services is held to be wrongful in a proceeding u/s 41 of the Madras Shops and Establishments Act, the workmen should be deemed to be in service. He referred to the decision in C. Mohan Krishna Naidu Vs. The National Bank of India Ltd., Madras, where it has been held that when the order passed by an employer u/s 41(1) of the Madras Shops and Establishments Act is set aside by the appellate authority u/s 41(2) of that Act the employee may regard himself as continuing in service and may claim salary on that basis, or regard the order terminating his services as an order of wrongful dismissal and claim damages for wrongful dismissal. He also referred to the following observation of Lord Asquith of Bishopstone in East End Dwellings Co. Ltd. v. Finsbury Borough Council, 1952 AC 109 quoted with approval in M.K. Venkatachalam, I.T.O. and Another Vs. Bombay Dyeing and Mfg. Co., Ltd., :

If you are bidden to treat an imaginary state of affairs as real you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it

The contention of the learned Advocate for the petitioner is that it is open to the petitioner to claim wages in a second petition, though a claim for back wages for a prior period is barred is disallowed. He relied on the decisions in Dhandapani v. Salem Co-operative Whole Sale Stores Ltd., 1950 I LLJ 635 (Mad) and in Union of India (UOI) Vs. P.V. Jagannath Rao, . In support of his contention that the order of dismissal being ineffective from its inception, the petitioner should be deemed to continue in service in spite of the order and that the fiction of his continuing in service should be given full effect by his being allowed to claim wages as and when it accrues to him. He is, however, unable to show any authority in support of his contention that he can go on claiming wages by filing regular successive applications u/s 33-C(2) of the Act.

7. Under the common law of master and servant, an employer cannot be compelled to employ any one against his will and the remedy of an employee for wrongful dismissal is to sue for damages. But the labour legislation in India, is intended to bring about harmonious relationship between the employers and employees in the interest of Industrial peace and it has been held not to infringe the fundamental right guaranteed under

Article 19(1)(g) of the Constitution, But the common law as regards contractual rights could be interfered with only to the extent to which labour

legislation has been passed. There is nothing in Section 33-C(2) of the Act or any other provision, to show that an employee who has been

wrongfully dismissed can claim every now and then for wages. Even assuming that the employee can make successive claims for wages a second

or subsequent application would not lie in a labour Court if the first application is rightly or wrongly rejected on the ground that it would not come

within the ambit of Section 33-C(2) of the Act. The finding of the Labour Court that the claim of the petitioner is barred by *res judicata* is correct.

8. The other contentions were urged by the learned Advocate for the first respondent. According to him. Section 41 of the Madras Shops and

Establishments Act conferred uncontrolled and unlimited powers on the appellate authority which post is occupied by an administrative or

executive officer, to pass final and conclusive orders without any right of appeal and that it infringed the fundamental right guaranteed under Article

19(1)(g) of the Constitution. He relied on the decision in *Jugal Kishore Bhadani Vs. Labour Commissioner and Others*, where similar provisions

contained in Section 26(2) and 26(3) of the Bihar Act 8 of 1954, were held to be *ultra vires* of the powers of the legislature. It is really

unnecessary to consider this point as it has been taken for the first time during arguments and it would entail notice to the Government Pleader, if it

has to be considered.

9. The other point raised by the learned Advocate for the first respondent is that the Labour Court has not considered, the relevant principles of

law in assessing the amount at Rs. 2,200/-. He relied on the decisions in *S.S. Shetty Vs. Bharat Nidhi, Ltd.*, and *Malik Dairy Farms Vs. Its*

Workers' Union, in support of his Contention. Though the first respondent filed documents to show that the petitioner was employed elsewhere

after he left the services of the first respondent it made no attempt to prove the same. It is only in a case where an employee seeks to recover

damages for wrongful dismissal, one has to take several factors into consideration for assessing the damages. But, in the present case, the

petitioner's claim is that he continues to be in the service of the first respondent and that he is not employed elsewhere. If the claim of the petitioner

is otherwise justified, I fail to see how he cannot recover the amount of wages for the period from 16-8-1961 to 29-2-1964. But in view of my

finding on the question of res judi-cata it is really unnecessary to consider the last two points urged by the learned advocate for the first respondent.

10. In the result the writ petition is liable to be dismissed and it is hereby dismissed. In the circumstances of the case, I make no order as to costs.