

(1984) 07 DEL CK 0038

In the Delhi High Court

Case No : Civil Writ Appeal No. 864 of 1982

Suraj Bhan, etc.

APPELLANT

Vs

The Labour Court, Delhi and Another

RESPONDENT

Date of Decision : 23-07-1984

Acts Referred:

Citation : (1984) ILR Delhi 552

Hon'ble Judges : Yogeshwar Dayal, J

Bench : Single Bench

Judgement

Yogeshwar Dayal, J.

(1) This petition has been filed by Suraj Bhan and 24 others under Article 226 of the Constitution of India for quashing an order dated 25th March. 1981 passed by the Presiding Officer, Labour Court No. 1, Delhi dismissing an application filed by them under Sub-Section (2) of Section 33C of the Industrial Disputes Act, (hereinafter referred to as the Act) as incompetent.

(2) The petitioners and one other had filed a petition purporting to be under Sub-Section 2 of Section 33C of the Act alleging inter alias as under:

THE applicants ,named above, the workmen of above named employer, are entitled to receive from the said employer, the benefits mentioned in the statement annexed, on the following facts and grounds:

THAT all applicants are employees of the aforesaid employer. They were coerced to submit resignation in the month of May, 1976 under guise of Emergency. In this way they were turned out of employment, and this termination amounts to illegal retrenchment, having no validity in law, and further have not paid the salaries and benefits payable to applicants from May 1976 to July 1977. It is Therefore prayed that the court be pleased to determine the amount due to the applicants.

(3) Along with this application, the petitioners had filed a consolidated

statements of salaries for the period from May. 1976 to June, 1977 in respect of the petitioners.

(4) Respondent No. 2, the Management of Delhi Cloth & General Mills Company Ltd. Bara Hindu Rao, Delhi filed a reply and inter alias pleaded that the applicants are not the employees of the respondent and the applicants have taken all their emoluments due to them at the time of their resignations. The claim for salaries from May 1976 to July 1977 is, thus, not maintainable. It was further pleaded that the Labour Court had no jurisdiction to entertain and adjudicate the present claim. The alleged salaries claimed by the applicants are not due to the applicants and the Labour court cannot adjudicate in these proceedings if the resignations were voluntarily or not. It was further pleaded that some of the applicants i.e. applicants at Serial numbers 1,2,4,5,8, 10 to 14, 16, 17, 21 had moved the Labour Commissioner, Delhi for commencing conciliation proceedings on the same facts as alleged in the present application but the Secretary(Labor)of the Delhi Administration informed the respondent that the dispute is not a fit one for reference to the Industrial Tribunal as the workers resigned of their own and have been paid ex-gratia, gratuity and other dues. Thus, the case of the Management was that the applicants had voluntarily resigned from the service of the company while they were working at its Unit, Dcm City Shop Nai Sarak, Delhi and their resignations were accepted by the Management and it was false to allege that the workmen were coerced to submit resignation in the month of May. 1976 under guise of Emergency. The workmen were, in fact, paid huge amount by way of solarium in recognition of long services of the applicants with the Management.

(5) The workmen filed a rejoinder admitting the fact that their efforts for having the matter adjudicated through the Industrial Tribunal had failed. But it was submitted that that was not bar to the maintainability of the present petition. The payment of various amounts by the Management to the workmen was, however, not denied, but it was reiterated that the resignations were procured by the Management with ulterior motive.

(6) While these proceedings were pending in the Labour Court, the Labour Court had framed three issues on merits and during the proceedings framed the 4th issue as under:

WHETHER this court has jurisdiction to compute wage for the period after alleged retrenchment U/s. 33C(2) of the I.D. Act?

(7) On this issue No. 4, the Labour Court upheld the objection of the Management that since there is no subsisting right and the question whether the resignations were voluntarily or otherwise, was beyond the purview of Section 33-C(2)) of the Industrial Dispute Act and dismissed the application as stated earlier.

(8) It may be mentioned that the application u/s 33C(2) of the Act was filed by 26 workmen, whereas the present petition, as stated earlier, has been filed on behalf of 25 of them.

(9) In the writ petition, it was inter alias pleaded that in the D.C.M. (City) shop, the Management had employed about 60 persons and had become vindictive and taking advantage of emergency during the period May/June, 1976, procured resignations from about 45 persons ostensibly representing that the 45 workmen have resigned of their own free will. The Management, thereafter, did not recruit any new hands in place of the 45 persons who resigned nor transferred any of its employees from any other unit to D.C.M. (City Shop) and thereafter continued the said unit with the remaining employees. That the efforts of the Management in procuring the resignations amounted to, in fact, retrenchment of the petitioners and the Management did not offer or pay the retrenchment compensation to the petitioners which is sine-qua-non for retrenchment, though the petitioners had been in continuous service for more than 10 years in each case. The petitioners had pleaded that there was illegal retrenchment and thus, u/s 33C(2) of the Act, they were entitled to get, "any benefit which is capable of being computed in terms of money" and in the present case, the benefits which they wanted to be computed was salary for the period from May, 1976 to June, 1977 and that the Labour Court acted without jurisdiction in holding that it had no jurisdiction to determine it.

(10) Mr. D. R, Gupta, learned counsel for the workmen relied on the following authorities in support of his submissions: 1. Sahu Minerals and Properties Ltd. Vs. Presiding Officer, Labour Court and Others, ; 2. Karnal Singh Uttam Singh Vs. State of Maharashtra, ; 3. Santosh Gupta Vs. State Bank of Patiala, and 4. Nazamuddin Suleman etc. Vs. The New Shorrock Spg. and Mfg. Mills Co. Ltd. Nadiad and another etc. 1980 Lab. L.C. 397.

(11) It was submitted that for purposes of seeing the jurisdiction of the Labour Court, the Labour Court is supposed to see merely the application and not the reply of the management. It was submitted that the petitioners had stated in the application u/s 33C(2) of the Act that there were illegal retrenchment and, therefore ,they are wanting the Labour Court to declare that there was illegal retrenchment and thereafter instead of claiming compensation under Chapter V-A of the Act, they were claiming that the wages be computed.

(12) Mr. Rameshwar Dial, learned counsel for the Management, however, submitted that on the face of the application, it is stated by the workmen themselves that they have submitted resignations though they have termed the resignations as having been submitted under coercion under the guise of Emergency. The Management has not retrenched the petitioners. They had submitted voluntarily resignations and they were paid huge amount varying between Rs. 10,000 to more than Rs. 30,000 in each case as stated in the annexure filed to the statement. It was submitted that the Labour Court without first determining whether the resignations were voluntarily or not, it would not be in a position to hold whether it was retrenchment or not and this was a "principal matter for adjudication" and was not "incidental" to computing the wages. He thus, submitted that unless the workmen show pre-existing right by

showing that the contracted employment is still subsisting, they cannot claim wages in these things nor could the wages be computed under the circumstances of the case.

(13) It was also pointed out that the case of the petitioners- workmen could not fall within the definition of "retrenchment" as defined in Section 2(00) of the Act as there was no termination of employment by the Management.

(14) In all cases where jurisdiction of Labour Court is disputed u/s 33C(2) of the Act, invariably reference is made to a celebrated case of The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., , decided by the Supreme Court speaking through P. B. Gajendragadkar, J. and various other decisions of the Supreme Court elucidating this decision. In this case Gajendragadkar, J. after giving legislative history of Section 33C of the Act, observed:

THE claim u/s 33C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by sub-section (2).

This proposition was explained in para 19 as under:

WE would ,however, like to indicate some of the claims which would not fall under S. 33C(2), because they formed the subject matter of the appeals which have been grouped together for our decision along with the appeals with which we are dealing at present, if an employee is dismissed or demoted and it is his case that the dismissal or demotion is wrongful, it would not be open to him to make a .claim for the recovery of his salary or wages under S. 33C(2). His demotion or dismissal may give rise to an industrial dispute which may be appropriately tried, but once it is shown that the employer has dismissed or demoted him, a claim that the dismissal or demotion is unlawful and, Therefore, 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 under S. 33C(2).

(15) Therefore, no claim u/s 33C(2) could be made if contract of employment has been terminated. The matter again came up before the Supreme Court in the case of State Bank of Bikaner and Jaipur Vs. Khandelwal (R. L.) 1968 1 Lj 589(6). In this case the workman was claiming certain supervisory allowances under the Sastri award but for the period for which the allowance has been claimed, the workman stood reverted to a lower post. The Supreme Court was pleased to point out that u/s 33C(2), when claiming supervisory allowance, the question, whether reversion was right or wrong could not be gone into by the Labour court and the application for computation of such benefit was incompetent.

(16) What enquiry would be "incidental" as observed by Gajendragadkar. J. in

the aforesaid case of The Central Bank of India Ltd. (supra) came up for consideration again before the Supreme Court in the case of Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, and Palekar, J. on behalf of the Supreme Court explained it as under:

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 proceeds 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 for. In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff's right to relief; (ii) the corresponding liability of the defendant, including, whether the defendant is, at all, liable or not and (iii) the extent of the defendant's liability, if any. The working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding. Determination No. (iii) referred to above, that is to say, the extent of the defendant's liability may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). Since a proceeding u/s 33C(2) is in the nature of an execution proceeding it should follow that an investigation of the nature of determinations (i) and (ii) above is, normally, outside its scope. It is true that in a proceeding u/s 33C(2), as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But that is merely incidental. Therefore, when a claim is made before the Labour Court under S. 33C(2) that court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions—say of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as incidental to its mainness of computation. In such cases determinations (i) and (ii) are not incidental to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal.

THE Old Company closed its business on May 3, 1967. The Corporation to which the company's undertaking was transferred in due course, appointed a large number of the Company's employees by fresh letters of appointments, but it could not absorb all of them. The reference under S. 33C was made on behalf of the employees. Section 25FF of the Industrial Disputes Act declares what are the rights of the workmen of an undertaking which is transferred. The right is to receive compensation as if the workmen are retrenched under S. 25F and is available only against the owners of the undertaking that is to say, the transferor of the undertaking. The former employees of the company who were not absorbed by the Corporation could hardly make out a claim against the

transferee Corporation either for compensation on termination of their service following the transfer or for reemployment. Only on a detailed investigation would it be possible to determine whether the workmen had any right to a benefit and, if so, the Corporation was liable to satisfy the same. The other question which would be necessary to decide was whether the Corporation was a successor of the defunct company. Such an investigation would clearly be quite outside the speedy individual remedy contemplated by Section 33C(2). The question was not one which the Labour Court could be expected to deal with in a proceeding u/s 33C(2) the principal business whereunder is just computation of a benefit demonstrably existing. In short, the problems raised were appropriate for determination in an Industrial Dispute on a reference under S. 10 of the Act and could not be regarded as merely "incidental" to the computation under S. 33C(2).

(17) It fell to the Supreme Court again speaking through Bhagwati, J. who explained the aforesaid case in the case of Punjab Beverages Pvt. Ltd. Vs. Suresh Chand and another 1978 2 LlJ 1(8). In this case a workman after enquiry was dismissed from service but as the industrial dispute was pending, the Management approached the Industrial Tribunal for approval of the action taken by it. The application was resisted by the workman but when the matter came up for hearing, the Management withdrew the application for approval and the workman thereafter demanded full wages from the date of the suspension till the date of demand contending that as the action of the Management was not approved by the Industrial Tribunal the respondent continued to be in service and was entitled to all the emoluments. The Management did not respond to the demand and thereafter the workman made an application to the Labour Court u/s 33C(2) of the Act for determination and payment of the amount of wages due to him from the date of suspension, on the ground that the Management not having obtained the approval of the Industrial Tribunal to the dismissal of the workman u/s 33(2)(b), the order of dismissal, was void and the workman continued to be in service and was entitled to receive his wages from the Management. The Management resisted the application u/s 33C(2) inter alia on the ground that the application u/s 33(2), (b) having been withdrawn, the position was as if no application had been made at all with the result that there was contravention of S. 33(2)(b), but such contravention did not render the order of dismissal void ab initio and it was merely illegal and unless it was set aside in an appropriate proceeding taken by the workman either u/s 33A or in a reference u/s 10, the Labour Court had no jurisdiction u/s 33C(2) to direct payment of wages to the workman on the ground that he continued to be in service and the application made by the workman was accordingly, incompetent. The Labour court rejected the contentions of the Management and allowed the application of the workman. The Management came up to Supreme Court by way of appeal and the principal question which fell for determination before the Supreme Court was whether such an application was competent. This turned, inter alia, on the question as to what is the effect of contravention of Section 33(2)(b) of the Act on an order of dismissal passed by an employer in breach of

it. Does it render the order of dismissal void and inoperative so that the aggrieved workman can say that he continues to be in service and is entitled to receive wages from the employer? It is Only if an order of dismissal passed in contravention of Section 33(2)(b) of the Act is null and void that the aggrieved workman would be entitled to maintain an application u/s 33C(2) of the Act for determination and payment of the amount of wages due to him on the basis that he continues to be in service despite the order of dismissal. Supreme Court, however, took the view that the workman who had been dismissed would no longer be in service and though it is possible that on a reference u/s 10 of the Act, the Tribunal may find, on the material placed before it, that the dismissal was unjustified, yet until such adjudication is made, the workman cannot ask the Labour Court in an application u/s 33C(2) of the Act to disregard his dismissal as wrongful and on that basis to compute his wages. It was held that even though the Management had contravened Section 33(2)(b) of the Act in dismissing the workman but such contravention did not have the effect of rendering the order of dismissal void and inoperative and hence the workman is not entitled to maintain the application for determination and payment of wages u/s 33C(2) of the Act.

(18) It will be noticed that in the present case also, the workman himself submits in the application u/s 33C(2) of the Act that he had resigned but the resignation was not voluntarily. Therefore, before it could be held that resignation was voluntarily or not, the Labour Court will have to go into it. To my mind, this is not a matter incidental to the computation of benefit as held by Gajendragadkar, J. in the case of *The Central Bank of India Ltd.* (supra) or as observed by Bhagwati, J. in the case of *Punjab Beverages Pvt. Ltd.* (supra). The determination of the question, whether the termination of service by way of resignation, being voluntarily or not, is a principal matter for adjudication and is not incidental to the computation of the benefit as contemplated in the aforesaid decision of *The Central Bank of India* or the decision of Bhagwati J., in the case of *Punjab Beverages Pvt. Ltd.*

(19) By way of illustration, I may refer to the decision of Ramakrishnan, J. in the case of *Management of Gillanders Arbuthnot and Co. Ltd., Madras vs. D. Ramachandran and another*, 1970 Lab. I.C. 612(9). In this matter the employee had filed an application for grant of gratuity though he had been discharged from service. The employee had filed an application u/s 33C(2) of the Act. The Labour Court went into the question of validity of discharge or otherwise and thereafter awarded the gratuity under the scheme of gratuity. The High Court set aside the order following the decision of *The Central Bank of India Ltd.* (supra) and took the view that the Labour Court could not go into the proceedings u/s 33C(2) of the Act to examine the validity or otherwise of the discharge to enable it to award gratuity and dismissed the application u/s 33C(2) of the Act.

(20) To the similar effect is the decision of C. K. Banerji, J. (Calcutta High Court) in the case of *The Life Insurance Corporation of India, v. The Union of India and others* 1979 Lab. I.C. 351(10). In this case also, the employee had sought to

claim "Cashier allowance" computation for the period after he had been relieved from those duties. Banerji, J. took the view that the application u/s 33C(2) of the Act was incompetent as the Labour Court could not go into the question about the validity or employee being removed from those duties and since the workman had not actually worked which entitled him to claim "Cashier allowance" the application u/s 33C(2) of the Act claiming computation of "Cashier allowance" was incompetent.

(21) What is the position of the present case? The employees are claiming salary on the basis of the contract of service. The claim is not under statutory provision of Chapter 5-A of the Act for claiming retrenchment compensation. Here the claim is of salary. Salary postulates existence of relationship of employee and employer.

(22) The case of Dharma Singh (H.R.) Vs. Divisional Superintendent, Southern Railway, Hubli and another. 1966(2) Lj, 269(11), is also helpful. In this case the workman had claimed salary. The Labour Court on an application u/s 33C(2) of the Act found retrenchment illegal and refused to compute the salary from the date of retrenchment to the date of the application. It was held by Division Bench that, "Where the termination of the services of the petitioner was found to be illegal u/s 25F of the Act by the Labour Court, no order could be made by the Labour Court under Sub-section (2) of Section 33C for the payment of any salary or pay which the petitioner might claim in a proceeding such as an industrial dispute, under the Act". It was also held, "Claims of this description are entirely outside the orbit of Section 33C(2)".

(23) I may now deal with the cases relied upon by the learned counsel for the petitioners. The principal reliance was placed on the aforesaid Full Bench decision of Gujarat High Court in the case of Nizamuddin Suleman etc. vs. The New Shorrock Spg. and Mfg. Mills Co. Ltd., Nadiad and another, 1980 Lab. I.C. 397. The point of distinction between that case and the present case is that there the retrenchment was accepted by the employee and he was claiming retrenchment compensation. In the present case even retrenchment is not being accepted. In fact, case of the Management was that there was no retrenchment nor were the present petitioners admitted any retrenchment and claimed retrenchment compensation. That case has, thus, no application to the facts of the present case. Other three cases are of no assistance to the workmen. In the present case, contract of employment is not subsisting. There is, thus, no pre-existing right and, Therefore, no question arose of computing salary u/s 33C(2) of the Act.

(24) The inquiry into the question of voluntarily nature of resignation is not "incidental" to determining the wages claimed. Such an inquiry is a "principal matter for adjudication" and thus, outside the purview of powers of the Labour Court u/s 33C(2) of the Act.

(25) Result's ,present petition fails and is dismissed. Parties are, however, left to bear their own costs.