
(1990) 09 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 241 of 1988

The State of Punjab

APPELLANT

Vs

Paramjit Kaur and Another

RESPONDENT

Date of Decision : 18-09-1990

Acts Referred:

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

Citation : (1992) 1 ILR (P&H) 312

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Advocate : Charu Tuli, AAG, for the Appellant; Nemo, for the Respondent

Judgement

S.S. Sodhi, J.—The controversy here is with regard to the scope and ambit of the jurisdiction u/s 33C(2) of the Industrial Disputes Act (hereinafter referred to as "the Act"), in the context of the rule of Equal pay for "Equal work".

2. The Directorate of Lotteries of the State of Punjab had employed a number of persons as clerks on daily wages. To begin with, they were paid at the rate of Ks. 15 per day, which was later enhanced to Rs. 17 per day and ultimately to Es. 20 per day. These persons were appointed as clerks some time in the year 1982 and their services were terminated in 1986. They then filed applications u/s 33-C(2) of the Act praying that they be paid at the same rate as regular clerks of the Directorate. The Labour Court upheld this claim and this is now what has been challenged in this bunch of writ petitions.

3. The point that arises at the very out-set is whether this claim of the employees to pay equal to that of the regular employees, is amenable to the jurisdiction of the Labour Court u/s 33-C(2) of the Act. The scope and ambit of this provision of law was considered by the Supreme Court in Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, , where, it was observed:

It is now well settled that a proceeding u/s 32C(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 to 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.

It was further observed that "in a suit, a claim for relief made by the Plaintiff against the Defendant involves an investigation directed to the determination of (i) the Plaintiffs 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 sometime be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. 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 33-C(2), as in 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". To call determinations (i) and (ii) "incidental" to an execution proceeding would be a perversion because execution proceedings in which the extent of liability is worked out are just consequential upon the determinations (i), (ii) and represent the last stage in a process leading to final relief. Therefore, when a claim is made before the Labour Court u/s 33-C(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 main business 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.

4. A similar view was expressed by the Supreme Court in an earlier case in Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others, , where it was reiterated that the right to the benefit which is sought to be computed in proceedings u/s 33C(2) of the Act must be an existing right, that is, to say a right already adjudicated upon or provided for.

5. It will be seen, therefore, that it is only an existing right which constitutes the foundation of a claim u/s 33 C(2) of the Act. The right asserted of "Equal pay for Equal work" is, in the present case, not one which can by any means be

described as an existing right. It is a right which, at the moment, has merely been asserted, but not yet adjudicated upon. This being so, according to the test laid down by the Supreme Court in Central Inland Water Transport Corporation Ltd. (Supra), there can thus be no escape from the conclusion that the Labour Court lacked the requisite jurisdiction to grant to the Respondent-employees the relief claimed. The impugned order of the Labour Court is consequently hereby set aside and these petitions are accepted. There will, however, be no order as to costs.