

(2014) 03 AHC CK 0234

In the Allahabad High Court

Case No : Service Single No. 6412 of 1999

U.P. Cooperative Union Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court

RESPONDENT

Date of Decision : 10-03-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33(C)(2), 33C, 33C(2), 33-C(2)
Uttar Pradesh Industrial Disputes Act, 1947 — Section 11-B, 6(H), 6H, 6-H, 6-H(1)

Citation : (2014) 4 ADJ 495 : (2014) 3 ESC 1385 : (2014) 2 LLJ 459

Hon'ble Judges : Suneet Kumar, J

Bench : Single Bench

Advocate : Rakesh Kumar, Advocate for the Appellant; B.S. Yadav, Advocate for the Respondent

Judgement

Suneet Kumar, J.—Matter has been taken up in the revised list. Heard Sri Rakesh Kumar, learned counsel appearing for the petitioner for U.P. Cooperative Union Limited.

2. This writ petition has been preferred against the order dated 20.09.1999 passed by the respondent No. 1, Presiding Officer, Labour Court, Lucknow in exercise of its power u/s 6(H) of the U.P. Industrial Disputes Act, 1947 which is pari materia to Section 33-C(2) of the Industrial Disputes Act, 1947. The respondent No. 2 i.e. Workman had approached Labour Court making an application u/s 33-C(2) stating therein that though he was a clerk he was working on the post of Assistant Receptionist from 1989 to 1992 and thereafter he was transferred as clerk, therefore, he has claimed arrears of salary amounting to Rs. 65,572.45 paisa for the post of Assistant Receptionist.

3. The petitioner filed their objections to the claim stating therein that respondent No. 2 was clerk and at no point of time he was transferred or appointed as Assistant Receptionist. The claim is not maintainable u/s 33-C(2) as claim of the workman is disputed and the same has not been adjudicated upon.

4. Sri Rakesh Kumar further states that U.P. Cooperative Societies Act, 1965 is a special enactment and the remedies for redressal of dispute is provided in the Act itself and is a self contained code, U.P. Industrial Disputes Act is not applicable to the employees of Co-operative Societies.

5. In support of his contention, learned counsel for the petitioner has relied upon the following decisions:

D. Krishnan and Another Vs. Special Officer, Vellore Co-operative Sugar Mill and Another, , Ghaziabad Zila Sahkari Bank Ltd. Vs. Addl. Labour Commissioner and Others, , U.P. State Road Transport Corporation Vs. Shri Birendra Bhandari, , State of Uttar Pradesh and Another Vs. Brijpal Singh, , Union of India Vs. Gurbachan Singh and another, , Municipal Corporation of Delhi Vs. Ganesh Razak and Another, and Sahkari Ganna Vikas Samiti Ltd. Vs. Jitendra Mohan and The Presiding Officer, Labour Court, .

6. In D. Krishnan and Another Vs. Special Officer, Vellore Co-operative Sugar Mill and Another, , the Hon''ble Supreme Court held that proceedings u/s 33-C(2) are in the nature of execution proceedings. Such proceedings presupposes some adjudication leading to determination of a right, which has to be enforced.

7. In Ghaziabad Zila Sahkari Bank Ltd. Vs. Addl. Labour Commissioner and Others, , the Supreme Court has held that the U.P. Co-operative Societies Act, 1965 will apply to persons in the employment of Co-operative Societies, to the exclusion of all other labour laws including U.P. Industrial Dispute Act, 1947. Paragraph 60 is reproduced:

60. The general legal principle in interpretation of statutes is that "the general Act should lead to the special Act". Upon this general principle of law, the intention of the U.P. legislature is clear, that the special enactment U.P. Co-operative Societies Act, 1965 alone should apply in the matter of employment of Co-operative Societies to the exclusion of all other Labour Laws. It is a complete code in itself as regards employment in co-operative societies and its machinery and provisions. The general Act the UPID Act, 1947 as a whole has and can have no applicability and stands excluded after the enforcement of the UPCS Act. This is also clear from necessary implication that the legislature could not have intended "head-on-conflict and collision" between authorities under different Acts.

8. The Hon''ble Supreme Court further stated that in case the ingredients of section 6(H) are not satisfied then also there is no adjudicated claim but only a highly disputed claim of workman. The scope of section 6(H) was discussed in paragraph 64 which is reproduced:

64. In the alternative if we are to presume that the ingredients of S. 6H are not satisfied then also there is no adjudicated claim but only a highly disputed claim of the workman. In this connection, one can refer to the decision of this court in the case of Central Inland Water Transport Corporation v. Workmen and Another (supra) wherein this court opined that:

11. The only question which arises for determination in this Court is whether the Labour Court has jurisdiction to adjudicate on the issues referred to it u/s 33C(2) of the Industrial Disputes Act. Sub-section (2), which is part of Section 33C dealing with "the recovery of money due from an employer" reads as follows:

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government.

12. It is now well-settled that a proceeding u/s 33(C)(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 *Chief Mining Engineer, East India Coal Co. Ltd. v. Rameswar and Others*, it was reiterated that proceedings u/s 33(C)(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 an industrial workman and his employer.

13. 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 defendants 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). They are normally regarded as the functions of a suit and not an execution proceeding. Since a proceeding u/s 33(C)(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 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". 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) and (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. It was, therefore, held in *State Bank of Bikaner and Jaipur v. R.L. Khandelwal*, that a workman cannot put forward a claim in an application u/s 33(C)(2) in respect of a matter which is not based on an existing right and which can be appropriately the subject-matter of an industrial dispute which requires a reference u/s 10 of the Act.

14. The scope of Section 33(C)(2) was illustrated by this Court in the *Central Bank of India Ltd. v. P.S. Rajagopalan etc.* Under the Shastri Award, Bank clerks operating the adding machine were declared to be entitled to a special allowance of Rs. 10/- per month. Four clerks made a claim for computation before the Labour Court. The Bank denied the claim that the clerks came within the category referred to in the award and further contended that the Labour Court u/s 33(C)(2) had no jurisdiction to determine whether the clerks came within that category or not. Rejecting the contention, this Court held that the enquiry as to whether the 4 clerks came within that category was purely "incidental" and necessary to enable the Labour Court to give the relief asked for and, therefore, the Court had jurisdiction to enquire whether the clerks answered the description of the category mentioned in the Shastri Award, which not only declared the right but also the corresponding liability of the employer bank. This was purely a case of establishing the identity of the claimants as coming within a distinct category of clerks in default of which it would have been impossible to give relief to anybody falling in the category. When the Award mentioned the category it, as good as, named every one who was covered by the category and hence the enquiry, which was necessary, became limited only to the clerks' identity and did not extend either to a new investigation as to their rights or the Bank's liability to them. Both the latter had been declared and provided for in the Award and the Labour Court did not have to investigate the same. Essentially, therefore, the assay of the Labour Court was in the nature of a function of a court in execution proceedings and hence it was held that the Labour Court had jurisdiction to determine, by an incidental enquiry, whether the 4 clerks came in the category which was entitled to the special allowance.

15. It is, however, interesting to note that in the same case the court at page 156 gave illustrations as to what kinds of claim of a workman would fall outside the scope of Section 33(C)(2). It was pointed out that a workman who is dismissed by his employer would not be entitled to seek relief u/s 33(C)(2) by

merely alleging that, his dismissal being wrongful, benefit should be computed on the basis that he had continued in service. It was observed "His... dismissal may give rise to an industrial dispute which may be appropriately tried, but once it is shown that the employer has dismissed ... him, a claim (8) that the dismissal... 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 preexisting contract, cannot be made u/s 33(C)(2)". By merely making a claim in a loaded form the workmen cannot give the Labour Court jurisdiction u/s 33(C)(2).

9. In U.P. State Road Transport Corporation Vs. Shri Birendra Bhandari, , the Hon"ble Supreme Court relying upon the State Bank of India Vs. Ram Chandra Dubey and Others, and a three-Judge Bench decision in State of Uttar Pradesh and Another Vs. Brijpal Singh, , discussed the scope of Section 33-C(2), holding, that the benefits to be enforced u/s 33-C(2) of the Act must be a preexisting benefit or one flowing from preexisting right and there is a difference between the preexisting right or benefit on one hand and the right or benefit which is considered just and fair on the other hand is vital. The former falls within jurisdiction of the Labour Court exercising powers u/s 33-C(2) of the Act while the latter does not.

10. In Union of India Vs. Gurbachan Singh and another, , Hon"ble Supreme Court held that the power u/s 33-C(2) does not extend to adjudication of a fresh case treating a part of service rendered by workman as a re-employment after retirement.

11. Similarly, in Municipal Corporation of Delhi Vs. Ganesh Razak and Another, , the Supreme Court held that the Labour Court's jurisdiction u/s 33-C(2) cannot be invoked to adjudicate dispute of entitlement of the workman, it can only interpret the award or settlement on which the claim is based. The jurisdiction is like that of the Executing Court.

12. In Union of India (UOI) and Another Vs. Kankuben (Dead) by LRs. and Others etc. etc., the Apex Court referring to earlier decisions observed that the benefit sought to be enforced u/s 33-C(2) is necessarily "a pre-existing benefit or one flowing from a pre existing-right". The difference between a pre-existing right and benefit on the one hand and right and benefit which is considered just and fair on the other hand is vital. The former comes within the ambit of Section 33-C(2) while latter does not.

13. Considering pari materia provision in Section 6H of U.P. Industrial Disputes Act, 1947 (hereinafter referred to as "U.P. Act, 1947") in Hamdard (Wakf) Laboratories Vs. Deputy Labour Commr. and Others, , the Court said that Section 6-H(1) of the U.P. Act, 1947 is in the nature of an execution proceedings. It can be invoked inter alia in the event any money is due to workman under an award but cannot be invoked in a case where ordinarily an industrial dispute can be raised and can be referred to any adjudication by the appropriate Government to

an industrial Court. The authorities u/s 6-H cannot determine any complicated question of law and also cannot determine in regard to existence of legal right. The Court went to observe that it cannot usurp the jurisdiction of the State Government u/s 11-B of the U.P. Act, 1947. The Court said in paras. 38 and 39 that the jurisdiction of Labour Court u/s 33-C(2) is limited and if existence of right itself is disputed the provisions may not be held to have any application.

14. This Court in Sahkari Ganna Vikas Samiti Ltd. Vs. Jitendra Mohan and The Presiding Officer, Labour Court, , set aside the order of labour court on the ground that it had no jurisdiction to adjudicate the dispute of the employees of co-operative societies.

15. In view of the exposition of law, stated herein above and considering the facts that by order dated 25.07.1989, respondent No. 2 was attached as Assistant Receptionist but was not paid the salary of the Assistant Receptionist nor over time charges was paid for the additional shifts and the workman/respondent No. 2 prayed for computing the amounts towards salary and over time charges. The petitioner-Cooperative Society disputed the claim of the respondent No. 2. It was categorically stated that the respondent No. 2 was never appointed as Assistant Receptionist nor any service was taken from the respondent No. 2 in shifts. The labour court by the impugned order partially allowed the application holding that the respondent did not work in shifts but since he was transferred as Assistant Receptionist, therefore, the workman was entitled to the salary of Assistant Receptionist. The order dated 25.07.1989 clearly states that the workman/respondent No. 2 was not posted as Assistant Receptionist, but he was attached with the receptionist and subsequently he was transferred as a clerk.

16. From the pleadings of the parties, it is evident that the claim of the respondent No. 2 is not based upon any adjudication, the post as well as the amount was itself disputed which needed adjudication. The labour court erred in adjudicating the dispute as it was beyond its scope u/s 33-C(2) of the Industrial Disputes Act.

17. The impugned order dated 20.09.1999 cannot be sustained in the light of the law stated herein above. The labour court did not have jurisdiction to entertain the application as U.P. Cooperative Societies Act, 1965 being special Act and Chapter IX of the Act provides for settlement of dispute including claims for amounts due. The order impugned passed by the labour court is also without jurisdiction as the entire mechanism for redressal of dispute is provided under Chapter IX of the U.P. Co-operative Societies Act, 1965. The impugned order dated 20.09.1999 passed by the respondent No. 1, Presiding Officer, Labour Court, Lucknow cannot be sustained either on merit or on the ground of jurisdiction and is hereby quashed.

18. The writ petition is allowed. No order as to costs.