

(1972) 07 KAR CK 0017

In the Karnataka High Court

Case No : Writ Petition 776, 961, 978, 1024 and 1243 of 1971

Vasanth Kshatriya

APPELLANT

Vs

The Presiding Officer, Labour Court, Mangalore and Another

RESPONDENT

Date of Decision : 26-07-1972

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (1), 33 C (2)
Minimum Wages Act, 1948 — Section 3 (1) (a), 5 (2)

Citation : (1973) 26 FLR 111 : (1973) 2 LLJ 46

Hon'ble Judges : M. Sadanandaswamy, J; Chandrashekhar, J

Bench : Division Bench

Judgement

Per Chandrashekhar, J.—These five petitions under Arts. 226 and 227 of the Constitution are for quashing a common order of the Labour Court on applications made under S. 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). Those applications were presented by the petitioners herein (hereinafter referred to as the workmen) who were hotel workers, claiming that they were entitled to receive from respondent 2 herein, their employer (hereinafter referred to as the management), certain amounts towards wages due to them.

2. Under the notification dated 1-6-1967 issued under Ss. 3(1)(a) and S. 5(2) of the Minimum Wages Act, 1948, the Government of Mysore had fixed minimum rates of wages for different classes of employment like cooks, assistant cooks, servers and helpers in hotel and eating houses, with effect from 1-7-1967. The petitioners in W. Ps. Nos. 961, 1024 and 1243 of 1971 were admittedly paid by the management wages of servers; but they have claimed that they performed duties of assistant cooks and hence were entitled to the minimum rate of wages fixed under the notification for assistant cook. Similarly the petitioners in W. Ps. Nos. 776 and 978 of 1971 were admittedly paid by the management wages of helpers; but they have claimed that they performed duties of suppliers and were hence entitled to the minimum rate of wage fixed by the aforesaid notification for supplier.

3. All their applications were made in printed application forms by filling certain particulars therein. The application made by the petitioner in W.P. No. 978 of 1971 (which is marked as Annexure M-3 therein) may be taken as a specimen application. We have reproduced below the relevant portions in the annexure to that application :

"3. The applicant is employed under the opponent in the category mentioned below :

4. Supplier. As per the Minimum Wages Notification No. S.O. 1038, dated Bangalore, June 1, 1967, the applicant is entitled to receive salary at the following rates with effect from 1-7-1967 or the date of appointment whichever is later - Rs. 100.

8. He ought to have been put in the following categories but they have been treated wrongly as follows :

Demanded correct category with rate of salary. - Supplier with Rs. 100.

Existing wrong category with rate of salary. - Helper with Rs. 100.

9. In view of the above applicant is entitled to the higher rate of salary of the correct category and the arrears to which they are thus entitled come to the following amounts.

From 1-7-1967 to 31-12-1967 @ Rs. 20 p.m. Rs. 120-00 1-1-1968 to 30-9-1968 @ Rs. 20 p.m. Rs. 180-00 1-10-1968 to 30-4-1970 @ Rs. 19 p.m. Rs. 361-00 ----- Rs. 661-00 -----

11. Thus the applicant is entitled to the following total amount from the opponents Rs. 748.

12. The Hon"ble Court may be pleased to enquire into the application and determine the amounts due to the applicant as the Hon"ble Court find to be due in the circumstances of the case."

4. These applications were resisted by the management. In its objection statement, it took up a preliminary objection as to the jurisdiction of the Labour Court to entertain the claims put forward in those applications and to grant the reliefs prayed for therein. The material part of para 3 in each of those objection statements reads :

"The abovenamed opponents humbly submit that this Hon"ble Court cannot entertain this application for want of jurisdiction as the claim made by the applicant relates to an industrial dispute to be adjudicated upon under S. 10 of the Industrial Disputes Act, 1947, being mainly an issue relating to the applicant's category."

5. The Labour Court tried as preliminary issue the question whether or not it was competent for the Labour Court to determine in such applications under S. 33C(2) of the Act the status of the applicants as assistant cooks or suppliers.

After hearing arguments on such preliminary question, the Labour Court held that it (the Labour Court) was not competent under S. 33C(2) of the Act to go into the question of such status. In that view the Labour Court dismissed those applications as not maintainable.

6. Mr. Tukaram Pai, learned Counsel for the workmen, contended that the Labour Court had misconstrued the nature of the applications and the principal relief sought for therein and had wrongly held that it had no jurisdiction to entertain such claims of the workmen and to grant them relief. Elaborating his contention, Mr. Tukaram Pai argued that the principal relief sought for by the workmen was computation of wages due to them in accordance with the minimum rates of wages fixed by the Government and not the determination of their status or classification by grades or jobs in which they were employed by the management. It was also argued by him that though in para 8 of their respective applications, they complained that the management had shown their names in wrong categories of jobs and that their names should be shown in correct categories of jobs, that complaint was merely incidental to the main claim, namely, computation of wages due to them according to the minimum rates of wages for the work they actually performed.

7. The scope of S. 33C(2) of the Act has been explained by the Supreme Court in numerous decisions. In *Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others*, , the Supreme Court referred to its earlier decision in *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, , and said thus at page 230 :

"Section 33C(2) takes within its purview cases of workmen who claim that the benefit to which they are entitled should be computed in terms of money even though the right to the benefits on which their claim is based is disputed by their employers

It is clear 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."

The Supreme Court made the elucidation that cases which would appropriately be adjudicated under S. 10(1) of the Act would be outside the scope of adjudication under S. 33C(2) of the Act.

8. To understand the true nature of claims made in these applications and the reliefs sought for therein, it is plain that these applications should be read as a whole. So read, it appears to us that Mr. Tukaram Pai is right in his submission that the main relief claimed in these applications is computation of wages due to them in accordance with the minimum rates fixed by the Government for the jobs in which they were actually employed by the management. Their case is that such of the workmen who have actually worked as assistant cooks cannot be denied by the management the minimum rate of wages fixed for assistant cook by merely designating them as suppliers; and that likewise such of the workmen

who have actually worked as suppliers cannot be denied the minimum rate of wage fixed for supplier by merely calling them as helpers.

9. However, Mr. U. L. Narayanarao, learned counsel for the management, contended that in view of what the workmen have stated in paras 8 and 9 of their applications, their claim should be regarded as being in substance for revision of the classification of their grades or jobs, which comes within the ambit of Item No. 7 in the III Schedule to the Act and that hence such claim can be adjudicated only under S. 10(1) of the Act and not under S. 33C(2) of the Act.

10. In support of his contention Mr. Narayanarao strongly relied on the decision of this Mysore Sugar Company Ltd. Vs. Manavendra (B.K.) and Others, There, the respondent in certain grades. They claimed in their application under S. 33C(2) of the Act that they should be fitted in certain higher grades. The Labour Court allowed their claim and directed the management to place them in the higher as claimed by them and to pay them the difference of emoluments consequent upon such re-adjustments of grades. The order of the Labour Court was challenged by the management in a writ petition before this Court. In allowing that petition, Tukol, J., who spoke for the Bench, observed thus :

"In the present case, we have pointed out with reference to the pleadings and the representation made by the petitioners that the relief claimed by them is not one which strictly and specifically springs from the existing position which they held at the date of the applications. Their submission is that both by virtue of their qualifications and the nature of the duties, they were entitled to be fixed to higher grade and were entitled to be awarded the higher grade of salary. This, in our opinion, is clearly a matter which falls within the exclusive jurisdiction of the Industrial Tribunal and, therefore, stands excluded from the jurisdiction of the Labour Court."

The above decision is clearly distinguishable on facts. In that case the claim of the workmen was for revision of the grades and the payment of difference of emoluments was a consequence of the workmen being fitted into their grades. But the petitioners herein had claimed certain rates of wages on the basis of their averment that they actually worked in certain jobs though the management has shown in its records their names in certain lower categories of jobs. Their claim for wages was not based on any demand that they should be fitted into higher grade or higher categories of jobs. Hence the decision in Mysore Sugar Company Ltd. Vs. Manavendra (B.K.) and Others, cannot be of any assistance to Mr. Narayanarao.

11. Mr. Narayanarao sought to draw support from the observations of the Supreme Court in U.P. Electric Supply Co. Ltd. Vs. R.K. Shukla and Another, etc., , that where the dispute is whether workmen had been retrenched and the computation of the amount of retrenchment compensation is subsidiary or incidental, the Labour Court will have no jurisdiction to trespass upon the powers of the Industrial Tribunal with which it is statutory invested. This decision also

has no application to the present petitions because the computation of wages due to the workmen in accordance with minimum rates of wages cannot be regard as being incidental or subsidiary to any dispute as to classification by grades which Industrial Tribunal. As stated earlier, the claim of these workmen is not based upon any classification by grades, but upon the nature of the work alleged to have been actually performed by them. The adjudication of the nature of the work actually performed by them in their employment, i.e., whether some of them actually worked as assistant cooks as alleged by them or only as suppliers as shown in the records of the management and whether others actually worked as suppliers as alleged by them or only as helpers as shown in the records of the management. But such factual ascertainment will not be in regard to any classification by grades or in regard to status of workmen as the Labour Court thought. Such factual ascertainment of the nature of the work actually done by them does not depend upon determination of any other matter which might give rise to a dispute falling under S. 10(1) of the Act.

12. The view that we take receives support from the decision of Inder Singh and Others Vs. Labour Court, Jullundur and Another, The facts of that case, as set out in para 18 of the judgment therein are briefly these. The employer had entered into a statutory contract (by operation of a Government Notification) to pay Rs. 100 per mensem to persons performing "X" duties and Rs. 80 per mensem to those performing "Y" duties. The petitioners who were admittedly workmen of the employer, were paid Rs. 80 per mensem. They claimed that they were performing "X" duties and were, therefore, entitled to the difference of Rs. 20 per mensem. Dealing with the question whether such a claim could be made before the Labour Court under S. 33C(2) of the Act, their Lordships held that such a claim did not appear to be in industrial dispute but merely called for factual adjudication arising out of the claim on the basis of an existing right and hence fell squarely within the jurisdiction of the Labour Court under S. 33C(2).

13. The finding of the Labour Court that it had no jurisdiction to entertain those applications, and the consequent dismissal of those applications, are clearly unsustainable. In the result we allow the petitions, set aside the common order of the Labour Court, and direct the Labour Court to take back these applications on its file and to dispose of them on merits, according to law and in the light of our above observations.

14. In the circumstances of these petitions, we direct the parties to bear their own costs.