
(2009) 07 DEL CK 0086
In the Delhi High Court
Case No : WPC No. 2505 of 2007

Workmen of MCD

APPELLANT

Vs

MCD

RESPONDENT

Date of Decision : 27-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 33C, 33C(2), 36A
Working Journalists and Other Newspaper Employees (Conditions of Service) and
Miscellaneous Provisions Act, 1955 — Section 17

Citation : (2009) 161 DLT 458 : (2010) 1 LLJ 417

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Varun Prasad, for the Appellant; Amit Paul, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—This common order shall dispose of all the 18 matters bearing WPC Nos. 2505/2007, 2506/2007, 2507/2007, 2508/2007, 2509/2007, 2517/2007, 2518/2007, 2536/2007, 2609/2007, 4968/2007, 4969/2007, 4970/2007, 4971/2007, 4972/2007, 4973/2007, 4974/2007, 4975/2007, 5008/2007.

2. The brief conspectus of the facts as set out in these petitions are as under:

That the petitioners/workmen are working in the category of Group "C" & "D" like Choudhury, Mali, Chowkidar, Sweeper, Machine man, Hedgman, Pump Operator, Blacksmith, Bhisti, Bullackman, Asstt. Pump Driver, Painter, Beldar, Driver, fitter, tech. supervisor etc. As per the petitioners they are entitled to the cost including stitching charges and quantum of liveries as per orders issued by the Deptt. of Personnel and Training, Government of India and adopted by the management of MCD from time to time to compensate the workers for liveries and stitching charges used for the work of MCD. The allowances are granted to the employees in addition to their pay for the purpose of meeting some specific

requirement connected with the service rendered. The petitioners/workmen being low paid employees of MCD were granted the benefits of supply of liveries and also washing allowance to wash those liveries provided by the management of MCD. Petitioners/workmen have purchased the liveries themselves as the management did not supply these liveries and only paid the washing allowance to wash those liveries procured by the petitioners workmen themselves. The petitioners filed separate applications before the Labour Court to claim the benefit of liveries (Uniform and stitching charges). MCD in their written statement had taken a preliminary objection to contend that No. 1 that 33C(2) application was not maintainable. The learned Labour Court vide order dated 6.3.2007 disposed of these petitions by observing that the same are not maintainable u/s 33-C(2) of I.D. Act, 1947. Aggrieved with the said order the petitioner preferred these petitions under Articles 226 & 227 of the Constitution of India, seeking issue of an appropriate writ, order or direction to quash award dated 06/3/2007 and direct the Ld. Labour Court to decide all issues together after adjudicating the main dispute on its merits.

3. The short question arising in this batch of writ petitions filed by the different category of employees working with the MCD in the C & D groups is as to whether the applications filed by the petitioners u/s 33-C(2) of the Industrial Disputes Act could be rejected after framing a preliminary issue on the maintainability, without deciding the entire claim on its merits.

4. Mr. Varun Prasad counsel for the petitioners strongly contended that the pre-existing rights of the petitioners flows from their own policy of the MCD announced from time to time through various circulars to provide liveries, stitching expenses and washing allowance etc. The contention of the counsel for the petitioner was that such a policy of the respondent MCD forms part of the service conditions of the petitioners and therefore, the same creates a pre-existing right in the petitioners to claim various amounts spent by these employees towards the purchase of liveries and towards the cost of stitching. Counsel for the petitioners further contended that the tribunal fell in grave error by framing a preliminary issue with regard to the maintainability of the claims filed by all these petitioners without following the proper procedure to decide the claim of the petitioners on its own merits after proper adjudication. Counsel thus submitted that piecemeal adjudication of the reference without going into the merits of the claim is a novel method adopted by the Court. The counsel urged that the tribunal erred in not appreciating that the grant of uniform and stitching charges are part of service conditions of the workmen and Labour Court has jurisdiction to compute such benefits in terms of money u/s 33-C(2) ID Act. The counsel also averred that the Ld. Labour Court erred in interpreting the decision of this Court in Jeet Lal Sharma v. P.O. in favour of the management. The counsel maintained that in view of the law laid down in Jeet Lal Sharma's case (supra) the right as claimed for by the petitioners in the instant petitions is an existing right provided for and recognized by the employer and therefore, the Labour Court has jurisdiction to grant relief u/s 33-C(2) of the ID Act. Counsel

further argued that according to Pay Commission's recommendations, rate of stitching charges are fixed by Deptt. Of Personnel, Govt. of India and the same have been adopted by the MCD being the existing right, therefore, the labour court has jurisdiction to determine the benefits in terms of money which could be computed in the proceedings u/s 33-C(2) of the ID Act for the rates of liveries/uniform and stitching charges etc, contended counsel for the petitioners. The counsel also urged that the decisions in MCD v. Ganesh Razak and Ors. and Tara and Ors. v. Director, Social Welfare and Ors. are not applicable to these cases since therein, the rights claimed by the parties were in itself disputed but herein, the petitioners have a pre-existing right. The counsel has relied on following judgments in support of his contentions:

- (a) D.P. Maheshwari Vs. Delhi Administration and Others,
- (b) Jeet Lal Sharma Vs. Presiding Officer, Labour Court - IV and Another,
- (c) AIIMS v. AIIMS Employees Union in WPC No. 3950/2006 dated 25/8/2006 of this Court;
- (d) Punjab National Bank Ltd. v. K.L. Kharbanda 1962 (2) CR 977 (SC);
- (e) The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.,
- (f) Kasturi and Sons (Private) Ltd. Vs. N. Salivateeswaran and Another,
- (g) Fabril Gasosa v. Labour Commissioner and Ors. 1997 LAB. I.C. 912 (SC); and
- (h) Gopiseti Venkataratnam and Others Vs. The Vijayawada Municipality and Others,

5. Per contra counsel for the respondent submitted that the workmen are entitled to get the benefits of liveries/uniforms and washing allowance to wash only those liveries which are supplied by the management of the MCD and the benefit of washing allowance for the liveries already supplied by the management alone can create a pre-existing right. The counsel maintained that the amount claimed by the workmen are not on account of aforesaid pre-existing rights but on account of the fact that liveries were not supplied by the MCD for some period of time, forcing them to purchase the same and got them stitched on their own account from the open market. The counsel urged that even as per their own case, the amount claimed by the workmen is not against the pre-existing right as mentioned in paras 3 & 6 of the order assailed by the petitioners. The counsel averred that the Labour Court u/s 33-C(2), ID Act cannot first decide the right to entitlement and then compute the amount due under the said entitlement. The counsel maintained that had the case of the petitioner been that they were given uniforms but were not provided stitching charges for a certain period then the claim could have been maintainable u/s 33-C(2) ID Act, but an assumption and inference of a new right derived from a pre-existing right is correct or not can only be tested in proceedings u/s 10 of the ID Act and not u/s 33-C(2) ID Act. The counsel also contended that many disputed questions of facts arise in the

present case viz-a-viz whether the MCD failed to provide uniforms to the workers in the first place ; whether failure to provide uniforms, would give right to the workers to purchase the same from the open market without intimating or seeking permission from the Department; whether purchase from the open market would entitle them to a right to receive money on account of stitching charges; whether monetary claim made after 6-7 years of the alleged purchase is genuine or not. Counsel urged that these disputed questions of facts can be decided only in proceedings u/s 10 ID Act and not u/s 33-C(2) ID Act. The counsel urged that the proceedings u/s 33-C(2) are, primarily, in the nature of execution proceeding wherein the Labour Court can direct payment of that money which is legally 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 counsel submitted that proceedings u/s 33-C(2) cannot be used first to establish and demonstrate the existence of a right and then seek computation of the amount due thereunder. The counsel contended that the petitioner's interpretation of Jeet Lal Sharma's case, in his favour is totally misconceived. The counsel also relied on decision dated 27/2/2008 of this Court in review petition filed in CWP No. 2187/2007 in support of his submissions. The counsel also submitted that while exercising power under Article 226 of the constitution of India, this Court exercises supervisory jurisdiction and not appellate jurisdiction and in the absence of any jurisdictional error this Court may not interfere with the orders passed by the Labour Court. The counsel also submitted that the decisions relied upon by the counsel for the petitioners have been wrongly interpreted by him in his favour. The counsel placed reliance on the following decisions in support of his arguments:

(a) UOI v. Kankuben 2006 SCC (L&S) 1700;

(b) Municipal Corporation of Delhi Vs. Ganesh Razak and Another, and

(c) Director General (Works), C.P.W.D. Vs. Ashok Kumar and Others,

6. I have heard learned Counsel for the parties at considerable length.

7. It is no more res integra that the proceedings contemplated by Section 33C(2) are analogous to execution proceedings and the Labour Court, like the Executing Court in the execution proceedings governed by the CPC, would be competent to interpret the award on which the claim is based. It is obvious that the power of the Executing Court is only to implement the adjudication already made by a decree and not to adjudicate a disputed claim which requires adjudication for its enforcement in the form of decree. The Executing Court, after the decree has been passed, is however competent to interpret the decree for the limited purpose of its implementation.

8. It is well settled that where the very basis of the claim or the entitlement of the workman to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement cannot be treated as incidental to the benefit claimed and therefore the same would be

clearly outside the purview of Section 33-C(2) of the Act. The Labour Court in exercise of its powers u/s 33-C(2) of the Act, does not have the jurisdiction to decide the entitlement of the workman first and then proceed to compute the benefits so adjudicated on that basis. Reference in this context may be made to the judgment of the Supreme Court in the case of State of U.P. and Anr. v. Brijpal Singh reported as 2005 VIII AD (SC) 250 and of this Court in the case of Jeet Lal Sharma v. Presiding Officer, Labour Court IVth and Anr. reported as 2005 (85) FLR 268.

9. It is well-known that, wherever the legislature intended to confer power to any specified authority with the powers to conduct an enquiry, specific provision can be found in the statute made in that behalf. If the legislature had intended that the enquiry authorized u/s 33-C should include within its compass the examination of the merits of the employee's claim against his employer and a decision on it, undoubtedly, the legislature would have enacted an appropriate provision conferring on the Labour Court the relevant powers for holding such an enquiry.

10. The decision in N. Salivateeswaran's case (Supra) is of no assistance to the petitioners, rather it goes against the petitioners as in the said case, the Hon'ble Apex Court while drawing similarity between Section 17 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 and Section 33-C(2) held that a summary enquiry as contemplated u/s 33-C is of a very limited nature and its scope is confined to the investigation of the narrow point as to what amount is actually due to be paid to the employee under the decree, award, or other valid order obtained by the employee after establishing his claim in that behalf.

11. Also, the decisions in K.L. Kharbanda's case (Supra) and Kays Construction Co. Pvt. Ltd. case (Supra) pertains to the issue of interpreting the expression "benefit" as mentioned in Section 33-C(2) of the Act, which are of no assistance to the petitioner's in the facts of the present case.

12. The issue with regard to the scope of Section 33-C(2) of the Act has been crystallized by the Supreme Court in the case of Ganesh Razak (supra). While addressing the question as to whether without prior adjudication or recognition of the disputed claims of the workmen therein, the proceedings for computation of the arrears of wages claimed by them on the basis of equal pay for equal work were maintainable u/s 33C(2) of the Act, the Supreme Court referred to decisions rendered earlier on the said issue, including those in the case of The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others, , Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others, and Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, and held as under:

Para 8. Reference may be made first to the Constitution Bench decision in Th The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., on which Shri Rao placed

heavy reliance. That was a case in which the question of maintainability of proceedings u/s 33C(2) of the Act was considered in a claim made by the workmen on the basis of the Sastry Award. The employer disputed the claim of the workmen on several grounds including the applicability of Section 33C(2) of the Act. It was urged that since the applications involved a question for interpretation of the Sastry Award, they were outside the purview of Section 33C(2) because interpretation of awards or settlements has been expressly provided for by Section 36A. This objection was rejected. This Court pointed out the difference in the scope of Section 36A and Section 33C(2) indicating that the distinction lies in the fact that Section 36A is not concerned with the implementation or execution of the award whereas that is the sole purpose of Section 33C(2) and whereas Section 33C(2) deals with cases of implementation of individual rights of workmen falling under its provisions, Section 36A deals merely with a question of interpretation of the award where a dispute arises in that behalf between the workmen and the employer and the appropriate Government is satisfied that the dispute deserves to be resolved by reference u/s 36A. In this context, this Court also indicated that the power of the Labour Court in a proceeding u/s 33C(2) being akin to that of the Executing Court, the Labour Court is competent to interpret the award or settlement on which a workman bases his claim u/s 33C(2), like the power of the Executing Court to interpret the decree for the purpose of execution. Relevant extract from that decision is as under- Besides, there can be no doubt that when the Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing Court to interpret the decree for the purpose of execution. It is, of course, true that the executing Court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court; but like the executing Court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim u/s 33C(2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination u/s 33C(2), it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests. This decision itself indicates that the power of the Labour Court u/s 33C(2) extends to interpretation of the award or settlement on which the workman's right rests, like the Executing Court's power to interpret the decree for the purpose of execution, where the basis of the claim is referable to the award or settlement but it does not extend to determination of the dispute of entitlement or the basis of the claim if there be no prior adjudication or recognition of the same by the employer. This decision negatives instead of supporting the submission of learned Counsel for the respondents.

13. Therefore, as discussed above, the decision in the P.S. Rajagopalan's case (Supra), is of no assistance in the facts of the present case to the petitioners as in the said judgment also, the Apex Court held that the Labour Court exercises

power like Executing Court's power u/s 33C(2) I.D. Act and has no power to determine a dispute of entitlement if there is no adjudication or recognition of same by the employer.

14. The decision, in CWP No. 2187/2007 dated 21/3/2007, is also of no assistance to the petitioners since in the review application filed in that case, this Court had observed vide order dated 27/2/2008 that the order passed on 21/3/2007 will not be taken as a precedent.

15. The decisions in D.P. Maheshwari's case (Supra) and AIIMS's case (Supra) relied upon by the counsel for the petitioners are also of no help in the facts of the present case since the same do not pertain to the issue of scope of Section 33-C(2) ID Act, which is the sole question herein. Furthermore, the aforesaid decisions pertain to Section 10 ID Act and according to the said judgments u/s 10, ID Act, there can be no piecemeal adjudication and same principle cannot be said to apply to Section 33-C(2) I.D. Act.

16. The courts and tribunals of limited jurisdiction while exercising their powers under any enactment or statute cannot assume any power by implication just because they feel that in the absence of such implied power, his jurisdiction u/s 33C(2) could be better exercised. If the legislature did not confer adequate powers on the specified authority u/s 33C(2), a more reasonable inference would be that the nature and scope of the powers u/s 33C(2) is very limited and the legislature was conscious of the fact that, for holding such a limited and narrow enquiry, it was unnecessary to confer powers invariably associated with formal and complicated enquiries of a judicial or quasi-judicial character.

17. In Union of India (UOI) and Another Vs. Kankuben (Dead) by LRs. and Others etc. etc., , the Apex Court explained that whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court u/s 33-C(2) of the Act. The benefit sought to be enforced u/s 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre- existing 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 Labour Court exercising powers u/s 33-C(2) of the Act while the latter does not.

18. Furthermore, the contention of the counsel for the petitioner that the rates claimed by the petitioners were admitted rates on which payment was earlier made, is required to be considered along with other concomitant facts, which being disputed question of facts require adjudication u/s 10, I.D. Act.

19. Thus, in view of the above discussion, it is manifest that the nature of power or the scope of enquiry u/s 33-C is limited and pertains to a pre-existing benefit or one flowing from a pre-existing right.

20. In the present petitions, I do not feel that the tribunal committed any error in dismissing the applications filed by the petitioners u/s 33-C(2). First of all the MCD raised the dispute to the entitlement of the petitioner's to liveries etc. But even if it be taken that the petitioner's had right to liveries and stitching and washing allowance as per the rules of the MCD, but still certain question of facts as to whether they were entitled to purchase them from open market and what cost should be allowed for such purchase, why did they raise this question of reimbursement after a lapse of 6-7 yrs. etc. and certainly are such questions cannot be answered by a court exercising execution jurisdiction. The said issues require adjudication on merits after formal enquiry, which can be gone into only u/s 10 of the ID Act.

21. The Labour Court in exercise of its powers u/s 33C(2) of the Act cannot enlarge the scope of the said provision by arrogating to itself the function of adjudicating the dispute relating to the claim of the nature made by the workmen, herein. The limitations placed on the Labour Court u/s 33C(2) of the Act are of such a nature which do not permit it to entertain a claim put forward by a workman in respect of a matter which is not based on an pre-existing right and which can be adjudicated upon in an industrial dispute u/s 10 of the Act.

22. In view of the above discussion, the present petitions are dismissed with the liberty being granted to the petitioners to seek their remedy by raising an Industrial Dispute u/s 10 of I.D. Act.

23. With the above directions, the writ petitions are dismissed.