

STATE OF UP

v.

BRIJPAL SINGH

SEPTEMBER 27, 2005

[RUMA PAL. DR. AR. LAKSHMANAN AND R.V. RAVEENDRAN, JJ.]

Industrial Disputes Act, 1947—Sections 33C(2), 33A, and 10—Termination of service of workman appointed on temporary basis—Stay by High Court—Six years thereafter, without rejoining duty, relying on the stay order, application filed by workman under Section 33C(2) seeking salary and bonus for those years—Held: Labour Court did not have jurisdiction to adjudicate the application in an undetermined claim—Till adjudication by appropriate forum, workman could not ask Labour Court under Section 33C(2) to disregard his dismissal as wrongful and on that basis compute his wages.

Respondent was appointed as seasonal clerk on temporary and *ad hoc* basis with the appellant. On his services being terminated, he filed a writ petition in High Court, wherein a stay was granted. After a gap of six years therefore, without having rejoined duty in meanwhile, relying on the stay order, respondent filed an application under Section 33C(2) of Industrial Disputes Act, 1947 before Labour Court seeking salary and bonus for those years. In response, appellants contended that since writ petition was pending, Labour Court did not have the jurisdiction to hear and decide the dispute. However, Labour Court allowed the application, and writ petition of appellant against that was dismissed by the High Court. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. The Labour Court has erred in allowing the application filed under Section 33C(2) of the I.D. Act and ordering payment of not only the salary but also bonus to the workman although he has not attended the office of the appellants after the stay order obtained by him. [641-D]

2. The appropriate forum where question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. The Labour Court, in the instant case, cannot arrogate to itself the

A functions of an Industrial Tribunal and entertain the claim made by the respondent which is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute in a reference under Section 10 of the I.D. Act. Therefore, the Labour Court has no jurisdiction to adjudicate the claim made by the respondent herein under Section 33C(2) of the I.D. Act in an undetermined claim and until such adjudication is made by the appropriate forum, the respondent-workman cannot ask the Labour Court in an application under Section 33C(2) of the I.D. Act to disregard his dismissal as wrongful and on that basis to compute his wages. It is, therefore, impossible to accept the arguments that the respondent-workman can file application under Section 33C(2) for determination and payment of wages on the basis that he continues to be in service pursuant to the said order passed by the High Court. [641-A, B, C]

D *Punjab Beverages Pvt. Ltd. v. Suresh Chand*, [1978] 2 SCC 144, *Municipal Corporation of Delhi v. Ganesh Razek and Anr.*, [1985] 1 SCC 235 and *State Bank of India v. Ram Chandra Dubey and Ors.*, [2001] 1 SCC 73, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5910 of 2005.

E From the Judgment and Order dated 9.1.2002 of the Allahabad High Court in C.M.W.P. No. 36406 of 1995.

Dileep Tandon and Praveen Swarup for the Appellants.

Mrs. Shyamla Pappu, R. Krishnamoorthi and Mohan Pandey with him for the Respondent.

F The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. Leave granted.

G This appeal is filed against the final judgment and order dated 9.1.2002 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 36406 of 1995 where the High Court dismissed the writ petition filed by the appellants - The State of U.P. & The Regional Food Controller, Meerut Region, Meerut. The respondent was appointed as Seasonal Clerk on temporary and *ad hoc* basis in the office of the Senior Marketing Inspector on stop gap arrangement. The appointment order dated 22.4.1987 reads thus:

H

Dated:22.4.1987 A

ORDER

Following persons are appointed in this district on the post of S.A. Clerk at the place mentioned in front of their name vide order No. 97/68/S.V.A. 1.2.87 dated 20.4.1987. Food Controller of the Department and direction is given that they should immediately report their joining at the place of their posting. The appointment of these employees have been made under wheat purchase Project of 1987-88 on temporary/*ad hoc* basis in the pay scale of 430-685. The services shall be automatically stand terminated from the afternoon of 31.7.1987. No separate order shall be issued for it.” B C

The services of the respondent were terminated on 3.7.1987. Feeling aggrieved by the termination order, the respondent filed Writ Petition No. 15172 of 1987 on the file of the High Court. Vide order dated 28.10.1987, the High Court passed the following order:- D

“Issue notice.

Till further orders of the Court, the operation of orders dated 22.4.87 and 3.7.87 shall remain stayed.”

The appellants herein filed its counter affidavit in the writ petition stating that the respondent never attended the office as per orders of the High Court and that he did not care to join the duties, therefore, he is not entitled to any pay. The respondent, after a gap of six years, filed Misc. Case No.11 of 1993 before the Labour Court, Meerut, for payment of salary from 4th July, 1987 till July, 1993 and bonus for the years 1987 to 1992. The total amount of salary and bonus was worked out to be Rs. 1,55,821. The respondent for filing the above petition under Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the I.D. Act”), has solely relied on the interim order dated 28.10.1987 passed by the High Court in the writ petition. A counter affidavit was filed by the appellants herein before the Labour Court stating that Writ Petition No.15172 of 1987 is pending for consideration before the High Court, therefore, in such circumstances, the Labour Court does not have the jurisdiction to hear and decide the dispute. E F G

The Labour Court, vide its order dated 23.8.1995, directed the appellants to make the payment of salary and bonus of Rs. 1,55,821 for the period from 1987 to 1992 within one month from the date of the said order. Aggrieved by H

A the order of the Labour Court, the appellants filed Civil Misc. Writ Petition No. 36406 of 1995 before the High Court contending that the Labour Court has no jurisdiction to try and decide the present controversy and that the order passed by the Labour Court suffers from manifest error of law apparent on the record and hence is liable to be set aside. The appellants, therefore, prayed for quashing the order dated 23.8.1995 passed by the Labour Court,

B Meerut. Counter affidavit was filed by the respondent herein to the writ petition stating that after the stay order passed by the High Court, he was not allowed to join the duty in spite of several requests made to the appellants to permit him to join the duty. The respondent was left with no other remedy but only to file the application under Section 33C(2) of the I.D. Act. It was,

C therefore, stated that the Labour Court has rightly passed the order in favour of the respondent directing the appellants to make the payment of salary and bonus. The High Court, by order dated 9.1.2002 dismissed Civil Misc. Writ Petition No. 36406 of 1995 holding that the respondent-Workman is entitled for the salary and other allowances, which admittedly has not been paid to the respondent; that so long as Civil Misc. Writ Petition No.15172 of 1984 is

D not finally disposed of, the liability to pay, if any to the concerned workman under Section 33C(2) of the I.D. Act cannot be avoided by the appellants and, therefore, the petition filed by the respondent under Section 33C(2) of the I.D. Act is competent and maintainable. Aggrieved by the judgment and order dated 9.1.2002, the appellants preferred this appeal by way of special leave.

E We have carefully perused the pleadings, annexures and orders passed by the Labour Court and of the High Court.

F We heard the arguments of Mr. Dileep Tandon, learned counsel appearing for the appellants and Mrs. Shymala Pappu, learned senior counsel appearing for the respondent.

In the background facts of this case, the following questions of law arise for consideration by this Court:

- G (1) Whether the High Court erred in allowing the order passed by the Labour Court filed by the respondent under Section 33C(2) of the Industrial Disputes Act?
- H (2) Whether the pendency of the Writ Petition No. 15172 of 1987 filed by the respondent herein, same being not finally disposed of, the liability to pay, if any to the concerned workman under Section 33C(2) of the I.D. Act, does arise or not?

- (3) Whether the High Court gravely erred in allowing the salary and bonus to the respondent, although he has not attended the office of the appellant after the stay order passed by the High Court dated 28.10.1987? A
- (4) Whether the Labour Court has jurisdiction to entertain and decide the undetermined claim? B

Section 33C of the Industrial Disputes Act reads thus:

“[33C. *Recovery of Money Due from an Employer* -

- (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of chapter 5A or chapter 5B, the workman himself or any other person authorised by him in writing in this behalf, or, in the case, of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the collector who shall proceed to recover the same in the same manner as an arrear of land revenue: C D

Provided that every such application shall be made within one year from the date on which money became due to the workman from the employer; Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the application had sufficient cause for not making the application within the said period. E

- (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 within a period not exceeding three months. F G

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think H

A fit.”

It is well settled that the workman can proceed under Section 33C(2) only after the Tribunal has adjudicated on a complaint under Section 33A or on a reference under Section 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. This

B Court in the case of *Punjab Beverages Pvt. Ltd. v. Suresh Chand*, [1978] 2 SCC 144 held that a proceeding under Section 33C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. Proceeding further, this
C Court held that the right to the money which is sought to be calculated or 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 the industrial workman, and his employer. This Court further held as follows:

D “It is not competent to the Labour Court exercising jurisdiction under Section 33C(2) to arrogate to itself the functions of an industrial tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute in a reference under Section 10 of the Act.”

E In the case of *Municipal Corporation of Delhi v. Ganesh Razek and Anr.*, [1995] 1 SCC 235. this Court held as under:

F “12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen’s
G entitlement and then proceed to compare the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity required
H interpretation that the interpretation is treated as incidental to the

Labour Court's power under Section 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution. A

13. In these matters, the claim of the respondent-workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of "equal pay for equal work" being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C(2). B
The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. C
Respondents' claim is not based on a prior adjudication made in the writ petition filed by some other workmen upholding a similar claim D
which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made under Section 33-C(2) of the Act by these respondents." E

In the case of *State Bank of India v. Ram Chandra Dubey and Ors.*, [2001] 1 SCC 73, this Court held as under: F

"7. When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be H

A appropriately examined only in a reference. When a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

B 8. The principles enunciated in the decisions referred by either side can be summed up as follows:

C 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 under Section 33-C(2) of the Act. The benefit sought to be enforced under Section 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 D just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined E only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious F manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, G to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages”

H Thus it is clear from the principle enunciated in the above decisions that

the appropriate forum where question of back wages could be decided is only in a proceeding before a forum to whom a reference under Section 10 of the Act is made. Thereafter, the Labour Court, in the instant case, cannot arrogate to itself the functions of an Industrial Tribunal and entertain the claim made by the respondent herein which is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute in a reference under Section 10 of the I.D. Act. Therefore, the Labour Court has no jurisdiction to adjudicate the claim made by the respondent herein under Section 33C(2) of the I.D. Act in an undetermined claim and until such adjudication is made by the appropriate forum, the respondent-workman cannot ask the Labour Court in an application under Section 33C(2) of the I.D. Act to disregard his dismissal as wrongful and on that basis to compute his wages. It is, therefore, impossible for us to accept the arguments of Mrs. Shymala Pappu that the respondent-workman can file application under Section 33C(2) for determination and payment of wages on the basis that he continues to be in service pursuant to the said order passed by the High Court in Writ Petition No. 15172 of 1987 dated 28.10.1987. The argument by the learned counsel for the workman has no force and is unacceptable. The Labour Court, in our opinion, has erred in allowing the application filed under Section 33C(2) of the I.D. Act and ordering payment of not only the salary but also bonus to the workman although he has not attended the office of the appellants after the stay order obtained by him. The Labour Court has committed a manifest error of law in passing the order in question which was rightly impugned before the High Court and erroneously dismissed by the High Court. The High Court has also equally committed a manifest error in not considering the scope of Section 33C(2) of the I.D. Act. We, therefore, have no hesitation in setting aside the order passed by the Labour Court in Misc. Case No. 11 of 1993 dated 23.8.1995 and the order dated 9.1.2002 passed by the High Court in C.M.W.P. No. 36406 of 1995 as illegal and uncalled for. We do so accordingly.

At the same time, the respondent-workman should not be left without any other remedy. According to the respondent-workman, he was first appointed on the seasonal post of Clerk in the office of the Senior Marketing Inspector on 24.4.1973 and thereafter he was appointed in the years 1981, 1982, 1983, 1984, 1985, 1986 and 1987 and, therefore, the respondent would be entitled to be regularised and salary and other emoluments. Admittedly, Writ Petition No. 15172 of 1987 is still pending on the file of the High Court. Both parties submit that the pleadings are complete and the pending writ petition can be disposed of at any time. We, therefore, request the High Court to dispose of the writ petition preferably within three months from the date

A of the receipt of this order. We make it clear that we are not expressing any opinion on the merits of the rival claims.

The civil appeal is, accordingly, allowed and the orders passed by the Labour Court and the High Court in C.M.W.P.No. 36406 of 1995 are set aside. However, there shall be no order as to costs.

VS.

Appeal allowed.