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UNION OF INDIA AND ANR.

v.

KANKUBEN (DEAD) BY LRS. AND ORS. ETC. ETC.

MARCH 20, 2006

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[ARIJIT PASAYAT AND TARUN CHATTERJEE, JJ.]

Industrial Disputes Act, 1947; Section 33-C(2):

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Workmen—Application for recovery of over-time allowance—Claim allowed/awarded by Labour Court—Challenge to—Dismissed by High Court—Letters Patent Appeals dismissed by the High Court holding that application for recovery of the claim maintainable—On appeal, held: Benefits sought to be enforced under Section 33-C (2) of the Act should necessarily be either pre-existing benefit or one flowing from a pre-existing right—Pre-existing benefit/right differs from just and fair benefit/right—Former falls under the jurisdiction of Labour Court, and thus a Labour Court could exercise power under Section 33-C(2) of the Act but the later does not—Since the employer has been questioning the maintainability of the recovery petition right from the beginning, the employee is not entitled to the benefit/relief in view of the settled position in law.

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Respondents-workmen filed a petition against the employer/Railways for recovery of overtime allowances. The Labour Court allowed the petition by passing an award. Writ petitions filed by the employer, questioning the correctness of the award, were dismissed by the High Court and later Letters Patent Appeals were dismissed by the High Court holding that the petitions for claim of overtime were maintainable under Section 33-C(2) of the Industrial Disputes Act. Hence the present appeals.

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Appellants contended that the true scope and ambit of Section 33-C(2) of the Industrial Disputes Act has not been kept in view by the High Court while deciding the appeals.

Allowing the appeals, the Court

HELD: 1. In the case of *State Bank of India v. Ram Chandra Dubey & Ors.*, this Court has rightly held that whenever a workman is entitled to

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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, he can approach Labour Court under Section 33-C(2) of the Industrial Disputes 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 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. [50-G; 51-C-F]

Director General (Works), C.P.W.D. v. Ashok Kumar & Ors., [1999] 9 SCC 167; *State of U.P. and Anr v. Brijpal Singh* [2005] 8 SCC 58 and *A.P. SRTC v. B.S. David Paul*, [2006] 2 SCC 282, relied on.

2. In view of the settled position in law, the appeals are allowed. In the peculiar circumstances of the case, if any amount has been paid to any of the respondents in compliance of the order of the Labour Court and/or the High Court the same shall not be recovered. [52-D-E]

Director General (Works), C.P.W.D. v. Ashok Kumar & Ors., [1999] 9 SCC 167, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 10252-10269 of 2003.

From the Final Judgment dated 28.8.2000 of the Gujarat High Court in Letters Patent Appeal Nos. 496, 498 to 514/2000.

Harish Chandra, Ajay Sharma, B.K. Prasad and Mrs. Anil Katiyar for the Appellants.

Ms. Meera Agarwal and Mrs. K. Sarada Devi for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Challenge in these appeals is to the common judgment rendered by a Division Bench of the Gujarat High Court holding that the applications of the respondents before the Labour Court (Central) Ahmedabad, in terms of Section 33-C (2) of the Industrial Disputes Act, 1947 (in short 'the Act') were maintainable.

A Background facts in a nutshell are as follows:

By a common judgment and order dated 4.5.2000 the Labour Court allowed the claims made by the respondents-workmen in the recovery applications filed under Section 33-C (2) of the Act in respect of certain claims of overtime allowance which according to them was payable in view of what is called as 'on and off duty' for taking out and bringing in locomotives from the shed as was required to be done for the purpose of operating them at and from different stations. Apart from questioning the legality of the claims preliminary objection to the maintainability of the applications under Section 33-C (2) of the Act was raised. The Labour Court, however, did not accept the same and held that the applications were maintainable, relying on certain earlier adjudications by the Labour Court and the High Court. Writ petitions were filed under Articles 226 and 227 of the Constitution of India, 1950 (in short 'the Constitution') by the appellants questioning correctness of the Labour Court's award. Learned Single Judge held that on the basis of materials on record the entitlements were rightly worked out and, therefore, the recovery applications were maintainable. Letters Patent Appeals were filed before the High Court which by the impugned judgment dismissed them. It was held that instructions issued under Section 71-A to 71-H of the Indian Railways Act, 1890 (in short 'the Railways Act') and the Railway Servants (Hours of Employment) Rules, 1961 (in short 'the Employees Rules') did not in any way help the case of the appellants and in any event the applications under Section 33-C (2) of the Act were maintainable, as held by the High Court earlier.

In support of the appeals, learned counsel for the appellants submitted that the true scope and ambit of Section 33-C (2) of the Act has not been kept in view. Learned counsel for the respondents on the other hand submitted that in similar cases reliefs have been granted and the challenge thereto had been repelled by the High Court. The respondents were similarly situated and, therefore, the appeals deserve to be dismissed. Reliance is placed on a decision of this Court in *Director General (Works), C.P.W.D. v. Ashok Kumar and Ors.*, [1999] 9 SCC 167 in support of the stand.

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

"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 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.

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

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 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 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 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

A award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, 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”

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C The position was recently reiterated by three-judge Bench of this Court in *State of U.P. and Anr. v. Brijpal Singh*, [2005] 8 SCC 58. Also see *A.P. SRTC v. B.S. David Paul*, [2006] 2 SCC 282.

D *Director General (Works), C.P.W.D.* (supra) is clearly distinguishable on facts, as in that case the employer had accepted its liability and that is why this Court did not interfere. The factual scenario is entirely different in the cases at hand. Right from the beginning the appellants have been questioning the maintainability of the petitions under Section 33-C (2) of the Act. In view of the settled position in law as delineated above, the appeals deserve to be allowed which we direct. In the peculiar circumstances of the case, if any amount has been paid to any of the respondents in compliance of the order of the Labour Court and/or the High Court the same shall not be recovered. Costs made easy.

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S.K.S.

Appeals allowed.