

Rajendra Prasad and Others Vs Labour Court and Another

Court: Allahabad High Court

Date of Decision: Dec. 5, 2002

Acts Referred: Industrial Disputes Act, 1947 " Section 10, 33C(2), 36A

Citation: (2003) 2 AWC 870

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Advocate: K.P. Agarwal and Suman Sirohi, for the Appellant; H.R. Misra, Ajeet Kumar Singh, S.R. Misra, A.K. Misra and S.C., for the Respondent

Final Decision: Allowed

Judgement

Rakesh Tiwari, J.

Heard counsel for the parties.

By means of this writ petition, the petitioners have challenged the order of the labour court dated 22.1.1980 in Misc. Case No. 141 of 1979 filed

u/s 32C(2) of the Industrial Disputes Act. 1947.

2. The root of the dispute lies in a consolidated award of the labour court, Gorakhpur dated 23.4.1979 in Adjudication Case Nos. 88/77, 91/77,

92/77, 93/77, 95/77, 103/77, 104/77, 107/77, 109/77, 111/77, 114/77, 152/77 and 135/78. Adjudication Case No. 135/78 was made the

leading case.

3. The aforesaid cases pertain to adjudication of dispute on reference made by the State Government with regard to illegal termination of services

of the workmen, The labour court by the aforesaid consolidated award in Adjudication Case No. 135/78 held that the termination of services of

the workmen was illegal and unjustified. It further held that in the peculiar facts and circumstances of the case, termination of the services of the

workmen amounted to victimization of innocent and helpless workmen. By the aforesaid award, the labour court granted relief of reinstatement to

the workers without back wages. It was further directed that the employers shall call upon the workmen within one month of the award becoming

enforceable in law by sending them a written notice for reinstatement on their old posts on which they were working prior to their termination.

4. The award was published on 29.5.1979 on the notice Board and the same became enforceable in law on 29.6.1979 i.e., after 30 days from the

date of its publication on the notice board in terms of Section 6 read with Section 6A (1) of the U. P. Industrial Disputes Act. The operative

portion of the award is as under :

^ftu ifjLFkfr;ksa eas bu IEcfU/kr Jfedksa dh Isok;sa leklr dh xbZ gS og Irkus $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ foDVhekbt"ku $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ ds leku gS A ;g IHkh Jfed ,slh ifjLFkfr

esa vlgk; ,oa funksZ""k gS vkSj esjs fopkj ls pw $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ fd bl caSad dh izcU/k lfeFr fu;qDr djus ds fy;s gj izdkj ls l{ke gS vkSj bu lc Jfedksa dh

fu;qfDr;k $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ v/;{k ds vkns"kkuqlkj gqbZ gSa A blfy;s ;g U;k;r% mfpr gksxk fd mUgsa iqu% muds dk;Z ij iquZLFkfkfr fd;k tk; A ;gk $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$;g dguk

iz"kkafxd gksxk fd bl fLFkfr ds vfrfjDr Isok;kstdksa dh vkSj ls bu Jgedksa ds ekeys esa dksbz vU; dkj.k ugha crk;s x;s gSaa vkSj u rks fdlh Lrj

$\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ LVst $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ ij bl fookn dh lquokbZ ds nkSjku ;g ugha dgk x;k gS A fd bu yksxksa dk dk;Z vUrks""ktud jgk gS A ;k os fdlh nqjkpj.k ds nks""kh

ik;s x;s gSaa A mfYyf[kr vkSj Hkh Li""V gS fd bu yksxksa ds $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ ij u rks dksbZ vkjksi&i= fn;k x;k gS vkSj u rks fdlh izdkj dh ?kjsyw tk $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ p

djkbZ xbz gS A vUr esa eSa bl urhts ij igq $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ pk gw $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ fd bu yksxksa dh fu;qfDr;k $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ mfpr ,oa oS/kkfud gSaa vkSj tc mudh txg tgk $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ og

fu;qDr fd;s x;s gSa vc Hkh fu;fer ,oa yxkrkj py jgh gS A rc mUgsa dk;Z ls foeqDr djuk U;k; ds gj n`f""Vdks.k ls vuqfpr ,oa voS/kkfud gS tgk $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$

rd budh csdkjh dh vof/k ds osru dk IEcfU/k gS] lwpukFkZ dh frfFk fnuk $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ d 20-2-1979 dks Jfed i{k ds izfrfuf/k us bl U;k;ky; ds le{k ;g

izkFkZuk&i= dh fd ;fn ;g IHkh Jfed viuh iqjkuh txg ij cgky fd;s tkrs gaSa rks os bu Jfedksa dh vkSj ls mudh csdkjh dh vof/k ds iSlS ij tksj ugha

nsaxs A bu IHkh ifjLFkfr;ksa ij iw.kZ:i ls fopkj djus ds mijUr esa bu fooknksa esa ;gh fu.kZ; nsrk gw $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ fd loZJh fnfXot; flag $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ iq= Jh fugky

flag $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ fookn la- 135@78 $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ Jh jktsUnz izlkn $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ fookn la- 88@77 $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ vatuh dqekj flag iq= Jh txnh"K izlkn flag $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ fookn] la- 103@77 $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$

Jh v"kkSD dqekj flag iq= Jh xaxk flag $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ fookn la- 104@77 $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ Jh vej ukFk flag iq= Jh jke lwjr flag $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ fookn la- 107@77 $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ Jh jfoUnz izrki

ukjk;.k iq= Jh cgy ukjk;.k $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ fookn la- 109@77 $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ Jh "kSysUnz flag iq= Jh HkxUr flag $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ fookn la- 111@77 $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ Jh /keZlsu flag iq= Jh ljlsu

$\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ fookn la- 114@77 $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ rFkk Jh izHkw xksfoUn jko iq= Jh jke nkl jko $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ fookn la- 152@78 $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ dks bl ,okMZ ds yxw gksus ds ,d ekg ds

vUnj fyf[kr lwpuk Hkst dj cqyk;k tk; vkSj mUgsa mudh iqjkuh txg ij iquZLFkfkfr $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ fcf"K""V $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ fd;k tk; rFkk muds izfrfuf/k ds vk"oklu ij vkSj bl

fookn dh iw.kZ fLFkfr dks /;ku esa j[krs gq;s eSa ;g Hkh fu.kZ; nsrk gw $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ fd ;g IHkh IEcfU/kr Jfed csdkjh dk iSlk ugha ik;saxs A

$\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ 8 $\tilde{A}\hat{A}\hat{A}\frac{1}{2}$ bl fookn esa esjk mijksDr izdkj dk vokMZ gS A

g- vLi""V

Ã~Â¿Â½MkW- t- u- flagÃ~Â¿Â½

ihBklhu vf/kdkjh A**

5. Before enforcement of the award, the employers vide letters dated 23.6.1979, 26.6.1979, 27.6.1979 and 28.6.1979 directed the petitioners to

join on the old posts on which they were working prior to their termination, on certain new terms and condition. The workmen by means of letters

dated 25.6.1979, 26.6.1979, 27.6.1979, 29.6.1979 and 2.7.1979 (Annexures-2 to 10 to the writ petition) informed the Secretary of respondent

bank that the new conditions laid down in the letters of the bank dated 23.6.1979, 26.6.1979, 27.6.1979 and 28.6.1979 for their reinstatement

were not acceptable to them and they requested that they may be reinstated on their old posts on old terms and conditions in terms of the award. It

was also stated by the workmen in the aforesaid letters that they were presenting themselves for joining their duties, but they were neither being

allowed to join their duties nor were permitted to sign the attendance register by the employers. Two of the aforesaid letters by the workmen dated

25/26.6.1979 and 27.6.1979 Annexures-2 and 4 respectively to the writ petition is reproduced below :

(I)

The Sachiv

Distt. Co-operative Bank Ltd.

College Road,

Gorakhpur.

Sir,

In terms of the award in Adjudication Case No. 109/77, I hereby submit my joining report to you, condition laid down in your letter dated

23.6.1979 are not acceptable. I have been ordered to be reinstated by a competent court and contrary to the terms of the award nothing shall be

legal and justifiable which may kindly be noted.

You are requested to kindly arrange my duties with effect from today in the light of the submission made above.

Yours obediently,

Sd/-

(Ravindra Pratap Narayan)

Address : Vill-Bennuwtika

Dated : 25.6.1979 Post-Dwarpur Distt. Gorakhpur.

(2) ""The Sachi

Zila Sahakari Bank Ltd.

Gorakhpur.

Sir,

Please refer to your letter No. 7363 dated 27.6.1979. In terms of the award, I had presented myself for duties after submitting joining report, but

1 was not allowed to duties.

Again I give this intimation to you that I have been always present for duties in the premises of the Bank with effect from 25.6.1979.

Kindly allow me to resume in terms of the award.

Yours obediently,

Sd/-

(Shailendra Singh)

Vill : Kusmaul

Dated : 27.6.1979 Post-Kusmaul

Distt. Gorakhpur.

6. From perusal of the aforesaid letters it appears, that the employers in the letters dated 23.6.1979, 25.6.1979 and 27.6.1979 laid down certain

new terms and conditions, which were not "acceptable to the workers and they wanted to be reinstated on the same terms and conditions by

which their services were governed at the time of their illegal termination as was directed in the award.

7. The employers refused to reinstate the petitioners and sent letters to them stating that the workmen had been reinstated on their old post but

since they had not accepted the conditions of reinstatement hence, they have lost their lien on the posts. These letters have been appended as

Annexures-14, 15 and 16 to the writ petition and are in the same language. One of such letter dated 28.6.1979 in respect of petitioner Shailendra

Singh is being quoted below :

^dk;kZy; ftyk lgdkjh cSad fyfeVsM] xksj[kiqj A

i=kad 7569 fnukÃ-Ã½d % 28-6-1979

Jh "kSysUnz flag

xzke dqleksy]

iks- dqleksy] ftyk&xksj[kiqj A

vkids izkFkZuk&i= fnukÃ-Ã½d 27-6-1979 ds IEcU/k esa lwfpr fd;k tkrk gS fd vius fu;qfDr&i= la[k;k 7148&53
fnukÃ-Ã½d 23@6@79 ftlds

vuqlkj ,okMZ dh n"kk ds vuq:i vki vius iqjkuh fLFkr ij fu;qfDr fd;s x;s Fks "krksZ dks Lohdkj ugha fd;k A blfy, vki us viuk
vf/kdkj Lor% [kks

fn;k A

ml IEcU/k esa iqu% lwfpr fd;k tkrk gS fd vc iqu% dksbZ i= O;ogkj ugha fd;k tk;sxx A

g- lfpo**

8. A perusal of the aforesaid letter dated 28.6.1979 would show that this letter was sent to the workers one day prior to the enforcement of the

award i.e., before expiry of 30 days from the date of its publication on the notice board in terms of Section 6A of the U. P. Industrial Disputes

Act, 1947. From perusal of the operative portion of the award, it is also clear that the workers were to be reinstated on their old posts and it did

not provide fresh appointment on the old posts on new terms and conditions.

9, Aggrieved by the aforesaid letter and the deliberate attempt of the employers to keep the workmen out of employment by imposing new

conditions of service and non-implementation of the award of the labour court in letter and spirit the workmen filed an application u/s 33C(2) of the

Industrial Disputes Act (Central) before the Labour Court, Gorakhpur praying that the benefits of reinstatement arising out of the award of the

labour court dated 23.4.1979 may be computed in terms of money as they were deliberately kept away from duty. This application u/s 33C(2) of

the Act by the workmen was registered as Miscellaneous Case No. 141 of 1979. The application was contested by the respondent-bank and the

labour court passed the impugned order dated 22.1.1980 by which the labour court held that the application u/s 33C(2) of the Act was not

maintainable.

10. It has been contended by Sri K. P. Agarwal, learned senior counsel appearing on behalf of the petitioners that according to the terms of the

award of labour court, the workmen were to be reinstated on their old posts and no new conditions could be imposed vide letter dated 23.6.1979

for their reinstatement as referred in letter dated 28.6.1979 as this would amount to fresh appointment. He further submits that for this purpose, the

respondent bank was to inform them within one month of the award becoming enforceable in law but the respondent-bank neither gave them any

notice nor reinstated them after enforcement of the award notwithstanding the fact that the workmen themselves have persistently approached the

respondent bank for being reinstated. He submits that the petitioners had an existing right arising out of the award and were entitled to computation

of the benefit of reinstatement after the enforcement of the award ; which was not implemented by the employers.

11. The counsel for the respondents states that the bank had implemented the award inasmuch as it had asked the workmen to join duties on old

posts on the basis of conditions of service re-clarified/re-defined in letter dated 23.6.1979 written to the workmen but since the workmen had

refused to accept the conditions of service for reporting on duty in pursuance of the letter written by the bank, they are not entitled to any benefit as

claimed by them. It was submitted that the labour court had not imposed any condition in the award that the workmen could not be reinstated on

old posts on new terms and conditions of service offered by the employers.

12. It was further submitted that the proceedings u/s 33C(2) of the Act were beyond the scope of the said section. It was also submitted that the

award u/s 10 of the Act can be declared as a nullity in proceedings u/s 33C(2) of the Act and if any difficulty arises to the interpretation of the

award the same can be removed u/s 36A of the Industrial Disputes Act.

13. The relevant paragraphs of the written statement submitted on behalf of the bank are as under :

~Ä½1Ä½ Ä½dÄ½ ekuuh; U;k;ky; ,okMZ ds ckjg bl Ä½tkZ ds vUrxZr vo/kkj.kk ugh dj ldrk A fdUrq ,okMZ dh uSfyVh vo"; ?kksf""kr dj

ldrk gS A

Ä½[kÄ½ ,okMZ dk ikyu izfroknx.k us dj fn;k A oLrq% oknhx.k gh fu;qfDr&i= dh "krksZ dks ekuus ls vLohdkj dj fn, A blfy, izfroknh ij

dksbZ nkf;Ro ugha jg tkrk A

Ä½xÄ½ oknhx.k us ,okMZ ifjiky uIEcfU/k dkuwuh dk;Zokgh Hkh dh Fkh A tgkÄ½ ;g Li""V gks x;k fd izfroknh dh vksj ls ,okMZ dk ifjiky

dj fn;k x;k A

Ä½?kÄ½ ,okMZ ds fdlh "kCn vFkok va" k dh O;k;k dk ;fn dksbZ iz"u gks rks ml ij i{kksa esa dksbZ erHksn gks A ftlds dkj.k dksbZ fnDdr

mRiUu gksrh gks] rks mldk lek/kku dsUnzh; dkuwu dh /kkjk 36, rFkk jkT; ds dkuwu dh /kkjk 11ch ls gh IEHko gS A /kkjk 33lh 2 mijksDr

/kkjkvksa dk vfrÄ½e.k ugha djrh A

Ä½pÄ½ izfroknh us fnukÄ½d 23 twu 1979 ds i= }kjk ,okMZ dk gokyk nsrs gq, izfroknx.k dks fM;wVh ij vkus ds fy, mds iwoZ fu;qfDr dh

"krksZ dks iquZLi""V djrs gq, lwfpr fd;k A bl izdkj dk ifjiky dj fn;k A

Ä½NÄ½ oknhx.k us izfroknh dk i= izklr fd;k A rr~i"pkr "krksZ dks u ekuus dh lwpuk nh rFkk ;g fy[kk fd "krsZ mUgsa Lohdkj ugha gSa A

,oe~ l{ke U;k;ky; }kjk iqUkZLFkkr fd, tkus ds izfrdwy dqN Hkh oS] ugha gksxk A ml i= ds dkj.k ,okMZ dh laKk vkSj "kCnksa dh O;k;k dk

fu%lUnsg fookn mRiUu gks x;k A ftls gy djkus ds fy, lUnHkZ dk vf/kdkj ek= mi;qDr ljdkj dks gS u fd /kkjk 33lh 2 dh Ä½tkZ A

2- oknhx.k us izfookn ds i= fy[kus ds okotwn O;k;k IEcU/kh fookn mRiUu djds viuk ;ksxnku dk;Zgsrq ugha fn;k A blfy;s mUgsa fdlh ykHk

;k vuqrks""k dk vf/kdkj ugha gS A**

14. In the impugned order in Misc. Case No. 141 of 1979. the labour court came to the conclusion that from the pleadings of the parties, it was

apparent that the workmen were being offered new terms and conditions of service, i.e., stand of the bank that it has implemented the operative

portion of the award and had only re-clarified/redefined the terms of employment was not accepted by the labour court. It was, however, held by

labour court that since there was dispute between the parties regarding implementation of the award it cannot be resolved in proceedings u/s

33C(2) of the Industrial Disputes Act.

15. Section 33C(2) of the Industrial Disputes Act, 1947 provides that 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).

16. The scope of the jurisdiction of the labour court u/s 33C(2) was considered by the Supreme Court in three leading cases :

(1) Punjab National Bank Ltd. v. K. L. Kharbandu, 1962 (1) LLJ 234.

(2) Central Bank of India Ltd. v. P. S. Rajagopalan etc. 1964 SC 734.

(3) Municipal Corporation Delhi v. Ganesh Razak 1995 (1) LLJ 395.

In these cases the Court interpreted and construed the words "any benefit which is capable of being computed in terms of money" as the benefit to

which a workman may be entitled which has not already been calculated.

17. In Municipal Corporation Delhi v. Ganesh Razak 1995 (1) LLJ 395, the Apex Court held that :

It is only when the entitlement has been earlier adjudicated or recognized by the employer or thereafter for the purpose of implementation or

enforcement thereof some ambiguity requires interpretation, that the interpretation is treated as incidental to the labour court's power u/s 33C(2)

like that of the executing court's power to interpret the decree for the purpose of its execution.

18. In Central Bank of India Ltd. v. P. S. Rajagopalan's case (supra), the Apex Court explained the scope of Section 33C(2) of the Act. In that

case, claim of four clerks was resisted by the bank on the ground that the labour court had no jurisdiction to determine the question whether the

clerks came within the category of workmen or not under the Shastri Award. It was held that the enquiry as to whether the four clerks came within

the category of workman was purely "incidental" and necessary for the purpose of giving relief asked for and, therefore, the labour court had

jurisdiction to enquire whether the clerks answered the description of the category mentioned in the Shastri Award.

19. Sri K. P. Agarwal, learned senior counsel has placed reliance on paragraph 16 of the judgment in Central Bank: of India Ltd. v. P. S.

Rajagopalan, etc. 1964 SC 734, in which scope of Section 33C(2) has been interpreted by the Apex Court which reads as under :

16. Let us then revert to the words used in Section 33C(2) in order to decide what would be its true scope and effect on a fair and reasonable

construction. When Sub-section (2) refers to any workman entitled to receive from the employer any benefit there specified, does it mean that he

must be a workman whose right to receive the said benefit is not disputed by the employer. According to the appellant, the scope of Sub-section

(2) is similar to that of Sub-section (1) and it is pointed out that just as under Sub-section (1) any disputed question about the workman's right to

receive the money due under an award cannot be adjudicated upon by the appropriate Government, so under Sub-section (2) if a dispute is raised

about the workman's right to receive the benefit in question, that cannot be determined by the labour court. The only point which the labour court

can determine is one in relation to the computation of the benefit in terms of money, We are not impressed by this argument. In our opinion, on a

fair and reasonable construction of Sub-section (2) it is clear that if a workman's right to receive the benefit is disputed, that may have to be

determined by the labour court. Before proceeding to compute the benefit in terms of money, the labour court inevitably has to deal with the

question as to whether the workman has a right to receive that benefit. If the said right is not disputed, nothing more needs to be done and the

labour court can proceed to compute the value of the benefit in terms of money, but if the said right is disputed, the labour court must deal with that

question and decide whether the workman has the right to receive the benefit as alleged by him and it is only if the labour court answers this point

in favour of the workman that the next question of making the necessary computation can arise. It seems to us that the opening clause of Sub-

section (2) does not admit of the construction for which the appellant contends unless we add some words in that clause. The clause ""Where any

workman is entitled to receive from the employer any benefit"" does not mean ""Where such workman is admittedly, or admitted to be, entitled to

receive such benefit."" The appellant's construction would necessarily introduce the addition of the words ""admittedly, or admitted to be"" in that

clause, and that clearly is not permissible. Besides, it seems to us that if the appellant's construction is accepted, it would necessarily mean that it

would be at the option of the employer to allow the workman to avail himself of the remedy provided by Sub-section (2), because he has merely

to raise an objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the labour court to entertain the

workman's application. The claim u/s 33C(2) clearly postulates that the determination of the question about computing the benefit in terms of

money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to

the main determination which has been assigned to the labour court by Sub-section (2). As Maxwell has observed ""where an Act confers a

jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution."" We

must accordingly hold that Section 33C(2) takes within its purview cases of workmen who claimed that the benefit to which they are entitled

should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employer

20. Sri Agarwal submits on the basis of the aforesaid judgment given in Central Bank of India's case (supra) that u/s 33C(2) of the Act, the labour

court had power to decide the incidental question of the nature involved in the writ petition and holding that due to some difference or dispute

between the parties regarding implementation of the operative portion of the award, the award is not maintainable u/s 33C(2) of the Act is illegal

and amounts to refusal of exercise of its jurisdiction.

21. This, in other words, means that u/s 33C(2) the labour court has a wide scope and the labour court under this section is competent to entertain

claims of workmen, even though the right to the benefit on which their claim is based is disputed by their employers and it is open to the labour

court to interpret an award or settlement on which the workman's right rests.

22. It is true that the labour court while exercising jurisdiction u/s 33C(2) cannot arrogate itself upon the power of adjudication u/s 10 of the

Industrial Disputes Act. It is equally settled in law that the labour court or Industrial Tribunal can decide the incidental question in exercise of its

power u/s 33C(2) of the Act. In the present case, the award has already been given by the labour court in the adjudication cases filed by the

workmen and they had an existing right to claim benefit of reinstatement and money in terms of the award as their rights stood adjudicated.

23. It is admitted to the parties that the employers had written letter(s) before enforcement of the award calling upon the workmen to report for

duty and that the workmen had also approached the Management and the Deputy Labour Commissioner for implementation of the award. The

only short question that was to be decided by the labour court was whether any new conditions have been imposed or not by the employers on the

workers while calling upon them to report for duty in terms of the award. This could have been decided by the labour court as incidental question

u/s 33C(2) of the Act for execution of the award on the basis of letter issued by the management calling upon the workers to report for duty and

did not require any adjudication u/s 10 of the U. P. Industrial Disputes Act. It could easily have been gathered from the record whether any new

conditions have been imposed upon the workmen de hors the operative portion of the award. It was only an incidental question, as such the labour

court had jurisdiction to determine by an incidental enquiry u/s 33C(2) of the Act as to whether any new conditions have been imposed upon the

workmen or not. The labour court was, therefore, competent to determine the benefit, as it only required reading of the letters of the employers

calling upon the workmen to report for duty and compute the amount.

24. The labour court was under bounden duty to have decided the dispute as well as the incidental questions of law and facts expeditiously

whether in favour or against the workmen. However, it emerges from the record that it has failed to exercise its jurisdiction vested in it and has

travelled beyond the scope of Section 33C(2) by holding that it had no jurisdiction in the matter.

25. The word "reinstatement" has been defined in Concise Oxford dictionary as (i) replace in formal position (it) restore a person(s) to former

privileges. According to the meaning of the word "reinstatement", the workmen were to be taken in service on the same terms and conditions and

privileges, which they were enjoying before their illegal termination. The contention of the employer that the service conditions of the workmen

were only re-defined or re-clarified while reinstating them is fallacious. No order of reinstatement after enforcement of the award was issued by the

employer and as such the award of the labour court was also not complied with in letter and spirit.

26. The other contention of the employer that the award given by the labour court u/s 10 of the Act adjudicating the dispute finally can be declared

as nullity in the proceedings u/s 33C(2) of the Act, is wholly misconceived. The scope of Section 10 and Section 33C(2) of the Act is different. u/s

10 of the Act, the rights of the parties are determined by adjudication whereas proceedings u/s 33C(2) are only in the nature of execution

proceedings. Subsection (2) of Section 33C of the Act is reproduced below :

33C (2) Where any workman is entitled to receive from the employer any money or 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 of not exceeding three months).

27. A reading of the aforesaid section shows that the matter has to be first adjudicated by the labour court u/s 10 of the Industrial Disputes Act,

1947 and thereafter recourse can be taken by the workman u/s 33C(2) of the Act. In the instant case, the matter has already been decided u/s 10

of the Industrial Disputes Act and thus the workman has a right which is sought to be executed u/s 33C(2) of the Act, The execution proceedings

are, therefore, always subject to the final decision of the matter i.e., to say, proceedings u/s 33C(2) which are in the nature of execution

proceedings and are subject to adjudication proceedings u/s 10 of the Act and not vice-versa as contended by the counsel for the petitioners.

28. The last contention of the learned counsel for the respondents is that if there is any difficulty in interpreting the award, recourse can be had to

Section 36A of the Act. Section 36A of the Act provides that if in the opinion of the appropriate Government, any difficulty or doubt arises as to

the interpretation of any provision of an award or settlement, it may refer the question to such labour court, Tribunal or National Tribunal as it may

think fit.

29. In this case, there is no material on record to show that the appropriate Government had any difficulty. There has even been no application to

the State Government by either of the parties that there was any doubt to the interpretation of any provision of the award nor it is a case of the

parties that any such matter was referred by the State Government to the labour court. The instant case arises out of an application u/s 33C(2) of

the Act for the execution of the award and computation of the benefit to which the workmen became entitled to due to alleged non-implementation

of its operative portion by the employers. Thus, the other two contentions of the employers that the adjudication proceedings u/s 10 of the

Industrial Disputes Act, 1947 which finally decide the industrial dispute or adjudicate are subject to execution proceedings are fallacious,

misconceived and cannot be sustained. In so far as the last contention of the employers that if there was any difficulty in interpreting the award,

recourse could be had to Section 36A of the Act also suffers from the same vice as no difficulty is felt by the State Government or by any of the

parties in implementation of the award nor any of the parties had moved any application for reference to the labour court.

30. The implementation of the award cannot be delayed due to any technical objections not furthering the cause of justice. The Apex Court has

time and again held that it is the duty of the courts to see that justice not only be done but also to prevent injustice from being done. The services of

the petitioners had been illegally terminated in 1977-78. Award had also been published in 1979, as such the employers cannot be permitted to

thrive upon technical pleas and the workmen cannot be made to suffer for no fault of theirs inspite of the award being in their favour.

31. In view of the discussion made above, the writ petition deserves to be allowed and is hereby allowed. The matter is remanded back to the

labour court for deciding the application of the workmen u/s 33C(2) of the Act afresh in accordance with law in the light of the observations made

in the body of this judgment. Since the matter is very old, the petition having been filed in the year 1980, it is directed that the labour court shall

decide Misc. Case No. 141 of 1979 within a period of two months from the date of production of a certified copy of this order and if it is found

that the workmen are entitled to receive from the employers any amount or benefit which can be computed in terms of money, the labour court

shall direct that the employers deposit the aforesaid amount before it along with 12% interest and the same shall be paid to the concerned workers.

32. No order as to costs.