Divisional Personnel Officer, Southern Railway Vs P. Ramachandran and Another

O.P. No. 10331 of 1987

Court: High Court Of Kerala

Date of Decision: Jan. 9, 1991

Acts Referred:
Constitution of India, 1950 â€" Article 226#Industrial Disputes Act, 1947 â€" Section 33C(2)

Citation: (1991) 63 FLR 895 : (1995) 3 LLJ 387

Hon'ble Judges: Varghese Kalliath, J

Bench: Single Bench

Advocate: M.G. Cherian, for the Appellant; B. Gopakumar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Varghese Kalliath, J.
Petitioner is challenging an order of the Labour Court, Kozhikode. Copy of the order is Ext.-P8. The order was

passed in a proceeding u/s 33C(2) of the Industrial Disputes Act (hereinafter referred to as "the Act").

2. The 1st respondent in this Original Petition claimed that he is entitled to get arrears of salary for a period from 23.7.1973 to 22.7.1984. The 1st

respondent was a casual labourer in the Railways from 23.7.1973. According to the 1st respondent, he was doing the work of a road roller driver

and since he was doing the work of a road roller driver, he is entitled to a scale of pay of Rs. 260-400. But in fact, he was given a scale of pay of

Rs. 196-232. Based on this difference in the scale of pay, 1st respondent calculated the arrears or emoluments due to him and made a claim u/s

33C(2) of the Act. The Labour Court held that the petitioner (1st respondent herein) is entitled to arrears of emoluments and passed an order in

his favour and against the respondents in the petition for realisation of an amount of Rs. 15,060.20. This order, Ext.-P.8, is challenged in this

Original Petition.

3, Petitioner is one of the respondents in the petition before the Labour Court. viz., Divisional Personnel Officer, Southern Railway, Palghat He

challenges Ext.-P.8 award on the ground that the Labour Court had exceeded and overstepped its jurisdiction. I feel that it is appropriate to refer

Section 33C(2) of the Act.

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 from 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"".

Section 33C(2) of the Act gives only a limited jurisdiction to the Labour Court to decide certain disputes between the employer and the employee.

If any complicated question relating to any entitlement to the employee is involved, perhaps Section 33C(2) of the Act may not be the proper

provision to be invoked by the employee.

4. The scope, content and width of Section 33C were considered in several decisions of the Supreme Court. One of the earliest decisions of this

aspect is The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., and one of the latest decisions of the Supreme Court in P.K. Singh and Others

Vs. Presiding Officer and Others, . In P.K. Singh and Others Vs. Presiding Officer and Others, the Supreme Court was considering a question of

C"" Grade Fitters of an industry. ""C"" Grade Fitters claimed salary and allowances payable to "B" Grade Fitters and for obtaining arrears of salary

on the basis of pay and allowances payable to ""B"" Grade Fitters, they filed application u/s 33C(2) of the Act. In considering the scope of Section

33C(2) of the Act, the Supreme Court held thus (Para 4):-

The above provision came up for consideration before this Court in the Central Bank of India Ltd. v. P.S. Rajagopalan 1964 2 SCR 140 : 1963

(2) LLJ 69. At pages 150-151 of the said Report this Court observed thus:

The legislative history to which we have just referred clearly indicates that having provided broadly for the investigation and settlement of industrial

disputes on the basis of collective bargaining, the legislature recognised that individual workmen should be given a speedy remedy to enforce their

existing individual rights, and so, inserted Section 33A in the Act in 1950 and added Section 33C in 1956. These two provisions illustrate the

cases in which individual workmen can enforce their rights without having to take recourse to Section 10(1) of the Act, or without having to

depend upon their Union to espouse their cause. Therefore, in construing Section 33C we have to bear in mind two relevant considerations. The

construction should not be so broad as to bring within the scope of Section 33C cases which would fall u/s 10(1). Where industrial disputes arise

between employees acting collectively and their employers, they must be adjudicated upon in the manner prescribed by the Act, as for instance, by

reference u/s 10(1). These disputes cannot be brought within the purview of Section 33-C. Similarly, having regard to the fact that the policy of the

Legislature in enacting Section 33-C is to provide a speedy remedy to the individual workmen to enforce or execute their existing rights, it would

not be reasonable to exclude from the scope of this section cases of existing rights which are sought to be implemented by individual workmen. In

other words, though in determining the scope of Section 33-C we must take care not to exclude cases which legitimately fall within its purview, we

must also bear in mind that cases which fall u/s 10(1) of the Act for instance, cannot be brought within the scope of Section 33-C.

Further, the Supreme Court observed that by merely doing the same kind of work which is done by a "B" Grade Fitter, a workman appointed as a

"C" Grade Fitter, will not be entitled to claim the wages of a "B" Grade Fitter unless he is duly promoted after getting through the prescribed trade

tests.

5. Here, in this case the 1st respondent claims that he is a road roller driver and he further says that the scale of pay of a road roller driver is Rs.

260-400 and that he is entitled to that scale of pay. If the 1st respondent is entitled to that scale of pay, the award now challenged in this Original

petition is sustainable otherwise it is not sustainable.

6. So the chief question that has to be decided in this case is as to whether the 1st respondent is entitled to claim the grade of a road roller driver.

Yet another question also has to be considered. There is a serious challenge as regards the status of the employment of the 1st respondent. The

question is whether that status can be decided by the Labour Court u/s 33-C(2) of the Act. The definite case of the railways is that the 1st

respondent was a casual labourer, who got temporary status by virtue of an order, copy of which has been produced in this case as Ext.-P1. It is

stated in Ext.-P1 that certain casual labourers after having completed 4 months continuous service without break as per extant orders are granted

the benefit-of temporary status and arrears of pay with effect from the date noted against them. The 1st respondent"s name appears as No.

782/63. It is stated that he had continuous service from 23.7.1973. The date from which temporary status is given to the 1st respondent is

23.11.1973. Pay and scale granted to the 1st respondent is Rs. 196-232. Ext.-PI order is dated 2/15.4.1976. On the basis of Ext.-P1 order, it is

contended that the 1st respondent was working on a fixed pay scale and so long as he was working on that fixed pay scale, unless and until he has

been promoted or appointed on a different pay scale, he cannot at any rate, claim arrears of salary on the basis of a different pay scale by invoking

the provision u/s 33-C(2) of the Act.

7. Counsel for the 1st respondent submitted that the 1st respondent was engaged from 23.7.1973 as road roller driver and after 4 months, he got

an entitlement to obtain temporary status as road roller driver. Though he was empanelled as gangman in the scale of pay of Rs. 200-250, that

selection is question on the basis that he ought to have been selected for road roller driver and that he ought not have been empanelled for a post

which had lesser emoluments than road driver and so he approached this Court by filing writ petition O.P. No. 9326/83. That writ petition was

disposed of by judgment dated 31.10.1983, copy of which is produced in this Original Petition as Ext.-P4. In the judgment, it is stated that the 1st

respondent was screened for absorption as railway gangman in the pay scale of Rs.200-250 in SRR Sub-Division by Ext.-P1 office order in the

original petition. The 1st respondent''s claim is that he is entitled by such screening to be absorbed into a higher salary scale. Dealing with this claim,

this Court held that it is a matter which has to be determined by the administrative authorities in charge of appointment in the railways. At that

juncture, the 1st respondent submitted that he must be allowed to make a representation before the authorities for appropriate orders in the matter

of his appointment. The 1st respondent made a representation and that representation was disposed of by Ext.-P5 order. The 1st respondent was

not appointed or absorbed as road roller driver. The order, Ext.-P5 is dated 2.2.1984. This being the position, it is difficult for the 1st respondent

to contend that he has got an entitlement to claim salary on the basis that he should be treated as road roller driver.

8. I have already adverted to the limited jurisdiction of the Labour Court u/s 33C(2) of the Act. In the petition (Ext.P6) filed by the 1st respondent

before the Labour Court, he has stated thus : ""I have been designated as Man Mazdoor, but 1 have been working as road roller Driver since

23.7.73 onwards. I am having a valid heavy duty licence for operating the Road Roller vehicle. This is the fundamental basis for his claim for

arrears of salary calculated on the basis of pay scale of road roller driver. This was the same position in the Supreme Court case, P.K. Singh and

Others Vs. Presiding Officer and Others, : referred to by me. The only difference is that ''C'' Grade Fitters were working as ''B'' Grade Fitters and

they claim salary on the basis of pay scale of ''B'' Grade Fitters. The Supreme Court did not accept this contention and said that by merely doing

the same kind of work which is done by a ''B'' Grade Fitter, a workman appointed as a ""C"" Grade Fitter will not be entitled to claim the wages of

a ''B'' Grade Fitter. So the claim of the 1st respondent is not legal and cannot be adjudicated by exercising the power u/s 33C(2) of the Act by the

Labour Court. In this case, the Labour Court has adjudicated the matter and said that the 1st respondent is entitled to salary payable to the road

roller driver, viz., Rs. 260-400. Obviously it is wrong. In the result, I have to set aside the award. I do so.

9. Counsel for the 1st respondent submitted that though the award is passed on 29.7.1986, the Original Petition is filed only on 4.12.1987 and that

there is no proper explanation for the undue delay and on that ground 1 should not interfere with the impugned award, Ext.-P8. It is true that the

Original Petition has been filed after considerable delay. There is no clear and specific explanation for the delay. But it is stated in paragraph 6 of

the Original Petition that notice was received on 13.4.1987 to the effect that coercive steps will be taken under the impugned award. Thereafter,

an application for certified copy was made and the copy of the award was obtained only on 12.6.1987 and the Original Petition was filed on

4.12.1987. Though the conduct of the petitioner is not satisfactory in approaching this Court with so much delay, I do not think that in the

circumstances, petitioner should be denied access for the reliefs claimed in this Original Petition. The jurisdiction is discretionary and there is no

specific time limit with which a party should approach this Court for reliefs under Articles 226 of 227 of the Constitution. So there is no merit in this

contention.

10. Counsel for the 1st respondent further submitted that all the respondents before the Labour Court are not made parties in this Original Petition.

In fact, 2 petitions were filed before this Court for impleading the other respondents in the petition before the Labour Court. In CM.P. No.

3073/90 filed by the petitioner, this Court passed an order to this effect:

Petitioner seeks to implead respondents 3 to 5 in this petition as addl. respondents 3 to 5 in the O.P. Since there is no dispute as between the

petitioner and these respondents to be resolved in this O.P. I do not find any ground to implead them as addl. respondents. Petition is dismissed"".

In another petition, C.M.P. No. 34330/89 the respondents before the Labour Court, who were not parties in this Original Petition wanted to get

themselves impleaded and in that petition, this Court passed an order thus:

This petition is identical to the one filed in O.P. 4370/86. In that petition the prayer for impleadment as addl. petitioners was rejected.

I do not find any ground to allow the petitioners to get themselves impleaded as addl. petitioners to challenge Ext.-P8 order dated 29.7.1986 at

this distance of time. Petition is dismissed"".

It has to be remembered that the award is challenged on the ground that the Labour Court has exceeded its jurisdiction in passing the award.

11. One of the affected parties has come up before this Court. Certainly he has got right to challenge the award and I am of the view that this

Court can in such circumstance consider the validity of the award, particularly the question whether the Labour Court has exceeded its jurisdiction

or not. I have already found that the Labour Court has exceeded its jurisdiction and the award is liable to be set aside.

In the result, Ext.-P8 award is quashed and the Original Petition is allowed. No order as to costs.