**(1981) 07 KL CK 0038**

**High Court Of Kerala**

**Case No:** O.P. No. 4103 of 1979

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| Ungottukurussi Service Co-operative Bank Ltd. | | APPELLANT |
| | Vs | |
| Balakrishnan | | RESPONDENT |

**Date of Decision:** July 2, 1981

**Acts Referred:**

- Co-operative Societies Act, 1969 - Section 69, 80
- Industrial Disputes Act, 1947 - Section 2, 33C(2)
- Payment of Wages Act, 1936 - Section 15, 22

**Hon'ble Judges:** Khalid, J

**Bench:** Single Bench

**Advocate:** K. Chandrasekhran and Chandrasekhra Menon, for the Appellant; M.V. Joseph, for the Respondent

**Final Decision:** Dismissed

**Judgement**

Khalid, J.

A Service Co-operative Bank is the Petitioner. Respondents 1 and 2 are its employees. The 3rd Respondent is the Labour Court and the 4th Respondent is the State of Kerala. Respondents 1 and 2 filed C.P. 545 of 1976 and 546 of 1976 u/s 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) before the 3rd Respondent claiming amounts alleged to be due to them from the Petitioner society. Exts. P-1 and P-2 are the applications filed. The case of the 1st Respondent in Ext. P-1 was that he was employed under the Petitioner as measurer of ration shop No. 87 from 15th October 1969 onwards and that he had been paid at the rate of Rs. 20 as salary for the first three months and thereafter at the rate of Rs. 30 per month. This amount is far below the minimum wages fixed by the Government as well as under the Cooperative Societies Act, 1969 and Rules. He also alleged that no dearness allowance was also paid to him. The total claim made by the 1st Respondent was Rs. 9,350.

2. The 2nd Respondent also made a similar claim, the total amount claimed by him being Rs. 9,035. Exts. P-3 and P-4 are the receipts filed by the Petitioner-bank and Exts. P-5 and P-6, the rejoinders filed by Respondents 1 and 2. On these materials and the evidence adduced before it, the 3rd Respondent passed Ext. P-7 combined order accepting the claim with slight modification regarding 1st Respondent''s claim. Ext. P-7 order is under challenge in this petition.

3. The questions raised by the learned Counsel for the Petitioner in his challenge against Ext. P-7 are: (1) The Labour Court had no jurisdiction to consider the applications in question made u/s 33-C(2) for the reason that the dispute involved adjudication of disputed rights and the status of Respondents 1 and 2; (2) Respondents 1 and 2 are not workmen entitled to the wages claimed by them. They are working on contractual basis as evidenced by Ext. D-1 which disables them from enforcing their claim for arrears of salary or wages through the machinery of the Labour Court; (3) The claim made by Respondents 1 and 2 is in the nature of arrears of salary which is a claim enforceable in a civil court. The proper forum for getting relief for Respondents 1 and 2 for this claim is the Registrar u/s 69 of the Co-operative Societies Act; and (4) In any case the 2nd Respondent is not entitled to any relief before the 3rd Respondent for the reason that on his own showing he is a Manager who by definition of the ''workman'' in Section 2(s) of the Act is excluded.

4. The learned Counsel for Respondents 1 and 2 met the above contention with the plea that the claims come squarely within Section 33-C(2) of the Act, that it was not a matter to be decided by the Registrar and that Respondents 1 and 2 were workmen under the Act.

5. That Respondents 1 and 2 were employed in a ration shop belonging to the Petitioner society cannot be disputed. The case now put forward is that by virtue of Ext. D-1 the nature of their employment changed from 1st January 1974. Ext. D-1 is an application jointly made by Respondents 1 and 2 to the Petitioner requesting the latter that in case the latter decided to surrender the ration shop they might be allowed to work on commission basis. It is on this document that the Petitioner attempted to build up a case that the original appointment has ceased and Respondents 1 and 2 had become contractual employees under the Petitioner. For two reasons this submission cannot be accepted. The 3rd Respondent has on the materials available and on a fairly reasonable discussion come to the conclusion that the Respondents 1 and 2 continued to be employees of the Petitioner. For this conclusion the 3rd Respondent relied upon the uncorroborated testimony of P.W. 1 to the effect that Ext. D-1 was not acted upon and that Respondents 1 and 2 continued to be the employees of the Petitioner. Secondly, there is nothing on record to show that Ext. D-1 was implemented. There is a detailed discussion. The finding by the 3rd Respondent that Respondents 1 and 2 continued to be employees of the Petitioner society does not suffer from any infirmity.

6. That the 1st Respondent, as a measurer, is a workman cannot be seriously disputed. He comes squarely within the definition of Section 2(s) of the Act. The only presentable argument for the Petitioner-bank was about the 2nd Respondent. It is true that his designation is that of the Manager. The 3rd Respondent has relied upon the evidence of P.W. 1 to the effect that his duties were mainly to write bills and to receive the-cash and the said work was more clerical in nature than managerial. He also deposed that he was working under the supervision of the Secretary of the bark. No contra evidence was adduced by the Petitioner. Thus the 3rd Respondent had before it only the uncontradicted evidence of P.W. 1 in that behalf, and therefore there was enough justification for the finding that the 2nd Respondent was a workman.

7. In addition to this the counsel for Respondents 1 and 2 invited my attention to S.R.O. No. 1037/77, dealing with employment in shops and establishments (including hotels and restauants). The first item in the Schedule is Manager. The Respondents'' case is that irrespective of the definition of the word "workman" in Section 2(s) of the Act, Manager with a salary of Rs. 180 per mensem is one of the employees entitled to the benefits of the Minimum Wages Act as per entry No. 1 in the Schedule. For this reason also the 2nd Respondent is entitled to his relief.

8. The learned Counsel for the Petitioner forcefully contended that this case involved determination of questions of law and facts and hence was not one that a Labour Court could decide u/s 33-C(2) of the Act. The Labour Court acting u/s 33-C(2) of the Act was in the nature of an execution court and could only execute the award or determine the admitted amount and could not go either behind the award or enter into disputed questions of fact. In support of this submission he invited my attention to a decision reported in Personnel Officer, Southern Railway v. Labour Court, Quilon and Anr. ILR 1979 Ker 427. In that decision Balakrishna Eradi, J., as he then was, observed as follows:

The proceeding u/s 33-C(2) is, generally speaking, only in the nature of an execution proceeding wherein the function of the Labour Court is to calculate the amount of money due to a workman from his employer and the money value of any benefit due to the workman where the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court has merely to compute the money equivalent of such benefit. The Labour Court cannot arrogate to itself the functions of an Industrial Tribunal and embark upon an elaborate enquiry as to what should be the terms and conditions applicable to the employee as an Industrial Tribunal. Moreover, when the terms and conditions of service of an employee are governed by the rules, it is not open to the Labour Court in such a proceeding to deviate from the rules on considerations of what appears to be just, proper or fair. Much less is it open to the Labour Court to arrogate to itself the function of deciding upon the validity, constitutionality or otherwise of a service rule applicable to the employee while dealing with a proceeding initiated u/s 33-C(2). In the present case it

is manifest that the case of the 2nd Respondent does not fall within any of the categories enumerated in Clauses 1 to 4 of paragraph 1 of Ext. P-8.

With great respect the jurisdiction of the Labour Court has been clearly set out in the above extract. But that does not mean that the Labour Court cannot consider even matters incidental to a claim in applications u/s 33-C(2). The prohibition is only against a detailed examination of facts which are disputed and of questions of law. It is not as though the Labour Court is disabled to consider a question which an employer against whom an application u/s 33-C(2) is filed, puts forward either without any bona fides or only to imperil the claim of the employees. Such matters as are incidental in nature or as can be disposed of by the Labour Court without entering into disputed questions of fact can be gone into by the Labour Court on an application u/s 33-C(2) and this jurisdiction has not been taken away from the Labour Court in such matters. Assistance can be had for this approach from the observation by the Supreme Court in the decision reported in The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., at paragraphs 18 and 21.

(18) 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 33-C(2) Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination u/s 33-C(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.

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(21) In Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another, , Section 15 of the Payment of Wages Act, 1936 (No. 4 of 1936) fell to be construed, and it was held that under, the said section, when the authority exercises its jurisdiction which is made exclusive by Section 22, it has necessarily to consider various questions incidental to the claims falling there under, and it was added that although it would be inexpedient to lay down any hard and fast rule for determining the scope of such questions, care should be taken not to unduly extend or curtail its jurisdiction. As we have already indicated, we have adopted the same approach in interpreting Section 33-C(2).

To agree with the submissions made about the absence of jurisdiction with the Labour Court in such cases would be to encourage employers to put forward all sorts of untenable and frivolous contentions against a claim made by employees

and effectively reduce the scope of Section 33-C(2) nugatory. This cannot be permitted. On the facts of this case, I hold that the 3rd Respondent was justified in considering the incidental matters raised by the parties.

9. The third submission made is that the claim is akin to arrears of salary due to Respondents 1 and 2. Such a claim can be made in a Civil Court. Since the jurisdiction of the Registrar under the Co-operative Societies Act is coterminous with the jurisdiction of Civil Court, the claim for arrears of wages has to be made before the Registrar u/s 69 of the Co-operative Societies Act. I do not agree that the claim made in this case is in the nature of arrears of salary. Respondents 1 and 2, as already indicated, come squarely within the definition of workman in Section 2(s) of the Act. What they claim is the arrears of wages, which has to be decided by the Labour Court. The Civil Court cannot entertain such a claim. The workman can choose the forum between the Labour Court and the machineries provided under the Minimum Wages Act or the Payment of Wages Act. Here they have chosen the Labour Court which is perfectly in order.

10. It is too much for the Petitioner to contend that persons employed by authorised ration distributors under the Kerala Rationing Order are not employees coming under the Minimum Wages Act. It has to be found that the place where the authorised retail distributor carries on business is a shop under the Shops and Establishments Act. Shops and establishments including hotels and restaurants are scheduled employment as per Part I, item 21 in the Schedule to the Minimum Wages Act. A ration shop comes within the entry. The claim of Respondents 1 and 2 for wages under the Minimum Wages Act till 1st January 1974 and under the rules framed u/s 80 of the Co-operative Societies Act for period thereafter is perfectly in order.

11. In the result the Writ Petition fails and is dismissed.