Ajithkumar B. Vs Presiding Officer, Labour Court and Others

Court: High Court Of Kerala

Date of Decision: March 12, 1998

Acts Referred: Industrial Disputes Act, 1947 â€" Section 33C(2)
Minimum Wages Act, 1948 â€" Section 12, 2(1)

Citation: (1998) 79 FLR 753 : (1998) 3 ILR (Ker) 83 : (1999) 1 LLJ 780

Hon'ble Judges: Ar. Lakshmanan, J

Bench: Single Bench

Advocate: Ashok B. Shenoy, for the Appellant; Muraleedharan Nair, G.P. for Respondent No. 1 and K. Gopalakrishna Kurup, for the Respondent

Judgement

Ar. Lakshmanan, J.
Heard Mr. Ashok B.Shenoy for petitioner and Mr. Gopalakrishna Kurup for respondent No. 3 and Muraleedharan

Nair, Government Pleader for respondent No. 1. The petitioner is a workman who was employed as a salesman in the second respondent Co-

operative society. He was appointed by the third respondent, President, Ponkunnam Consumer Sahakarana Sangham Ltd. and was placed on

probation for a period of one year. According to the petitioner he was not paid the wages at the rate of minimum rate of wages fixed by the

Government of Kerala by notification No:GO(RT) 750/87/LBR dated May 15, 1987 issued u/s 5 of the Minimum Wages Act, 1948 in respect of

employees in shops and commercial establishments. According to the petitioner the provisions of the said Act squarely govern the petitioner and

the second respondent society. It is his case that he was paid wages at the rate lesser than the minimum rate of wages as fixed by the aforesaid

notification. Being entitled u/s 12 of Minimum Wages Act, 1948, to get the wages at the minimum rate of wages fixed aforesaid, the petitioner

requested the respondents 2 and 3 to pay him wages as per minimum wages notifications aforementioned. The request of the petitioner was never

heeded to. Therefore the petitioner filed an application u/s 33-C(2) of the Industrial Disputes Act, 1947 before the Labour Court claiming from the

respondents 2 and 3 a sum of Rs. 11,739.35 as balance wages for the period from May 18, 1991 to August 31, 1992 after setting oft the wages

already paid to the petitioner from the prescribed minimum rate of wages payable to him.

2. The respondents filed the written objection contending that the application is not maintainable u/s 33-C(2) of the Act, that as per Rule 134 of the

Kerala Co-operative Societies Rules every employee appointed to any of the categories of service is to be on probation for one year liable to be

extended upto two years, that there is no prescribed minimum wages for a probationer and the notification dated May 15, 1987 is inapplicable to

the petitioner, that the petitioner was appointed as a salesman on probation for one year as per order dated May 17, 1991 and that he was

dismissed from service on December 31, 1992, that against dismissal from service the appeal filed by him u/s 18 of the Kerala Shops &

Commercial Establishments Act is pending and therefore the petitioner has to approach the authorities under the Kerala Co-operative Societies

Act and not u/s 33-C(2) of the Industrial Disputes Act. It is also stated that the calculation of amounts claimed is wrong.

3. The petitioner in reply to the written objection filed by the respondents, filed a detailed replication specifically refuting the 2nd and 3rd

respondents contention and contending inter alia that the 2nd respondent though a Cooperative society formed under the Kerala Co-operative

Societies Act is a "shop" as defined in Section 2(6) of Kerala Shops and Commercial Establishments Act, 1960 and therefore the salesman

working therein is entitled to minimum wages payable to employees in shops as per notification No:GO(RT) 750/87/LBR dated May 15,1987. It

is also contended that the petitioner being a probationer cannot be a ground to deny payment of notified minimum wages applicable to employees

in shops and that his claim for minimum wages can be the subject matter of an application u/s 33-C(2) of the Industrial Disputes Act, 1947 and

that the calculation made by him is only to be upheld.

4. No oral evidence was adduced before the Labour Court. Ext. P1 was marked from the side of the petitioner and Exts. D1 to D15 were

marked from the side of respondents 2 and 3.

5. The Labour Court, however without going into the merits of the claim by order dated October 31, 1995 held that the claim of the petitioner

under notifications dated May 15, 1987 is disputed and hence the petitioner cannot invoke Section 33-C(2) of the Industrial Disputes Act. It was

held that the petitioner being only a probationer in trial run and his status is in dispute and therefore the Labour Court has no jurisdiction to

compute the claim u/s 33-C(2) of the Industrial Disputes Act. On these findings the Labour Court dismissed the claim application filed by the

petitioner and the order dated October 31, 1995 by the Labour Court is marked as Ext.Pl in this petition.

6. Aggrieved by the order of the Labour Court dismissing the petition on the ground of maintainability the petitioner filed the above original petition

under Articles 226 and 227 of the Constitution of India.

7. I have heard Mr. Ashok B.Shenoy for the petitioner and Mr. Gopalkrishna Kurup for respondent No. 3. The contentions raised before the

Labour Court and as incorporated above have been reiterated again before me at the time of hearing. The question which arise for consideration is

as to whether the petitioner can invoke Section 33-C(2) of the Industrial Disputes Act and whether he is entitled to receive the benefit under the

said provisions of the Act. A further question arises as to whether the Labour Court has jurisdiction to deal with the claim, if workmen"s right to

receive the benefit is disputed. In support of his claim Mr. Ashok B.Shenoy has cited Cannanore Co-operative Milk Supply Union v. Labour

Court 1983 KLT 685 (Balagangadharan Nair, J). The learned Judge of the Court held as follows:

While the existence of right is a condition precedent to an applicant u/s 33-C(2) the fact that it is (sic) or that the examination of the claim requires

an enquiry into the existence of the right, has not excluded the jurisdiction of the Labour Court.

A. P. Sankara Wariyar v. The North Labour Dist. Co-op. Supply and Marketing Society Ltd. (U.L.BHAT, J) while considering the scope and

ambit of powers of the Labour Court while dealing with cases u/s 33-C(2) of the Industrial Disputes Act, the learned Judge held as follows:-

Held, the provision contemplates an enquiry into the existence of the right, such an enquiry is only incidental to the main determination which has to

be made by the Labour Court. The proceeding is in the nature of execution proceeding in which the Labour Court decides the amount due or

makes computation. However, under the guise of taking such a decision, Labour Court cannot arrogate to itself the functions of an Industrial

Tribunal which is entitled to adjudicate matters covered by Section 10(1)(c) and to decide rights of workman or the existence of liability on the

part of the employer. At the same time a mere assertion by the employer that the applicant has no right or status or that the employer has no

liability will not oust the jurisdiction of the Labour Court to take decision. Labour Court can go into the question of right or status though it may not

be able to go into the validity of an order passed by the employer regarding the termination of service or dismissal, discharge, etc. A blank or mala

fide denial on the part of the employer and the status or the right of the applicant cannot oust the jurisdiction of the Labour Court, but where the

basis and the foundation of a claim is seriously and genuinely disputed and the decision on that factor will involve an elaborate process it has to be

decided by an Industrial Tribunal on a reference and not by the Labour Court under Sections 33-C(2) of the Act. If the decision involves an

interpretation of an award, settlement or order or a rule that will be well within the providence of the Labour Court to do.

8. In The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., (five Judges) the question that came up for consideration is as to whether a claim

by a workman for computation of benefit in terms of money is maintainable, the Court held that the said Section applies even if right to benefit is

disputed by the employer and that the Labour Court has jurisdiction to determine whether the workman has right to receive the benefit. The

principal contention which has been raised before the Supreme Court was one of jurisdiction. It was argued that the Labour Court has exceeded

its jurisdiction in entertaining the application made by the respondents because the claims made by the respondents in their respective applications

are outside the scope of Section 33-C(2) of the Act. The questions urged by the appellants before the Supreme Court is reproduced here under:-

The question which arises for our decision is, however, slightly different. It is urged by the appellant that Sub-section(2) can be invoked by a

workman who is entitled to receive from the employer the benefit there specified, but the right of the workman to receive the benefit has to be

admitted and could not be a matter of dispute between the parties in cases which fall under Sub-section (2). The argument is, if there is a dispute

about the workman''s right to claim me benefit, that has to be adjudicated upon not under Sub-section (2) but by other appropriate proceedings

permissible under the Act and since in the present appeals, the appellant disputed the respondents'' right to claim the special allowance, the Labour

Court had no jurisdiction to deal with their claim. In other words, the contention is that the opening words, of Sub-section (2) postulate the

existence of an admitted right vesting in a workman and do not cover where the said right is disputed.

The Supreme Court in para 16 held as follows:-

16. Let us then revert to the words used in Section 33-C(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 workmen''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 workmen''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 clauses 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 33-C(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, of employing such means as are essentially necessary to its execution."" We

must accordingly hold that Section 33-C(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 employers.

9. Counsel for the respondent however cited Karunakaran Nair Vs. Dhanalakshmi Bank Ltd., wherein Sreedharan, J. held that the Labour Court

has no jurisdiction to adjudicate upon when the right to money or benefit which is sought to be computed is disputed. In other words the

determination of the question is as to whether the employee is entitled to the right claimed by him as also to whether the employer is liable to pay

the amount claimed by the employee are not to be adjudicated upon by the Labour Court while dealing with the petition u/s 33-C(2) of the

Industrial Disputes Act. Before the learned Judge the judgment of the Supreme Court reported in Central Inland Water Transport Corporation

Limited Vs. The Workmen and Another, (2 Judges) was cited. In that case, the Supreme Court held that since a proceeding u/s 33-C(2) is in the

nature of an execution proceedings it should clearly understand the limitations under which it is to function and it cannot arrogate to itself the

functions of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations referred to above or proceed to

compute the benefit by dubbing the former as incidental to the main business of computation.

10. I am of the view that the judgment of the learned single Judge in Divisional Personnel Officer, Southern Railway v. Kamalam and Ors. (Supra)

is in direct conflict with the decision of the Supreme Court The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., - (5 Judges) wherein the

Supreme Court has specifically considered in paras 9 and 15 of its judgment the scope and interpretation of Section 33-C(2) and the claim by the

workman for computation of the benefit in terms of money under the said section and that the said section applies even if the right to benefit is

disputed by the employer. Applying the principles laid down by the Supreme Court in The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., I

hold that if a workman has right to receive the benefit under the Minimum Wages Act, which is disputed by the management in this case, the same

have to be determined by the Labour Court and before proceeding to compute the benefit in terms of money, the Labour Court has to necessarily

deal with the question as to whether the workman has a right to receive that benefit and if the Labour Court decides that the workman has a right

to claim the benefit, he can proceed to compute the value of the benefit in terms of money.

11. In Namer Ali Choudhury and Others Vs. The Central Inland Water Transport Corporation Ltd. and Another, similar question arose for

consideration. The Supreme Court held as follows:-

Where the only dispute in the proceeding u/s 33-C(2) between the management and a section of its workmen is whether those workmen are

entitled to take advantage of a settlement and the quantum or rate of extra wages to which the workmen would be entitled under the settlement is

not in dispute, the application u/s 33-C(2) could not be rejected on ground that there is no dispute about the money due. The provisions of Section

33-C(2) do not require that for conferring jurisdiction on a Labour Court not only that the workmen should be entitled to any money due but also

that there should be a dispute about the amount of that money. Civil Rule No. 778 of 1972, dated May 2, 1973 (Gauhati), Reversed (para4).

On a plain reading of the wordings of Section 33-C(2) it would be found that where any workman is entitled to receive from the employer any

money and if any question arises as to the amount of money due, then the question may be decided by the Labour Court. The expression, ""if any

question arises as to the amount of money due"" embraces within its ambit any one or more of the following kinds of disputes:-

1) Whether there is any settlement or award as alleged?

2) Whether any workman is entitled to receive from the employer any money at all under any settlement or an award etc.?

3) If so, what will be the rate or quantum of such amount?

4) Whether the amount claimed is due or not? Broadly speaking, these will be the disputes which will be referable to the question as to the amount

of money due. If the right to get the money on the basis of the settlement or the award is not established, no amount of money will be due. If it is

established, then it has to be found out, albeit, it may albeit, it may be by mere calculation, as to what is the amount due. For finding it out it is not

necessary that there should be a dispute as to the amount of money due also. The fourth kind of dispute obviously and literally will be covered by

the phrase ""amount of money due."" A dispute as to all such questions or any of them would attract the provisions of Section 33-C(2) of the Act

and make the remedy available to the workman concerned.

In the above judgment the Supreme Court has followed the principles of law enunciated by the Supreme Court in several decisions reported in The

Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., ; R.B. Bansilal Abirchand Mills Co. Ltd. Vs. The Labour Court, Nagpur and Others, and

AIR 1975 SC 1745.

12. The Labour Court relied on Municipal Corporation of Delhi Vs. Ganesh Razak and Another, and few other decisions. According to the

Labour Court those decisions show that the Labour Court cannot arrogate to itself a power to make adjudication in the nature of determination

which some other authority or Court is competent to do. I am of the view that the opinion expressed by the Labour Court is not correct in view of

the several decisions. To me the view 1 have expressed above is plainly and squarely covered by the principles of law enunciated by this Court in

several decisions and also of the Supreme Court reported in Namer Ali Choudhury and Others Vs. The Central Inland Water Transport

Corporation Ltd. and Another, and other decisions. Learned Counsel for the petitioner cited Hindi Prachar Press v. State of Kerala and Ors.

1982 KLT 285 and Vimal Printers Vs. Omana, in support of his contention that the claim for minimum wages is maintainable before the Labour

Court. In 1982 KLT 285 this Court held as follows :-

It is true that in a case where a separate self-contained machinery is specifically provided under a particular enactment, a claim based on the

provisions of that enactment must ordinarily be made before the competent authority set up under that statute, and not under the general provisions

of the Industrial Disputes Act. But where in a case, such as the present, a claim under the Minimum Wages Act had become barred and the order

is not appealable to any higher authority under that Act, there is no taboo as such in law against an aggrieved employee approaching the authority

invested with power u/s 33-C(2) of the Industrial Disputes Act. The object of the legislature behind all these enactments is to do justice to the

employees who legitimately contend that they are denied their due share. Apart from all these, it has to be stated that the objection as to

jurisdiction was not raised before the Tribunal. It is for the first time that the objection has been taken in the present proceedings. For all these

reasons there is no substance in the contention regarding jurisdiction.

In Vimal Printers Vs. Omana, in a similar question this Court held that such a claim is enforceable and can be agitated in proceedings u/s 33-C(2)

of the Industrial Disputes Act, 1947. It is held as follows:-

The indication is that while enacting Section 24 the legislature had thought about the question whether other remedies for enforcing claims under

the Act should be excluded or not, and that having so thought about it, it had decided that only remedies by way of suit need be excluded. Section

24 prevents a Court from entertaining suits for recovery of wages which could be recovered by filing an application u/s 20. It does not bar other

methods of recovery. An intention to exclude recourse to remedies other than civil suits, is not disclosed; on the other hand, the specific exclusion

of civil suits only implies that the legislature did not want to exclude other remedies. The Minimum Wages Act only prescribes the lowest limit to

which wages can go in scheduled employments, under any contract. There are many other enactments dealing with payment of wages during

holidays, periods of leave (including maternity leave), involuntary unemployment and the like. The Minimum Wages Act is thus not a self-contained

code incorporating all the provisions relating to payment of wages, or even minimum wages; and the Act discloses no intention that proceedings for

payment of minimum wages shall be the exclusive preserve of the authority appointed u/s 20. Claims arising under the Act could also be tackled u/s

33-C(2) of the Industrial Disputes Act.

I am therefore of the view that Ext. P1 order which is impugned in the petition declining to entertain the petitioner"s claim for minimum wages

merely on the Court that the Labour Court cannot invoke Section 33-C(2) of the Act is vitiated by patent error of law apparent on the face of the

record. As already noticed this Court has clearly laid down the law that while existence of a right is a condition precedent to an application u/s 33-

C(2) of the Act, the fact that it is denied or mat the examination of the claim requires an enquiry into the existence of the right, does not exclude the

jurisdiction of the Labour Court. Section 33-C(2) of the Act clearly contemplates an enquiry into the existence of the right and such an enquiry is

only incidental to the main determination which has to be made by the Labour Court. A mere assertion by the employer that the applicant has no

right or status or that the employer has no liability will not oust the jurisdiction of the Labour Court to take a decision on merits. The Labour Court

can go into the question of right or status though it may not be able to go into the validity of an order passed by an employer regarding termination

of service or dismissal, discharge etc. A blank or mala fide denial on the part of the employer of the status or the right of the petitioner cannot oust

the jurisdiction of the Labour Court. In fact, if the decision involves an interpretation of an award, settlement or a rule, that is well within province

of the Labour Court to do. Thus as per the law laid down by the Hon"ble Supreme Court and of this Court, power u/s 33-C(2) of the Industrial

Disputes Act is not taken away by the denial of the right by the employer or the necessity of an enquiry before enforcing the right. However, the

Labour Court without adverting to these principles of law laid down, by Ext. P1 order nastily went on to conclude the petitioner"s claim as not

maintainable on the count that it is disputed by the Management. Ext. P1 order is therefore illegal and liable to be quashed.

13. In the light of the fact that the petitioner"s claim was only for minimum wages due under the Minimum Wages Act which came to be disputed

by the Management solely on the ground that the petitioner being a probationer is not entitled to minimum wages, the only simple question mat falls

for consideration before the Labour Court was whether the petitioner was entitled to receive minimum wages under the Minimum Wages Act. This

question is only an incidental one to the main determination u/s 33-C(2) of the Act which involves only an interpretation of the Minimum Wages

Act. This question by no stretch of imagination necessitated any adjudication u/s 10 of the Industrial Disputes Act. Though it is argued before me

that the employer shall pay to every employee engaged in a schedule of employment under him the minimum rate of wages notified etc., I am not

considering the claim of the petitioner on merits which is left open to be decided by the Labour Court. The Labour Court shall advert to the said

question and consider as to whether the probationer also fell to be an employee u/s 2(i) of the Minimum Wages Act and then decide the question

on merits and in exercise of its jurisdiction vested in it. The Labour Court shall consider and decide u/s 2(i) of the Minimum Wages Act whether,

once the relationship between the employer and the employee is established, its duration is material or not. The Labour Court shall also decide the

distinction between probationer, permanent or temporary workman u/s 2(i) of the Minimum Wages Act.

14. I have already noticed some of the decisions cited by the respondent before the Labour Court which has been referred to in Ext.Pl order. In

those cases, the very status of the workmen was in dispute. In the instant case, there is no dispute as to the employer-employee relationship

between 2nd respondent and the petitioner. Therefore, Ext.P1 which was based on the decisions relied on by the respondents, is out of context

and is illegal and therefore the said order is liable to be quashed.

15. In the light of the fact that the petitioner''s claim was only for minimum wages due under the Minimum Wages Act, which claim is disputed by

the 2nd respondent solely on the ground that the petitioner, being a probationer, is not entitled to minimum wages, the only simple question that will

now arise for consideration before the Labour Court is whether the petitioner was entitled to receive minimum wages under the Minimum Wages

Act. This question is only an incidental one to the main determination u/s 33-C(2) of the Industrial Disputes Act and it involves only an

interpretation of the Minimum Wages Act, particularly Section 2(i) of the Minimum Wages Act, 1948 to see whether a probationer is an employee

thereunder, who is entitled to claim minimum wages.

For all the foregoing reasons, the order of the Labour Court, impugned in this writ petition, is quashed and the entire matter is remitted to the

Labour Court and C. P. No. 30 of 1993 is restored to file. Both the parties are at liberty to adduce both oral and documentary evidence before

the Labour Court in order to establish their respective claim. Since the claim petition is of the year 1993, the Labour Court shall decide the matter

within six month from the date of receipt of the records and copy of this judgment from this Court.

The original petition is allowed as above. There will be no order as to costs.

The office shall dispatch the entire records back to the Labour Court with copy of this judgment.