

MUNICIPAL CORPORATION OF DELHI

v.

GANESH RAZAK AND ANR.

OCTOBER 20, 1994

[J.S. VERMA, S.P. BHARUCHA AND K.S. PARIPOORNAN, JJ.]

Industrial Disputes Act 1947—Section 33C(2)—Proceedings under—Daily-rated casual workers—Claim to be paid at same rate as regular workmen—Disputed Claim—Whether proceedings u/s 33C(2) maintainable—Held, No—Adjudication of dispute relating to entitlement—Not within the scope of proceedings u/s 33C(2).

The respondents, all daily-rated/casual workers of the Municipal Corporation of Delhi, claimed that they were doing the same kind of work as the regular employees and, therefore, they were required to be paid the same pay as the regular employees on the principle of 'equal pay for equal work'. On this basis, they claimed computation of the arrears of their wages at the rate at which the wages were paid to the regular employees. Their applications made to the Labour Court u/s 33C(2) of the Industrial Disputes Act led to the award in their favour. Writ Petitions filed challenging those awards had been dismissed. These appeals were filed by special leave.

The appellant challenged the maintainability of the workers' claim in proceedings u/s 33C (2) of the Act on the ground that the claim of workmen to be paid at the same rate as the regular workmen being disputed, proceedings u/s 33C(2) of the Act were not maintainable for grant of the relief claimed. It was contended that the claim of the workmen had neither been adjudicated nor recognized by the employer in any award or settlement.

In this appeal, the question for the decision was whether without a prior adjudication or recognition of the disputed claim of the workmen to be paid at the same rate as the regular employees, proceedings for computation of the arrears of wages claimed by them on that basis were maintainable under Section 33C(2) of the Act.

Allowing the appeal, this Court

- A** **HELD : 1.1.** Where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33C(2) of the Industrial Disputes Act, 1947. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and 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 under section 33C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution. [626-C-D]

- D** *Central Bank of India Ltd. v. P.S. Rajagopalan etc.*, [1964] 3 SCR 140; *Bombay Gas Company Ltd. v. Gopal Bhiva and Ors.*, [1964] 3 SCR 700; *Chief Mining Engineer East India Coal Ltd. v. Rameswar and Ors.*, [1988] 1 SCR 140 and *Central Inland Water Transport Corporation Ltd. v. The Workmen and Anr.*, [1975] 1 SCR 153, relied on.

- E** **1.2.** In the instant case, the claim of the respondent workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of equal pay for equal work being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in the writ petitions filed by the some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually

made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made under section 33C(2) of the Act by these respondents. [626-F-H, 627-A] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7138 of 1994. B

From the Judgment and Order dated 26-11-1993 of the High Court of Delhi at Delhi in C.W.P. No. 150/90

G.B. Pai, P.P. Rao, Vivek Maheshwari, R.K. Maheshwari, K.B. Roh-taghi (N.P.), Jitender Sharma, Ajay Kapoor, Rajiv Aggarwal, Ashok Aggarwal and R.S. Sodhi for the Appearing Parties. C

The following Order of the Court was delivered :

J.S. VERMA, J. Leave granted. D

The common question for decision in these matters is the maintainability of the claim of respondents in proceedings under Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), The respondents are all daily-rated/casual workers of the appellant-Municipal Corporation of Delhi, who claim that they were doing the same kind of work as the regular employees and, therefore, they were required to be paid by the appellant the same pay as the regular employees on the principle of 'equal pay for equal work'. On this basis, they claim computation of the arrears of their wages at the rate at which the wages are paid to the regular employees, in accordance with Section 33C(2) of the Act. Their applications made to the Labour Court under Section 33C(2) of the Act led to the award in their favour, accepting this claim. Writ Petitions were filed in the Delhi High Court by the appellant-Municipal Corporation challenging those awards. The writ petitions having been dismissed, these appeals arise by special leave. E F G

The appellant's challenge to the maintainability of the respondents' claim in proceedings under Section 33C(2) of the Act is on the ground that the claim of workmen to be paid at the same rate as the regular workmen being disputed, proceedings under Section 33C(2) of the Act were not maintainable for grant of this relief. The Labour Court and, thereafter, the H

- A High Court have rejected this contention. The same argument is reiterated before us in these appeals.

It is clear that there has been no earlier adjudication by any forum of the claim of these workmen of their entitlement to be paid wage at the same rate at which the regular workmen of the establishment are being paid and there is no award or settlement to that effect. In short, this claim of the workmen has neither been adjudicated nor recognised by the employer in any award or settlement. The real question therefore, is : Whether in these circumstances, without a prior adjudication or recognition of the disputed claim of the workmen to be paid at the same rate as the regular employees, proceedings for computation of the arrears of wages claimed by them on that basis are maintainable under Section 33C(2) of the Act?

In our opinion, the question for decision is no longer *res. integra* being long settled by earlier decisions of this Court. Some of the decisions have been referred by the High Court in the impugned judgment, but the application of the settled principle made by the High Court is erroneous. We would refer to some of the decisions on this point and the submissions of learned counsel for the parties with reference to which these matters have to be decided.

Shri G.B. Pai, learned counsel for the appellant submitted that the proceedings under Section 33C(2) of the Act are in the nature of execution proceedings which envisage a prior adjudication or recognition by the employer of the claim of the workmen to be paid wages at the rate at which they claim the computation; and when the basis of their claim is disputed, the remedy under Section 33C(2) is not available to the workmen. Shri Pai contended that in the present case, there was no earlier adjudication or recognition of the workmen's claim to be paid at the same rate as the regular workmen and, therefore, the basis of computation being disputed, the proceedings under Section 33C(2) of the Act were not maintainable. According to Shri Pai, this is the settled position emerging from the decisions of this Court.

On the other hand, Shri P.P. Rao, learned Counsel for the respondent workmen submitted that there was really no dispute of this kind since these daily rated/casual workmen were doing the same kind of work as the regular workmen and, therefore, they were entitled to be paid wages at the

same rate as the regular workmen on the principle of 'equal pay for equal work'. It was submitted that in certain writ petitions filed by some other workmen, it had been held that they were required to be paid at the same rate as the regular workmen and, therefore, it would not be open to the employer to raise such a dispute in the case of other workmen such as the present respondents. According to Shri Rao, proceedings under Section 33C(2) of the Act were maintainable in these cases and the Labour Court as well as the High Court are right in taking that view. Shri Rao formulated his contention thus: the very dispute as to entitlement of the benefit claimed by the workmen as well/as the computation thereof are within the scope of Section 33C(2) of the Act.

Reference may be made first to the Constitution Bench decision in *The Central Bank of India Ltd. v. P.S. Rajagopalan etc.*, [1964] 3 SCR 140, on which Shri Rao Placed heavy reliance. That was a case in which the question of maintainability of proceedings under Section 33C(2) of the Act was considered in a claim made by the workmen on the basis of the Sastry Award. The employer disputed the claim of the workmen on several grounds including the applicability of Section 33C(2) of the Act. It was urged that since the applications involved a question of interpretation of the Sastry Award, they were outside the purview of Section 33C(2) because interpretation of awards or settlements has been expressly provided for by Section 36A. This objection was rejected. This Court pointed out the difference in the scope of Section 36A and Section 33C(2) indicating that the distinction lies in the fact that section 36A is not concerned with the implementation or execution of the award whereas that is the sole purpose of Section 33C(2) and whereas Section 33C(2) deals with cases of implementation of individual rights of workmen falling under its provisions, Section 36A deals merely with a question of interpretation of the award where a dispute arises in that behalf between the workmen and the employer and the appropriate Government is satisfied that the dispute deserves to be resolved by reference under Section 36A. In this context, this Court also indicated that the power of the Labour Court in a proceeding under Section 33C(2) being akin to that of the Executing Court, the Labour Court is competent to interpret the award or settlement on which a workmen bases his claim under Section 33C(2) like the power of the Executing Court to interpret the decree for the purpose of execution. Relevant extract from that decision is as under :

"Besides, there can be no doubt that when the Labour Court

- A 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 under s.33C(2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under S.33C(2), it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workmen's right rests."
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(at page 154-155)

- D This decision itself indicates that the power of the Labour Court under Section 33C(2) extends to interpretation of the award or settlement on which the workman's right rests, like the Executing Court's power to interpret the decree for the purpose of execution, where the basis of the claim is referable to the award or settlement, but it does not extend to determination of the dispute of entitlement or the basis of the claim if there is no prior adjudication or recognition of the same by the employer. This decision negatives instead of supporting the submission of learned counsel for the respondents.
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- F Another decision on the point is *Bombay Gas Company Ltd. v. Gopal Bhiva & Ors.*, [1964] 3 SCR 700, wherein also Gajendragadkar, J., (as he then was) speaking for the Bench, referring to the above Constitution Bench decision, stated that the proceedings contemplated by Section 33C(2) are analogous to execution proceedings and the Labour Court, like the Executing Court in the execution proceedings governed by the Code of Civil Procedure, would be competent to interpret the award on which the claim is based. It is obvious that the power of the Executing Court is only to implement the adjudication already made by a decree and not to adjudicate a disputed claim which requires adjudication for its enforcement in the form of decree. The Executing Court, after the decree has been
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- H passed, is however competent to interpret the decree for the purpose of

its implementation. This position was settled by the above Constitution Bench decision and has been the consistent view of this Court ever since then. A

Next case on this point is *Chief Mining Engineer East India Coal Co. Ltd. v. Rameshwar and Ors.*, [1988] 1 SCR 140 wherein the above decisions were relied on. It was held that the right to the benefit which is sought to be computed under Section 33C(2) must be 'an existing one, that is to say, already adjudicated upon or provided for'. The propositions on the question as to the scope of Section 33C(2) deducible from the earlier decisions of this Court were summarised and they include the following, namely. B

"(i) The legislative history indicates that the legislature, after providing broadly for the investigation and settlement of disputes on the basis of collective bargaining, recognised the need of individual workmen of a speedy remedy to enforce their existing individual rights and therefore inserted s.33A in 1950 and s.33C in 1956. These two sections illustrate cases in which individual workmen can enforce their rights without having to take recourse to s.10(1) and without having to depend on their union to espouse their case. C D

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(3) Section 33C which is in terms similar to those in s.20 of the Industrial disputes (Appellate Tribunal) Act, 1950 is a provision in the nature of an executing provision. E

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(5) Section 33C(2) takes within its purview cases of workmen who claim 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. It is open to the Labour Court to interpret the award or settlement on which the workmen's right rests. F G

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(7) Though the court did not indicate which cases other than those under sub-section (f) would fall under sub-section (2), it H

A pointed out illustrative cases which would not fall under sub-section (2), viz., cases which would appropriately be adjudicated under s.10(1) or claims which have already been the subject-matter of settlement to which ss. 18 and 19 would apply.

B (8) Since proceedings under s.33(2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the benefit claimed by a workmen is in such cases in the position of an executing court, the Labour Court like the executing court in execution proceedings governed by the Code of Civil Procedure, is competent under s.33C(2) to interpret the award or settlement where the benefit is claimed under such award or settlement and it would be open to it to consider the plea of nullity where the award is made without jurisdiction."

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(at pages 142-144)

D After stating the propositions, the decision proceeds to state as under:-

"It is clear that the right to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an industrial workman and his employer."

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(at page 144)

F In *Central Inland Water Transport Corporation Ltd. v. The Workmen & Anr.*, [1975] 1 SCR 153, it was held with reference to the earlier decisions that a proceeding under Section 33C(2) being in the nature of an execution proceeding, it would appear that an investigation of the alleged right of reemployment is outside its scope and the Labour Court exercising power under Section 33C(2) of the Act cannot arrogate to itself the functions of adjudication of the dispute relating to the claim of re-employment. Distinction between proceedings in a suit and execution proceedings thereafter was pointed out. It was indicated that the plaintiff's right to relief against the defendant involves an investigation which can be done only in a suit and once the defendant's liability had been adjudicated in the suit, the working out of such liability with a view to give relief is the function of an execution proceeding. This distinction is clearly brought out in that

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decision as under :

"In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff's right to relief; (ii) the corresponding liability of the defendant, including, whether the defendant is, at all, liable or not; and (iii) the extent of the defendant's liability, if any. The working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding. Determination No. (iii) referred to above, that is to say, the extent of the defendant's liability may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. Since a proceeding under section 33C(2) is in the nature of an execution proceeding it should follow that an investigation of the nature of determinations (i) and (ii) above is, normally, outside its scope, it is true that in a proceeding under section 33 (C) (2), as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that scope. But that is merely 'incidental'. To call determinations (i) and (ii) 'incidental' to an execution proceeding would be a perversion, because execution proceedings in which the extent of liability is worked out are just consequential upon the determinations (i) and (ii) and represent the last stage in a process leading to final relief. Therefore, when a claim is made before the Labour Court under section 33(C) (2) that court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions - say of an industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceeded to compute the benefit by during the former as 'incidental' to its main business of computation. In such cases, determinations (i) and (ii) are not 'incidental' to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the industrial Tribunal. It was, therefore, held in *State Bank of Bikaner and Jaipur v. R.L. Khandelwal*, (1968) L.L.J. 589, that a workman cannot put forward a claim in an application under section 33C(2)

- A in respect of a matter which is not based on an existing right and which can be appropriately the subject-matter of an industrial dispute which requires a reference under section 10 of the Act."

(at page 159)

- B The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and 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 under Section 33C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.
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- E In these matters, the claim of the respondent-workmen who were all daily rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of 'equal pay for equal work' being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondent's claim is not based on a prior adjudication made in the writ petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to
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which some reference was casually made, particulars of which are not available in these matters, have therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the application made under section 33C(2) of the Act by these respondents. A

Consequently, these appeals are allowed. The judgments of the High Court as well as the award made by the Labour Court in favour of the respondents are set aside. No costs. B

A.G.

Appeals allowed.