

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4211 & 4212 OF 2007

VIJAYA BANK

...APPELLANT

VERSUS

SHYAMAL KUMAR LODH

...RESPONDENT

J U D G M E N T

C.K. PRASAD, J.

1. These appeals, by grant of leave arise out of a common judgment of the Division Bench of the Gauhati High Court dated 10th January, 2007 in Writ appeal No.381 of 2001 and Writ Appeal No.11 of 2002, whereby it had set aside the order of the learned Single Judge dated 22nd August, 2001 and 24th August, 2001 passed in Civil Rule No.3735 of 1995 and Civil Rule No.2771 of 1997 respectively.

2. Facts lie in a narrow compass :-

Shyamal Kumar Lodh-respondent herein is an employee of the appellant-Vijaya Bank. It is a Nationalised Bank. The employee filed application before the Labour Court, Dibrugarh constituted by the State Government under Section 7 of the Industrial Disputes Act, 1947 for an award computing his suspension/subsistence allowance under Section 33C(2) of the Act.

3. It is not in dispute that the appropriate Government in relation to an employee is the Central Government and the employee had filed the application before the Labour Court constituted by the State Government. It is further not in dispute that the Labour Court before whom the employee had filed the application has not been specified by the Central Government. On the application so filed the Labour Court issued notice to the appellant-employer. The appellant appeared before the Labour Court and questioned its jurisdiction to adjudicate the dispute on the ground that the said Court having not been specified by the Central Government under Section 33C(2) of the Industrial Disputes Act, 1947 it had no jurisdiction to entertain the application.

4. The Labour Court by its order dated 19th August, 1995 over-ruled that objection and held that its jurisdiction to adjudicate the dispute is not ousted. Employer aggrieved by the aforesaid order dated 19th August, 1995 preferred writ application which was registered as Civil Rule No. 3735 of 1995. A learned Single Judge of the Gauhati High Court by its judgment dated 22nd August, 1995 passed in Civil Rule No.3735 of 1995 upheld its contention and while doing so observed as follows :

“As the Labour Court at Dibrugarh was not specified by the appropriate Government they have no jurisdiction to issue notice to the Petitioner in both the cases.”

5. During the pendency of the proceeding before the Labour Court, the employee filed application seeking enhancement of the subsistence allowance and the Labour Court by order dated 17th October, 1996 directed the employer to deposit recurring subsistence allowance in Court. Employee had also preferred writ petition against the aforementioned order dated 17th October, 1996 which was registered as Civil Rule No. 2771 of 1996. Following its earlier judgment dated 22nd August 1995

passed in Civil Rule No. 3735 of 1995, the learned Single Judge by its order dated 24th August, 2001 allowed the writ petition and quashed the aforesaid order dated 17.10.1996.

6. Employee, aggrieved by the aforesaid orders of the Single Judge, preferred separate appeals, which were registered as Writ Appeal No. 381 of 2001 and Writ Appeal No. 11 of 2002. Both the appeals were heard together and a Division Bench of the High Court by its common judgment dated 10th January, 2007 allowed the appeals and set aside both the orders of the Single Judge. While doing so it concurred with the Single Judge that as the Labour Court at Dibrugarh has not been specified by the Central Government, it had no jurisdiction to entertain the petition preferred by the employee. However, on its finding that claim of subsistence allowance falls within Section 10A(2) of the Industrial Employment(Standing Order) Act, and the Branch of the Bank where the employee was working, fell within the limits of jurisdiction of Labour Court in question, it shall have jurisdiction to decide the claim. While doing so, it observed as follows :

“In the instant case, the Labour Court at Dibrugarh has not been ‘specified’ by the Central Government for the said purpose and accordingly, we are unable to agree with the first submission advanced by the learned counsel for the appellant that the Labour Court at Dibrugarh would have jurisdiction to entertain the application filed by the Appellant only on the basis of the provisions under the Act.

However, the provisions of the Standing Orders Act appear to indicate that a Labour Court constituted under the 1947 Act, whether by the State Government or Central Government, would have jurisdiction to entertain a claim of subsistence allowance payable to a workman on an application made to such Labour Court by the concerned workman. The provisions of Section 10A(2) of the Standing Orders Act is a special provision incorporated only for adjudicating on claim relating to payment of subsistence allowance.

Having regard to the special provision under Section 10A(2) of the Standing Orders Act, we feel that the Labour Court of Dibrugarh, although constituted by the State Government, would have jurisdiction to entertain a claim for subsistence allowance even in respect of employees under a nationalized banks. It is not specified in Section 10A(2) of the Standing Orders Act that the Labour Court constituted under the 1947 Act has to be a Labour Court constituted by an appropriate Government. It is also not stipulated that the appropriate Government has to ‘specify’ such a Labour Court for entertaining on application under Section 10A(2) of the Standing Orders Act. The only requirement for assumption of jurisdiction by a Labour Court under Section 10A(2) of the Standing Orders Act is that the Labour Court has to be one, which has been constituted under the 1947 Act and

the concerned establishment must be functioning within the local limits of the jurisdiction of such Labour Court.

Having noted the provisions as above, we are of the view that the entertainment of the application by the Labour Court at Dibrugarh was proper in respect of the claim for subsistence allowance put forward by the Appellant, we hold that with regard to the claim for subsistence allowance put forward by the Appellant against the Respondent bank, the Labour Court at Dibrugarh has jurisdiction. We accordingly declare that the Labour Court at Dibrugarh was competent and had jurisdiction to entertain the claim for subsistence allowance put forward by the Appellant. The impugned decision of the learned Single Judge to the contrary is accordingly interfered with.”

7. Employer is assailing this common order in these appeals.

8. Mr. Jagat Arora, learned counsel appearing on behalf of the appellant submits that in view of clear and unambiguous language employed in Section 33C(2) of the Industrial Disputes Act, the money due to an employee can be adjudicated by a Labour Court specified by the appropriate Government. He points out that the appropriate Government admittedly is the Central Government and it having not specified the Labour Court where the employee had brought the action, it had no jurisdiction to entertain and adjudicate

the claim of the employee. In support of the submission reliance has been placed on a decision of this Court in the case of ***Treogi Nath and others vs. Indian Iron and Steel Co.Ltd. and others*** (AIR 1968 SC 205) and our attention has been drawn to the following passage from paragraph 4 of the judgment which reads as follows:

“The language of S.33-C(2) itself makes it clear that the appropriate Government has to specify the Labour Court which is to discharge the functions under this sub-section. The use of the expression “specified in this behalf” is significant. The words “in this behalf” must be given their full import and effect. They clearly indicate that there must be a specification by the appropriate Government that a particular Court is to discharge the function under S.33-C(2) and, thereupon, it is that court alone which will have jurisdiction to proceed under that provision. The mere fact that a Labour Court has been constituted under S.7(1) of the Act for the purpose of adjudication of industrial disputes as well as for performing other functions that may be assigned to it under the Act does not mean that that Court is automatically specified as the Court for the purpose of exercising jurisdiction under S.33-C(2) of the Act. S.33-C(2) confers jurisdiction only on those Labour Courts which are specified in this behalf, i.e., such Labour Courts which are specifically designated by the State Government for the purpose of computing the money value of the benefit claimed by a workman.”

9. Mr. A.K. Panda, learned Senior Counsel, however, appearing on behalf of the employee-respondent submits that

in view of the explanation appended to Section 33C of the Industrial Disputes Act, Labour Court includes any Court constituted under any law relating to investigation and settlement of industrial disputes in force in any State and the Labour Court before which employee laid his claim has been constituted for investigation and settlement of industrial disputes, it will have jurisdiction to entertain and adjudicate the money claim of the employee.

10. Before we advert to the rival submissions it is expedient to go into the legislative history of the enactment in question. The Industrial Disputes Act, 1947 as originally enacted did not provide for any remedy to individual employee to enforce his existing rights and only way to enforce the existing rights was to raise an industrial dispute. The legislature inserted Section 20 in the Industrial Disputes (Appellate Tribunal) Act, 1950 (since repealed) which provided for the recovery of the money due from the employer under an award or decision. Further, by the Industrial Disputes (Amendment) Act, 1953 the legislature inserted Chapter 5A to the Industrial Disputes Act, 1947, and for the recovery of money due to an employee from

his employer Section 25-I was enacted. The aforesaid insertion confined to the dues under Chapter 5A of the Act only but did not apply to moneys or benefits due under any award, settlement or any other provision of the Act. Taking note of the aforesaid lacunae the legislature passed the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956. This Act repealed the Industrial Disputes (Appellate Tribunal) Act, 1950 as also Section 25-I in Chapter 5A of the Industrial Disputes Act, 1947 and inserted Section 33C in the later Act. Section 33C as inserted by Amending Act, 1956 made provision for recovery of money due to an employee from his employer not only under the provision of Chapter 5A but also under settlement and awards. However, it did not prescribe any period of limitation and further only the workman entitled to a money or benefit himself could make an application. With a view to obviate this lacuna Section 33C of the Industrial Disputes Act, 1947 was recast by Section 23 of the Industrial Disputes (Amendment) Act, 1964(Act 36 of 1964). Section 33C of the Industrial Disputes Act, 1947 as stood before the amendment by Act 36 of 1964 read as follows:

“Section 33C. Recovery of Money Due from an Employer

– (1) Where any money is due to a workman from an employer under a settlement or an award or, under the provisions of chapter 5A, the workman may, without prejudice to any other mode of recovery, make an application to the appropriate government for the recovery of the money due to him, and if, the appropriate government is satisfied that any money is so due, it shall issue a certificate for that amount to the collector, who shall proceed to recover the same in the same manner as an arrear of land revenue.

(2) Where any workman is entitled to receive from the employer, any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under this Act, be determined by such labour court as may be specified in this behalf by the appropriate government and the amount so determined may be recovered as provided for in sub-section (1).

(3) For the purpose of computing the money value of a benefit, the labour court may, if it so thinks fit, appoint a commissioner who shall, after taking such evidence as may be necessary, submit a report to the labour court and the labour court shall determine the amount after considering the report of the commissioner and other circumstances of the case.”

11. Section 33C of the Industrial Disputes Act, as amended by Section 23 of the Amendment Act 36 of 1964 made substantial changes in law with which we are not concerned in

the present appeals, except explanation inserted in Section 33C, the effect whereof shall be considered in this judgment. Section 33C(2) and (5) of Industrial Disputes Act, as it stands today read as follows :

“33C. Recovery of money due from an employer –

(1) xxx xxx xxx xxx

(2) 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 the 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.

(3) xxx xxx xxx xxx

(4) xxx xxx xxx xxx

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Explanation.—In this section “Labour Court” includes any court constituted under any law relating to investigation and settlement of industrial disputes in force in any State.”

12. From a plain reading of Section 33C(2) it is evident that money due to a workman has to be decided by such Labour Court “as may be specified in this behalf by the appropriate Government.” Section 7 of the Industrial Disputes Act, 1947 inter alia confers power to the appropriate Government for constitution of one or more Labour courts for the adjudication of industrial disputes. It also prescribes qualification for appointment as Presiding Officer of a Labour Court. Explanation appended to Section 33C of the Act provides to include any Court constituted under any law relating to investigation and settlement of industrial disputes in force in any State as Labour Court. The underlying object behind inserting explanation seems to be varying qualification prescribed for appointment of Presiding Officers of Labour Court by different State enactments. The Parliament took note of the fact while inserting explanation that there are different kinds of Labour Courts constituted under Industrial Disputes Act and State Acts and a question may arise whether a Labour Court constituted under Acts,

Central or State could entertain a claim made under Section 33C(2) of the Act.

13. An explanation is appended ordinarily to a section to explain the meaning of words contained in that section. In view of the explanation aforesaid Labour Court shall include any Court constituted under any law relating to investigation and settlement of industrial disputes in force in any State. Money due to an employee under Section 33C(2) is to be decided by “Labour Court as may be specified in this behalf by the appropriate Government”. Therefore, the expression “Labour Court” in Section 33C(2) has to be given an extended meaning so as to include Court constituted under any law relating to investigation and settlement of industrial disputes in force in any State. It widens the choice of appropriate Government and it can specify not only the Labour Courts constituted under Section 7 of the Industrial Disputes Act, 1947 but such other Courts constituted under any other law relating to investigation and settlement of industrial disputes in force in any State.

14. But this does not end the controversy. The power to adjudicate money claim is to the Labour Court “as may be specified in this behalf by the appropriate Government”. Every word used by the Legislature carries meaning and therefore effort has to be made to give meaning to each and every word used by it. A construction brushing aside words in a Statute is not a sound principle of construction. The Court avoids a construction, if reasonably permissible on the language, which renders an expression or part of the Statute devoid of any meaning or application. Legislature never waste its words or says anything in vain and a construction rejecting the words of a Statute is not resorted to, excepting for compelling reasons. There does not exist any reason, much less compelling reason to adopt a construction, which renders the words “as may be specified in this behalf” used in Section 33C(2) of the Act as redundant. These words have to be given full meaning. These words in no uncertain terms indicate that there has to be specification by the appropriate Government that a particular court shall have jurisdiction to decide money claim under Section 33C(2) of the Act and it is that court alone

which shall have the jurisdiction. Appropriate Government can specify the court or courts by general or special order in its discretion. In the present case, there is nothing on record to show that the Labour Court at Dibrugarh has been specified by the appropriate Government, i.e., Central Government for adjudication of the disputes under Section 33C(2) of the Industrial Disputes Act. This question in our opinion has squarely been answered by this Court in the case of ***Treogi Nath (Supra)***. True it is that rendering this decision, this Court did not consider the explanation appended to Section 33C of the Act, as the lis pertained to period earlier to amendment but in view of what we have said above, excepting the widening of choice pertaining to Courts, explanation does not dispense with the requirement of specification of court by appropriate Government.

15. Having said so the next question which falls for determination is as to whether Labour Court at Dibrugarh could have entertained the application under Section 10-A of Industrial Employment (Standing Orders) Act, 1946. Section 10A of the Act reads as follows:

“10-A. Payment of subsistence allowance.—

(1) Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance-

(a) at the rate of fifty per cent of the wages which workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and

(b) at the rate of seventy-five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

(2) If any dispute arises regarding the subsistence allowance payable to a workman under sub-section (1), the workman or the employer concerned may refer the dispute to the Labour Court, constituted under the Industrial Disputes Act, 1947 (14 of 1947), within the local limits of whose jurisdiction the industrial establishment wherein such workman is employed is situate and the Labour Court to which the dispute is so referred shall, after giving the parties an opportunity of being heard, decide the dispute and such decision shall be final and binding on the parties.

(3) Notwithstanding anything contained in the foregoing provisions of this section, where provisions relating to payment of subsistence allowance under any other law for the time being in force in any State are more beneficial than the provisions of this section, the provisions of such other law shall be applicable to the payment of subsistence allowance in that State.”

16. From a plain reading of the Section 10A(2) of the aforesaid Act it is evident that the Labour Court constituted under the Industrial Disputes Act, 1947 within the local limits of whose jurisdiction the establishment is situated, has jurisdiction to decide any dispute regarding subsistence allowance. Here in the present case undisputedly dispute pertains to subsistence allowance and the Labour Court where the workman had brought the action has been constituted under Section 7 of the Industrial Disputes Act, 1947 and further the appellant bank is situated within the local limits of its jurisdiction. The workman had, though, chosen to file application under Section 33C(2) of the Industrial Disputes Act but that in our opinion shall not denude jurisdiction to the Labour Court, if it otherwise possesses jurisdiction. Incorrect label of the application and mentioning wrong provision neither confers jurisdiction nor denudes the Court of its jurisdiction. Relief sought for, if falls within the jurisdiction of the Court, it can not be thrown out on the ground of its erroneous label or wrong mentioning of provision. In the present case the Labour Court, Dibrugarh satisfies all the

requirements to decide the dispute raised by the employee before it.

17. As the matter is pending before Labour Court since long, it shall make endeavour to finally decide the dispute within 6 months from today. Appellant as also respondent are directed to appear before the Labour Court, within four weeks from today.

18. In the result, both the appeals are dismissed with cost, quantified at Rs.25,000/- to be paid by the appellant to the respondent.

.....J.
(G.S. SINGHVI)

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.....J.
(C.K. PRASAD)

New Delhi,
July 6, 2010.