

PETITIONER:
P.K. SINGH AND OTHERS

Vs.

RESPONDENT:
PRESIDING OFFICER & OTHERS

DATE OF JUDGMENT 15/07/1988

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
OJHA, N.D. (J)

CITATION:
1988 AIR 1618 1988 SCR Supl. (1) 471
1988 SCC (3) 457 JT 1988 (3) 62
1988 SCALE (2) 27

ACT:

Industrial Disputes Act, 1947: ss. 10(1) and 33C(2)-
Workmen-'C' Grade Fitters doing work of 'B' Grade Fitters-
Claim for higher wages-Admissibility of-Not entitled to
relief unless duly promoted or reclassified.

HEADNOTE:

The appellant engaged as 'C' Grade Fitters in a Central Government Undertaking filed applications under s. 33-C(2) of the Industrial Disputes Act, 1947 for computation of wages payable to them for certain periods. Their case before the Central Government Industrial Tribunal-cum-Labour Court was that since they were doing the same duties which were performed by a 'B' Grade Fitter, they were entitled to claim wages payable to 'B' Grade Fitters. The Management contended that since the principal question involved in all the applications related to re-classification of the workmen concerned, a relief which could not be claimed under s. 33-C(2) of the Act, these were not maintainable. The Tribunal rejected the applications by a common order.

In this appeal by special leave, it was contended for the workmen that they should be classified as 'B' Grade Fitters even though they had been appointed as 'C' Grade Fitters because they had been performing the duties which were similar to the duties of 'B' Grade Fitters.

Dismissing the appeal,

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HELD: 1.1 A workman cannot put forward a claim in an application filed under s. 33-C(2) of the Industrial Disputes Act, 1947 in respect of the relief which is not based on an existing right and which can be appropriately the subject-matter of an industrial dispute requiring a reference under s. 10 of the Act. [475C-D]

1.2 By merely doing the same kind of work which is done by a senior grade workman, a junior grade workman will not be entitled to claim the wages of senior grade unless he is duly promoted. Such a workman cannot complain that he is not being paid the salary and allowances due to a senior grade workman, since he does not possess an

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existing right to claim it. If on an adjudication made on

the said question on a reference made under s. 10(1) of the Act, it is held that he should be deemed to be a member of the senior cadre, then only he would be able to claim the salary and allowances payable to senior grade workmen. [474G-H;475A-B]

Central Rank of India Ltd. v. P.S., . Rajagopalan etc., [1964] 3 S.C.R. 140; State Bank of Bikaner and Jaipur v. Khandelwal (R.L.). [1968] 1 L.L.J. 589 and State Bank of Bikaner and Jaipur v. Gopal Sahal Pareek. [1968] 1 L.L.J. 593, referred to.

R. B. Bansilal Abirchand Mills Co. Ltd. v. Labour Court, Nagpur & Ors., [1972] 2 S.C.R. 580 and V.M Vankar (Macwana) v. Indian Farmers Fertilizer, [1984] Lab. I.C. 1342, distinguished.

1.3 In the instant case, the appellants had been employed as 'C' Grade Fitters and in order to get the salary and allowances payable to 'B' Grade Fitters they had to be promoted to the cadre of 'B' Grade Fitters on their passing certain trade tests. They had not been so promoted. The claim of the appellants, therefore, is not tenable. [473D-E]

2. It is open to the workmen, if they are so advised, to seek a reference of the question whether they are entitled to be treated as 'B' (grade Fitter Under s. 10 of the Act. [476E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2640(L) of 1980

From the Judgment and order dated 14.2.1978 of the Central Govt. Industrial Tribunal Cum-Labour Court New Delhi in L.C.A. Nos. 389, 391-393, 395-406 of 1978.

Mrs. Urmila Kapur Advocate, for the Appellants.

V.C. Mahajan, Miss A. Subhashini, R.P. Srivastava and C.V. Subba Rao for the Respondents.

The Judgment of the Court was delivered by

VENKATARAMLAH, J. This appeal by special leave is filed by 16 workmen of the Small Arms Factory, Kanpur against the common order dated 14th February, 1979 passed by the Central Government Industrial Tribunal-cum-Labour Court, Alipur Road, Delhi in applica-

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tions bearing L.C.A. Nos. 389, 391 to 393 and 395 to 406 of 1978 filed under section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') rejecting their claims.

The appellants filed the applications under section 33-C(2) of the Act for computation of the wages payable to them for certain periods as detailed in the respective petitions. Their case was that even though they had been engaged as 'C' Grade Fitters, they were entitled to the salary and allowances payable to 'B' Grade Fitters, since they were doing the same duties as 'B' Grade Fitters. The Management contested the applications filed by the appellants stating that they were not maintainable since the principal question involved in all the applications related to the re-classification of the workmen concerned and that such a relief could not be claimed under section 33-C(2) of the Act. The Central Government Industrial Tribunal-cum-Labour Court upheld the objection of the Management and rejected the applications by its common order dated 14th February, 1979. Aggrieved by the said common order the appellants filed this appeal by special leave.

It is not disputed that the appellants had been

employed as 'C Grade Fitters and in order to get the salary and allowances payable to 'B' Grade Fitters they had to be promoted to the cadre of 'B' Grade Fitters on their passing certain trade tests. Admittedly, the appellants had not been so promoted. But, their case before the Central Government Industrial Tribunal-cum-Labour Court was that since they were doing the same duties which are performed by a 'B' Grade Fitter, they were entitled to claim the wages payable to 'B' Grade Fitters under section 33-C(2) of the Act. Section 33-C(2) of the Act reads thus:

"33-C(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 any 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 within a period not exceeding three months.

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do he may, for reasons to be recorded in writing extend such period by such further period as he may think fit."

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The above provision came up for consideration before this Court A in the Central Bank of India Ltd. v. P.S. Rajagopalan etc., [1964] 3 S.C.R. 140. 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 s. 33-A in the Act in 1950 and added s. 33-C in 1956. These two provisions illustrate the cases in which individual workmen can enforce their rights without having to take recourse to s. 10(1) of the Act, or without having to depend upon their Union to espouse their cause. Therefore, in construing s. 33-C we have to bear in mind two relevant considerations. The construction should not be so broad as to bring within the scope of s. 33-C cases which would fall under 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 under s. 10(1). These disputes cannot be brought within the purview of s. 33-C. Similarly, having regard to the fact that the policy of the Legislature in enacting s. 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 s. 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 under s. 10(1) of the Act for

instance, cannot be brought within the scope of s. 33-C."

It is obvious from the facts narrated above, which are not in dispute, 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. Such a workman cannot complain that he is not being paid the salary and allowances due to a 'B' Grade Fitter, since he does not possess an

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existing right to claim it. If on an adjudication made on the said question on a reference made under section 10(1) of the Act, it is held that he should be deemed to be a member of the cadre of 'B' Grade Fitters, then only he would be able to claim the salary and allowances payable to 'B' Grade Fitters. The case before us is analogous to the claim made by a Junior Clerk, who can become a Senior Clerk only on promotion, to the salary attached to the post of Senior Clerk on the ground that both the Junior Clerk and the Senior Clerk are engaged in clerical work.

The learned counsel for the appellants, however, relied upon two other decisions of this Court—State Bank of Bikaner and Jaipur v. Khandelwal (R. L.), [1968] 1 L.L.J. 589 and State Bank of Bikaner and Jaipur v. Gopal Sahal Pareek, [1968] 1 L.L.J. 593 which were decided on the same day. On going through those two decisions we feel that they are of no assistance to the appellants. In the said cases this Court clearly laid down that a workman could not put forward a claim in an application filed under section 33-C(2) of the Act in respect of a relief which was not based on an existing right and which could be appropriately the subject-matter of an industrial dispute requiring a reference under section 10 of the Act.

The decision of this Court in R.B. Bansilal Abirchand Mills Co. Ltd. v. Labour Court, Nagpur & Ors., [1972] 2 S.C.R. 580 is clearly distinguishable from the present case. In the said case the only dispute was whether workmen were not entitled to lay-off compensation. The Management in that case contended that the business had been closed and the workmen were not entitled to lay-off compensation. This Court held that from the facts and circumstances of the case, it was clear that the business of the company was continuing and that the Labour Court's jurisdiction could not be ousted by a mere plea denying the workmen's claim to the computation of benefit in terms of money. It was also held that the Labour Court in the circumstances had to go into the matter and come to a decision as to whether there was really a closure or a lay-off. If in the present case the claim of the appellants was that they had been actually promoted to 'B' Grade Fitters cadre and that the Management had denied that there was such promotion, the Labour Court would have been under an obligation to determine whether there was such a promotion or not. But the case of the workmen before us is that they should be classified as 'B' Grade Fitters even though they had been appointed as 'C' Grade Fitters merely because they had been performing the duties which were similar to the duties of 'B' Grade Fitters.

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The decision of the Gujarat High Court rendered by Thakkar, C.J. (as he then was) in V.M. Vankar (Macwana) v. Indian Farmers Fertiliser, [1984] Lab. I.C. 1342 is again of no assistance to the appellants. In that case there was a

settlement arrived at between the Management and the workmen and under the said settlement persons working as Conveyor Attendants, Bag Stitchers, Bag Fillers and Pointsmen were entitled to the pay-scale of Rs.225-9-333. The complaint of the workman concerned was that even though he was performing the duties of persons in the above category, he was being paid as per the pay-scale of workmen in a lower category, i.e., the pay-scale of Rs.210-8-314. In that case the High Court rightly came to the conclusion that the Labour Court was required to decide whether the workman concerned was doing the work of an employee who was in the category which carried a higher pay-scale or was doing the work of an employee in a category which carried a lower pay-scale for the purpose of granting relief to the workman. The question of promotion from a lower post to a higher post or of the passing of a trade test for the purpose of securing such promotion was not involved in that case.

In any view of the matter we feel that there is no ground to set aside the order of the Central Government Industrial Tribunal-cum-Labour Court against which this appeal is filed. The appeal fails and it is dismissed. There will be no order as to costs.

It is open to the workmen, if they are so advised, to seek a reference of the question whether they are entitled to be treated as 'B' Grade Fitters under section 10 of the Act and if such a reference is sought we hope that the appropriate Government would decide expeditiously the question whether a reference should be made accordingly or not. If a reference is made, the Tribunal or the Court to which the reference is made shall dispose of the case as early as possible.

P.S.S.

Appeal dismissed.

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