

Treogi Nath

Vs

The Indian Iron & Steel Co. Ltd.

Civil Appeal No. 370 of 1967

(J. M. Shelat, V. Bhargava JJ)

03.08.1967

JUDGMENT

BHARGAVA, J. –

On an industrial dispute referred to it, the Fifth Industrial Tribunal of West Bengal gave an award, which was published on September 19, 1955, under which 41 persons, including the 30 appellants who had been dismissed from service by the two companies, which are respondents 1 & 2 in this appeal, were directed to be reinstated in service. Under the award, it was held that these appellants were entitled to half their salary from October 2, 1953 to the date of their actual resumption of duty. According to the appellants, they were not allowed to resume duty by the Companies, even though they offered to do so. The Companies did not admit that there was any such offer and went up in appeal to the Labour Appellate Tribunal and obtained an order to stay of implementation of the award from it. The Labour Appellate Tribunal dismissed the appeal, whereafter the Companies came in further appeal to this Court, and this Court also granted stays of the implementation of the award during the pendency of that appeal. After the final dismissal of the appeal by this Court, the appellants were allowed to resume their duty. Thereafter, a dispute arose as to the amount to which the appellants were entitled under the award until the date of resumption of duty by them. The appellants, by separate applications, applied to the Second Labour Court, West Bengal, for determination of the amounts due to them under Section 33C(2) of the Industrial Disputes Act, 1947 (No. 14 of 1947) (hereinafter referred to as "the Act"). The Companies challenged the jurisdiction of the Second Labour Court on the ground that that Court had not been specified for the purpose of determining the amount at which the benefit claimed by the workmen is to be computed in terms of money under s. 33C(2) of the Act. This preliminary objection was accepted by the Second Labour Court which held that it had no jurisdiction to make any order on the applications presented by the appellants. The appellants then filed a petition under Article 226 of the Constitution in the High Court of Calcutta challenging the correctness of the view taken by the Second Labour Court. A learned single Judge of that Court came to the decision that the Second Labour Court had jurisdiction to take proceedings on the applications of the appellants under s. 33C(2) of the Act, and consequently, issued, a writ of certiorari vacating the order made by the Second Labour Court and a writ of mandamus directing the Second Labour Court to decide on merits the applications presented on behalf of the appellants. The Companies then went before a Division Bench by a Letters Patent Appeal and, in that appeal, the decision of the learned single Judge was set aside and that of the second Labour Court was restored. The appellants have now come up to this Court by special leave against this order of the Division Bench of the Calcutta High Court by which it has been that the Second Labour Court had no jurisdiction to deal with these applications of the appellants.

For convenience, the provisions of sub-ss. (1) and (2) of section 33C of the Act, as they stood at the

relevant time, are reproduced below :-

"33C. Recovery of money due from the 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 VA, 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 areas 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)."

The language of sub-s. (2) of s. 33C is perfectly clear in laying down that the computation in terms of money of the benefit claimed by a workman is to be made by such Labour Court as may be specified in this behalf by the appropriate Government and, consequently, the only question that falls for determination is whether it can be held that the Second Labour Court, to which applications were presented by the appellants, had been specified as "the Court" to make the determination under s. 33C(2). It was conceded by counsel for both parties that there was no general or specific order mentioning the Second Labour Court, West Bengal, as the Court specified for purpose of making the determination under s. 33C(2). On behalf of the appellants, it was urged that the Second Labour Court should be held to have jurisdiction to deal with these applications, because it was constituted under s. 7(1) of the Act and every Labour Court constituted under the Act would be competent to make the determination under s. 33C(2) by virtue of the provision contained in that sub-section itself.

Section 7(1) of the Act lays down that :-

"The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act."

The submission which was made before the High Court was that the matter which was raised by the applications presented on behalf of the appellants related to one of the matters specified in the Second Schedule, because the Second Schedule at Item No. 6 contained the entry "all matters other than those specified in the Third Schedule" and determination of money value of a benefit claimed by a workman is not one of the matters specified in the Third Schedule. This contention was rejected by the appellate Bench of the High Court. It was not sought to be pressed before us by learned counsel for the appellants when it was pointed out to him that even if it be held that the matter raised by the appellants in their applications related to one of those enumerated in the Second Schedule, that would be immaterial, because, under s. 7(1) of the Act, a Labour Court is constituted for the purpose of adjudication of industrial disputes relating to those matter, and it cannot possibly be contended that these disputes raised by individual workmen for determination of amounts due to them under the award constituted industrial disputes. In fact, this Court, in the Central Bank of India

Ltd. v. P. S. Rajagopalan etc., ([1964] 3 S.C.R. 140) clearly held that proceedings under s. 33C of the Act are in the nature of execution proceeding and are not meant to include in them proceedings for adjudication of industrial disputes which can only be competently decided by a Labour Court on reference by the appropriate Government under s. 10(1) of the Act. It was in view of this legal position that the counsel appearing for the appellants relied on the second part of s. 7(1) of the Act, under which Labour Courts are constituted "for performing such other functions as may be assigned to them under this Act".

The point urged by learned counsel was that the Second Labour Court, West Bengal, having been constituted for performing such other functions also as may be assigned to it under the Act, it should be held that it was competent to decide the dispute raised by these applications of the appellants, because this function of deciding the applications had been assigned to it by s. 33C(2) of the Act. The submission of learned counsel was that s. 33(C)(2) should be read as containing a general assignment to all Labour Courts of the function of determining the money value of a benefit claimed by a workman under that provision. We are unable to accept this interpretation. The language of s. 33C(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. 33C(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. 33C(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. The Second Labour Court, West Bengal, was in fact, never specified by any order of the State Government as one of those Labour Courts which is to exercise the powers or discharge the functions under s. 33C(2).

In this connection, learned counsel appearing for the appellants wanted to draw an analogy with section 13 of the Bengal, Agra and Assam Civil Courts Act XII of 1887, under which a State Government may, by notification in the Official Gazette, fix and alter the local limits of the jurisdiction of any Civil Court under that Act. It was urged by him that this provision was similar to the provision contained in s. 7(1) of the Act. Section 13(2) of the Bengal, Agra and Assam Civil Courts Act thereafter gives the power to the District Judge, in cases where same local jurisdiction is assigned to two or more Subordinate Judges or to two or more Munsifs, to assign to each of them such civil business cognizable by the Subordinate Judge or Munsif, as the case may be, as, subject to any general or special orders of the High Court, he thinks fit. It was suggested that s. 33C(2) of the Act makes a provision in respect of Labour Courts of the same nature as the provision made by s. 13(2) of the Bengal, Agra and Assam Civil Courts Act in respect of Subordinate Judges or Munsifs, and since Subordinate Judges and Munsifs can exercise jurisdiction by virtue of s. 13(1) of that Act to decide civil suits, it should be held that Labour Courts, by virtue of their constitution under s. 7(1) of the Act, get the jurisdiction to decide applications under s. 33C(2) also, and the specification of Courts mentioned in that sub-section is only for the purpose of deciding which Labour Court should exercise jurisdiction where there may be more than one Labour Court. We do not think that this comparison is correct or justified. Though Civil Courts are constituted under s. 13 of the Bengal, Agra and Assam Civil Courts Act, it has to be remembered that the power of those

Courts to take cognizance of civil suits and decide them is conferred by the Code of Civil Procedure. It is not by virtue of their constitution under s. 13 of the Bengal, Agra and Assam Civil Courts Act that the Courts take cognizance of civil suits and decide them. Section 33C(2), in the matter of applications made by individual workmen, is, therefore, not comparable with s. 13(2) of the Bengal, Agra and Assam Civil Courts Act, but, in fact, lays down the requirement which must be satisfied before the Labour Court can take cognizance of the matter raised before it by the applications of the workmen. Section 33C(2) would, thus, serve the purpose in the case of Labour Courts which is served by the provisions of the Code of Civil Procedure relating to cognizance in respect of civil courts. S. 33C(2), by its language, makes it clear that the jurisdiction under that provision is to be exercised only by those particular Courts which are specified in that behalf by the State Government and, in fact, confers jurisdiction on only those Courts and not on all Labour Courts, which may have been constituted under s. 7(1) of the Act.

It was also urged by learned counsel before us that we should give a liberal construction to the provisions of s. 33C(2) so as to ensure that the benefits of that provision are not denied to a workman even if a State Government neglects to specify a Labour Court in that behalf. We do not think that there is any force in this submission. When a provision has been made in s. 33C(2) for specification of a Labour Court in that behalf by the appropriate Government, it is presumed that that Government will carry out its duty and will make the necessary specification. Even under s. 7(1) of the Act, the power is granted to a State Government to constitute Labour Courts, and if the State Government neglects to constitute Labour Courts, the provisions of s. 33C(2) would automatically become ineffective. This would be no ground for giving an interpretation to s. 7(1) which would do away with the necessity of the Labour Court being constituted by a State Government. It may also be incidentally mentioned that in West Bengal the State Government had made Rules in 1958 under s. 38 of the Act and Rule 74 was as follows :-

"74. Application for recovery of dues - An application under section 33C shall be delivered personally or forwarded by registered post in triplicate to the Secretary to the Government of West Bengal in the Department of Labour or to such officers to whom powers have been delegated under section 39 of the Industrial Disputes Act."

This Rule lays down that all applications under s. 33C are to be delivered to the Secretary to the Government of West Bengal in the Department of Labour, or to such officers to whom powers may have been delegated under s. 39 of the Act. The purpose of the application being sent to the Government is clear. If the application is under s. 33C(1), the Government is to take action on that application itself and is to realise the money claimed in that application. On the other hand, if the application happens to be under s. 33C(2), the purpose of delivery of that application to the Secretary to the Government clearly would be that, on that application, the Government would specify the Labour Court which is to deal with that application. It appears that, in some States, the appropriate Government has, by general orders, specified Labour Courts for the purpose of exercising jurisdiction under s. 33C(2). So far as the Government of West Bengal is concerned, it did not issue any similar general order, and the intention of Rule 74 was that any workman wishing to obtain relief under s. 33C(2) should apply to the State Government when the Government would specify the Labour Court for the purpose of dealing with that application. This position has been further clarified by a subsequent amendment of Rule 74 under which it is clearly provided that where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the workman concerned may apply to the State Government in the prescribed Form for the specification of a Labour Court for determining the amount of his dues. It is true that this Rule 74 did not in this form exist at the relevant time, with which we are concerned in

the present case, but we agree with the Bench of the Calcutta High Court that Rule 74, as it stood at that time, was also intended to lay down that a workman claiming relief under s. 33C(2) must present his application to the State Government, whereupon the State Government would specify the Labour Court which was to deal with it under s. 33C(2) of the Act.

For the reasons given above, we hold that the decision of the Division Bench of the Calcutta High Court is correct and must be upheld. The appeal fails and is dismissed, but, in the circumstances of this case, we make no order as to costs.

Appeal dismissed.

</html