National Building Construction Corporation

Vs

Pritam Singh Gill and Others

Civil Appeal No. 1771 of 1970

(G. K. Mitter, C. A. Vaidialingam, I. D. Dua JJ)

29.03.1972

JUDGMENT

DUA, J. -

1. Facts necessary for understanding the short but important point arising for decision in this appeal by special leave are these.

2. The appellant is a company incorporated under the Companies Act, 1956 with its registered office in New Delhi. Its entire share capital has been subscribed by the Central Government. Pritam Singh Gill, respondent No. 1, in this appeal was employed by the appellant as Junior Engineer at its Bhopal office with effect from November 9, 1962, at Rs. 280/- p.m. as basic salary with other allowances. On October 5, 1964, he was suspended and this order of suspension remained in force till September 18, 1967. He was dismissed from service on September 19, 1967. During the period of suspension, on October 7, 1965, the respondent was transferred to Delhi. On June 15, 1968, the respondent applied to the Labour Court at Delhi under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter called the Act) for computing the benefits and amounts he was entitled to receive alleging that the appellant had not paid to him such amount and benefits. The appellant contested the respondent's claim on various grounds. The Labour Court framed the following four issues :

> "1. Whether the application is not legally maintainable ?
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> 2. Whether this court has no jurisdiction to entertain this petition ?
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> 3. Whether the petitioner has been dismissed with effect from September 19, 1967, if so its effect?
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> 4. Whether the applicant is entitled to any of the benefits claimed ?"

and decided all of them in favour of the respondent who was held entitled to Rs. 5,195/- as balance of salary at the rate of Rs. 150/- p.m. for the period of suspension and also other allowances, the total amount computed being Rs. 10,259.98.

3. Before us the appellant only questioned the jurisdiction of the Labour Court to entertain the respondent's application under Section 33-C(2) of the Act because, according to the submission, the respondent, having already been dismissed, had ceased to be a workman on the date of the application. After his dismissal, argued Shri Malhotra, learned counsel for the appellant, the

respondent ceased to be a workman and had, therefore, no locus standi to approach the Labour Court under Section 33-C(2) and the Labour Court had no jurisdiction to entertain the respondent's application. The date of the application under Section 33-C(2) of the Act, contended the counsel, is the crucial point of time, when it is to be seen whether or not the applicant is a workman. The respondent on the other hand emphasised that if the period, in respect of which the benefits and amount are claimed under Section 33-C(2) of the Act, was during the course of his employment prior to his dismissal, then, the mere fact, that he was dismissed by his employer before he could apply to the Labour Court under Section 33-C(2) would not deprive him of his right to claim relief under that section. The sole question we are thus called upon to decide is, whether Section 33-C(2) can be invoked by a dismissed workman in respect of benefits and salary due to him for the period prior to the date of his dismissal. It may be stated that the appellant did not contend that a workman under suspension is disentitled to seek relief under Section 33-C(2) and indeed, it was specifically conceded that a suspended workman could invoke this section for relief because by suspension he does not cease to be a workman as defined in the Act. The question posed is a pure question of law depending on the construction of the relevant statutory provisions.

4. The Act was brought on the statute book for making provision for the investigation and settlement of industrial disputes and for certain other purposes. Section 2(s) defines "workman" to mean "any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

> (i) who is subject to the Army Act, 1950, or the Air Force Act, 1950 or the Navy (Discipline) Act, 1934; or
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> (ii) who is employed in the police service or as an officer or other employee of a prison; or
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> (iii) who is employed mainly in a managerial or administrative capacity; or
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> (iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

It is noteworthy that Section 2 by its opening words expressly excludes the operation of this section in case of repugnancy in the subject or context. Section 33-C provides for recovery of money due from an employer and sub-section (2) of this section reads as under :

> "(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."

5. According to the appellant's submission, under Section 33-C(2) the applicant cannot claim that his dismissal is unlawful and that he should, therefore, he deemed to be in service and on that basis entitled to receive salary or wages under the pre-existing contract. Now, if challenge to his dismissal is not open under this provision of law then the respondent must be considered to be a dismissed workman and, therefore, outside the purview of "workman" as defined in Section 2(s). A dismissed workman, the argument proceeded, is to be considered as a workman under this provision only for the purpose of that proceeding under the Act in relation to an industrial dispute, which has either arisen out of, or resulted in or is connected with, his dismissal. In support of this submission he relied on the Central Bank of India v. P. S. Rajagopalan ((1964) 3 SCR 140.). At Page 156 of the report it was observed there that :

> "If an employee is dismissed or demoted and it is his case that the dismissal or demotion is wrongful, it would not be open to him to make a claim for the recovery of his salary or wages under Section 33-C(2). His demotion or dismissal may give rise to an industrial dispute which may be appropriately tried, but once it is shown that the employer has dismissed or demoted him, a claim that the dismissal or demotion is unlawful and, therefore, the employee continues to be the workman of the employer and is entitled to the benefits due to him under a pre-existing contract, cannot be made under Section 33C(2)."

6. Reference was also made on behalf of the appellants to Messrs. Kesoram Cotton Mills Ltd. v. Gangadhar and Others ((1964) 2 SCR 809.), where it is observed at Page 823 :

> "Ordinarily, the law is that a workman may be suspended pending enquiry and disciplinary action. If after the enquiry the misconduct is proved the workman is dismissed and is not entitled to any wages for the suspension period; but if the inquire results in the reinstatement of the workman he is entitled to full wages for the suspension period also along with reinstatement unless the employer instead of dismissing the employee can give him a lesser punishment by way of withholding of part of the wages for the suspension period."

7. These observations were made in an entirely different context and have nothing to do with the narrow point on which alone the appellant based his challenge to the judgment impugned in this appeal. The case cited has not the remotest connection with Section 33-C of the Act. The decision in the Central Bank of India v. Rajagopalan (supra), also in our opinion, does not assist us in deciding the question requiring determination because the respondent before us claims relief with respect to the period of suspension prior to his dismissal and the jurisdiction of the Labour Court is not questioned by the appellant on the ground that the only relief available to the respondent is to raise an industrial dispute with regard to his dismissal. The respondent in the present case is not seeking relief against his dismissal as indeed consistently with the order of dismissal his claim is confined to the benefits and amount which he was entitled to receive for the period prior to his dismissal. However, the decision in Central Bank of India v. Rajagopalan (supra), does trace the legislative history of Chapter V-A and Section 33-C of the Act and after doing so, the Court observed :

> "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 dispute, 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 necessary computation can arise."

And again,

"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 under Section 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)."

8. Section 33-C of the Act has been the subject-matter of several judicial pronouncements. This Court has also dealt with this section in several decisions. In Chief Mining Engineer, East India Coal Co. Ltd. v. Rameswar and Others ((1968) 1 SCR 140.), this Court deduced from three of its earlier decisions the following propositions :

"(1) 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 workman of a speedy remedy to enforce their existing individual rights and therefore inserted Section 33-A in 1950 and Section 33-C in 1956. These two sections illustrate cases in which individual workmen can enforce their rights without having to take recourse to Section 10(1) and without having to depend on their union to espouse their case;

(2) In view of this history two considerations are relevant while construing the scope of Section 33-C. Where industrial disputes arise between workmen acting collectively and their employers such disputes must be adjudicated upon in the manner prescribed by the Act, as for instance under Section 10(1). But having regard to the legislative policy to provide a speedy remedy to individual workmen for enforcing their existing rights, it would not be reasonable to exclude their existing rights sought to be implemented by individual workman. Therefore though in determining the scope of Section 33-C care should be taken not to exclude cases which legitimately fall within its purview, cases which fall, for instance, under Section 10(1), cannot be brought under Section 33-C;

(3) Section 33-C which is in terms similar to those in Section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950 is a provision in the nature of an executing provision;

(4) Section 33-C(1) applies to cases where money is due to a workman under an

award or settlement or under Chapter V-A of the Act already calculated and ascertained and therefore there is no dispute about its computation. But sub-section (2) applies both to non-monetary as well as monetary benefits. In the case of monetary benefit it applies where such benefit though due is not calculated and there is a dispute about its calculation;

(5) Section 33-C(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;

(6) The fact that the words of limitation used in Section 20(2) of the Industrial Disputes (Appellate Tribunal) Act, 1950 are omitted in Section 33-C(2) shows that the scope of Section 33-C(2) is wider than that of Section 33-C(1). Therefore, whereas sub-section (1) is confined to claims arising under an award or settlement or Chapter V-A, claims which can be entertained under sub-section (2) are not so confined to those under an award, settlement or Chapter V-A;

(7) Though the court did not indicate which cases other than those under sub-section (1) would fall under sub-section (2) it pointed out illustrative cases which would not fall under sub-section (2), viz. : cases which would appropriately be adjudicated under Section 10(1) or claims which have already been the subject-matter of settlement to which Sections 18 and 19 would apply;

(8) Since proceedings under Section 33-C(2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the benefit claimed by a workman 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 Section 33-C(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."

9. In U.P. Electric Supply Co. v. R. K. Shukla (AIR 1970 SC 237.), this Court approvingly referred to a passage from the judgment in Chief Mining Engineer, East India Coal Co. Ltd. (supra), already reproduced by us, in which, inter alia, it was emphasised that Labour Court had jurisdiction to entertain a claim in respect of an existing right arising from the relationship of an industrial workman and his employer. Again in R. B. Bansilal Abhirchand Mills Co. (P) Ltd. v. The Labour Court, Nagpur (AIR 1972 SC 451.), this Court, after a review of its previous decisions, upheld the jurisdiction of the Labour Court to entertain application for layoff compensation under Section 33-C observing that such jurisdiction could not be ousted by a mere plea denying the workman's claim to computation of the benefit in terms of money, adding that the Labour Court had to go into the question and determine whether on the facts it had jurisdiction to make the computation.

10. We now turn to some decisions of the High Courts which directly deal with this point. In Tiruchi-Srirangam Transport Co., (P) Ltd. v. Labour Court, Madurai (1961-I LLJ 729.), Ramachandra Ayyar, J., repelled a similar contention as was raised before us by Shri Malhotra on behalf of the appellant. In the case cited one Iswaran was employed as a traffic supervisor in Tiruchi-Srirangam Transport Co., (P.) Ltd. (supra). His services were terminated in December, 1956

under a scheme of retrenchment. Later, disputes were raised between the management and other workers regarding bonus for the years 1955-56 and 1956-57 and a settlement was reached in April, 1958 pursuant to which the management declared additional bonus and one month's wage for each of the two years. Iswaran having not been paid anything by way of bonus though he had worked during those two years applied to the Labour Court for necessary relief under Section 33-C(2) of the Act. The Labour Court having granted the relief claimed, the management approached the High Court under Article 226 of the Constitution questioning the jurisdiction of the Labour Court to entertain Iswaran's claim. The High Court repelled this challenge though on another point relating to the claimant's right to benefit under the settlement, the case was remitted back to the Labour Court for a fresh decision. It was observed in that decision that while enacting Section 33-C(2), the Legislature did not intend merely to provide a remedy for the limited class of persons who are in actual employment on the date of the application under that section. The words "any workman" in Section 33-C(2), according to that decision, would mean a workman who would be entitled to benefits conferred under the Act and would necessarily include a discharged workman as well. In Manicka Mudaliar (M) v. Labour Court, Madras (1961-I LLJ 592.), a Division Bench of the Madras High Court, while hearing a writ appeal, from the decision of a learned single judge of that Court also upheld the competency of a petition under Section 33-C(2) of the Act for arrears of salary and one month's salary in lieu of notice, although at the time of the application, the applicant was no longer in service of the employer. Following these Madras decisions a learned single judge of the Punjab and Haryana High Court in Bachittar Sing v. Central Labour Court, Jullunder (AIR 1969 Punj 187.), a Division Bench of the Mysore High Court in The Management of Government Soap Factory, Bangalore v. The Presiding Officer, Labour Court Bangalore (AIR 1970 Mys 225.), and the Allahabad High Court in U.P. Electric Supply Co., Ltd. v. Assistant Labour Commissioner, Allahabad (1966-II LLJ 714.), took the same view. In the Allahabad case, however, the provision which directly came up for construction was Section 6-H of the U.P. Industrial Disputes Act, the language of which was considered to be identical with that of Section 33-C of the Act. Incidentally it may be pointed out that Section 6-H of the U.P. Industrial Disputes Act has been held to be identical with Section 33-C of the Act even by this Court.

11. Shri Malhotra, learned counsel for the appellant, contended that all these decisions require reconsideration because they ignore a vital point in construing Section 2(s) which defines "workman". This definition has already been reproduced. According to the appellant's submission these decisions have ignored the vital point that the definition of "workman" specifically includes within its fold, only for the purpose of a proceeding under the Act in relation to an industrial dispute, persons who have been dismissed, discharged or retrenched in connection with or as a consequence of that dispute or, whose dismissal, discharge or retrenchment has led to that dispute. Since certain categories of persons are also expressly stated not to be included in this definition the Legislature must, according to the argument, be considered to have intended to define this word with exactitude and precision and its scope, therefor, cannot be extended to the dismissed, discharged or retrenched persons except strictly for the purposes of the proceedings expressly mentioned in the inclusive clause. The fact that the definition also specifically excludes from its purview four categories of persons employed in an industry who would have otherwise been within the periphery of the definition shows that the Legislature intended to be meticulously precise leaving no scope for any intendment extending the literal meaning of the language used to dismissed employees for purpose of other proceedings not specified in Section 33-C(2) of the Act. The definition, said Shri Malhotra, is exhaustive rendering its extension impermissible. The counsel also commented on the recent decision of this Court in R. B. Bansilal Abhirchand Mills Co. Ltd. v. The Labour Court, Nagpur (supra). According to Shri Malhotra this decision does not touch the question

whether a dismissed employee can be considered as a workman for the purpose of approaching the Labour Court under Section 33-C(2) of the Act and he emphasised that this case should be considered to be confined to its own facts. The further contention pressed by Shri Malhotra was that the respondent's claim raises an industrial dispute and, therefore, it would be more appropriate for him to claim a reference under Section 10 of the Act. This contention being based only on the appellant's denial of the claim cannot exclude the applicability of Section 33-C(2). He also made a reference to the decision of this Court in Bennet Coleman and Co., (P) Ltd. v. Punya Priya Das Gupta ((1970) 1 SCR 181.), which was concerned with the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act 45 of 1955 and contended that in that decision the definitions in Section 2(c) and (f) of that Act took within their fold persons who were no longer in the employment of their erstwhile employer against whom their claim was made, provided claim related to a period when they were in his employment. Shri Malhotra pointed out that in the reported case there was no clause in the statutory definition including therein for limited purpose certain persons otherwise not within the definition and excluding therefrom certain other categories of persons who would otherwise fall within the definition. This is how that case was sought to be distinguished from the present. The crucial point which requires consideration on the appellant's argument is thus confined to the precise scope and meaning of the word "workman" used in Section 33-C(2) in the background of the definition of this word as contained in Section 2(s).

12. Now, it is noteworthy that Section 2 of the Act, which is the definition section begins, as is usual with most of the definition sections, with the clause, "unless there is anything repugnant in the subject or context". This clearly indicates that it is always a matter for argument whether or not this statutory definition is to apply to the word "workman" as used in the particular clause of the Act which is under consideration, for this word may both be restricted or expanded by its subject-matter. The context and the subject-matter in connection with which the word "workman" is used are accordingly important factors having a bearing on the question. The propriety or necessity of thus construing the word "workman" is obvious because all parts of the Act have to be in harmony with the statutory intent. Keeping this in mind we may turn to the purpose and object of Section 33-C of the Act. This section was enacted for the purpose of enabling individual workman to implement, enforce or execute their existing individual rights against their employers without being compelled to have recourse to Section 10 by raising disputes and securing a reference which is obviously a lengthy process. Section 33-C of the Act has accordingly been described as a provision which clothes the Labour Court with the powers similar to those of an executing courts so that the workman concerned receives speedy relief in respect of his existing individual rights. The primary purpose of the section being to provide the aggrieved workman with a forum similar to the executing courts, it calls for a broad and beneficial construction consistently with other provisions of the Act, which should serve to advance the remedy and to suppress the mischief. It may appropriately be pointed out that the mischief which Section 33-C was designed to suppress was the difficulties faced by individual workmen in getting relief in respect of their existing rights without having resort to Section 10 of the Act. To accept the argument of the appellant, it would always be open to an unfair, unsympathetic and unscrupulous employer to terminate the services of his employee in order to deprive him of the benefit conferred by Section 33-C and compel him to have resort to the lengthy procedure by way of reference under Section 10 of the Act thereby defeating the very purpose and object of enacting this provision. This, in our view, quite clearly brings out the repugnancy visualised in the opening part of Section 2 of the Act and such a position could hardly have been contemplated by the Legislature. In order to remove this repugnancy Section 33-C(2) must be so construed as to take within its fold a workman, who was employed during the period in respect of which he claims relief, even though he is no longer employed at the time of the

application. In other words the term "workman" as used in Section 33-C(2) includes all persons whose claim, requiring computation under this sub-section, is in respect of an existing right arising from his relationship as an industrial workman with his employer. By adopting this construction alone can we advance the remedy and suppress the mischief in accordance with the purpose and object of inserting Section 33-C in the Act. We are, therefore, inclined to agree with the view taken by the Madras decisions and we approve of their approach. According to Shri Malhotra, in cases where there is no dispute about the employee's right which is not denied, he will be entitled to file a suit. Whether or not the right of suit can be claimed by the employee, we are not persuaded on the basis of this argument to accept the construction canvassed on behalf of the appellant and deny to a dismissed employee the benefit of speedy remedy under Section 33-C(2) of the Act.

13. We are aware of a conflict of decisions in some High Courts on the interpretation of Section 20 read with Section 2(i) of the Minimum Wages Act, 12 of 1948. This aspect was not canvassed before us and, therefore, we should not be deemed to express any opinion on the correctness or otherwise of either view. We are referring to this aspect only to make it clear that our decision must be confined to the construction of the provisions of the Act and we must not be understood to have expressed any opinion on the construction of the Minimum Wages Act. In the Madras High Court two single Judges have taken divergent views and the Kerala High Court agreed with the view that the employees under the Minimum Wages Act need not be in the employment at the time of their applications under Section 20 of the Minimum Wages Act whereas the Punjab High Court on the other hand agreed with the contrary view of the Madras High Court. The language of Section 20 of the Minimum Wages Act is not completely identical with that of Section 33-C(2) of the Act and the relevant clauses of the definition sections in the two statutes are also somewhat differently worded. Without any further discussion on this aspect we are content to observe that this judgment should not be considered as an expression of opinion on the interpretation of the relevant provisions of the Minimum Wages Act.

14. As a result of the foregoing discussion, this appeal fails and is dismissed with costs.

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