

DELHI HIGH COURT

Yad Ram (died).

Vs.

Bir Singh (Delhi)

Civil Writ Nos. 1278 of 1971, 1236, 961 and 1163 of 1972
(S.N. Andley, C.J and S.N. Shaker, JJ.)

11.12.1973

JUDGMENT

S.N. Andley, C.J.

1. These writ petitions were heard together I as they involve a common question of law and they will be disposed of by this judgment. The common question of law relates to the interpretation and scope of section 33C(2) of the Industrial Disputes Act, 1947, hereinafter referred to as "the Act".
2. To state it generally, what happened was that the individual petitioner in each of these petitions alleging himself to be a workman made an application to the specified Labor Court under the aforesaid section of the Act for the determination of the amount of money due to him and/or for computation in terms of money of the benefit to which he was entitled. The respective employer, in his reply before the specified Labor Court, denied the existence of the relationship of workman and employer and, thereupon, following the decision of a learned Single Judge of the Punjab High Court and ",some decisions of learned Single Judges of this Court, which shall be referred to hereinafter, the Labor Court held that it had no jurisdiction to determine the question of such relationship and ordered the return of the respective applications to the workman concerned. These orders have led to the institution of these writ petitions under Article 226 of the Constitution of India.
3. The main contention on behalf of the petitioners is that the specified Labor Court has jurisdiction to determine the existence of the relationship of employer and workman because it has to determine the title of the workman to receive the money due or the money equivalent of the benefit and determination of such title cannot be made unless such relationship is shown to exist for the relevant period. The contention

on behalf of the respondent-employers is that it is only in a case where the relationship is admitted or not disputed that the specified Labor Court can grant the relief under the. Aforesaid section. It is further contended that a specified Labor Court under the aforesaid section has no jurisdiction to determine incidental matters like the existence of the relationship as is the case with a Labor Court, Tribunal or National Tribunal under subsection (4) of section 10 of the Act or with any of the authorities constituted under sub-section (1) of section 15 of the Payment of Wages Act, 1936 and that the function of a specified Labor Court under section 33C(2) of the Act is merely to compute the money due or the money equivalent of a benefit as its function is merely that of an executing court.

4. SUB-SECTIONS (1) and (2) of section 33C of the Act. after the. Amendment by Act 36 of 1964, read as under -

"33C.(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 himself or any other person authorized by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs 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 : Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer : Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period. (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 Labor Court as may be specified in this behalf by the appropriate Government."

5. Before the amendment it was only the workman who could make an application under sub-section (1) of section 33C. But after the amendment such an application can be made not only by the workman himself but also by "any other person authorized by

him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs". Sub-section (2) of section 33C before this amendment could be invoked by a workman in respect of any benefit which was capable of being computed in terms of money and did not specifically mention money. After the amendment sub-section (2) of this section has specifically included money also.

6. The unlamented section 33C(2) was interpreted by the Supreme Court in the *Central Bank of India Ltd. v. P.S. Rajagopalan etc.*,¹ The contention before the Supreme Court was that sub-section (2) could be invoked by a workman who is entitled to receive from the employer the benefit there specified, but the right of the workman to receive the benefit has to be admitted and could not be a matter of dispute between the parties in cases which fall under this sub-section. The further argument was that if there is a dispute about the workman's right to claim the benefit, that has to be adjudicated upon not under sub-section (2), but by other appropriate proceedings permissible under the Act and that the opening words of sub-section (2) postulate the existence of an admitted right vesting in a workman and do not cover cases where the said right is disputed. The Supreme Court went into the historical background of this section and expressed the view that the legislative history clearly indicated "that having provided broadly for the investigation and settlement of industrial disputes on the basis of collective bargaining, the legislature recognized that individual workmen should be given a speedy remedy to enforce their existing individual rights, and so, inserted S. 33A in the Act in 1950 and added S. 33C in 1956". The Supreme Court expressed the view that in determining the scope of section 33C, care should be taken not to exclude cases which legitimately fall within its purview, and it must be borne in mind that cases which fall under section 10(1) of the Act cannot be brought within the scope of section 33C. The Supreme Court clearly rejected the argument that the only point which a specified Labor Court could determine was one in relation to the computation of the benefit in terms of money. They observed,-

"IN our opinion, on a fair and reasonable construction of sub-s. (2) it is clear that if a workman's right to receive the benefit is disputed, that may have to be determined by the Labor Court. Before proceeding to compute the benefit in terms of money, the Labor 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 Labor Court can proceed to compute the value of the benefit in terms of money; but if the said right is disputed, the Labor 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 Labor Court answers this point in favor of the workman that the next question of making necessary computation can arise. It seems to us that the opening clause of sub-s. (2) does not admit of the construction for which the appellant contends unless we add some words in that clause. The Clause 'Where any workman, is entitled to receive from the employer any benefit' does not mean 'where such workman is admittedly, or admitted to be, entitled to receive such benefit'. The appellant's construction would necessarily introduce the addition of the words 'admittedly, or admitted to be' in that clause, and that clearly is not permissible. 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 Labor Court to entertain the workman's application. The claim under S. 33C(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 Labor Court by sub-s. (2)."

The Supreme Court also found that the scope of section 33C(2) is wider than the scope of section 33C(1) as the former is not restricted to money due under a settlement or an award or under the provisions of Chapter Va and it is possible that claims not based on settlements, awards or under the provisions of Chapter Va may also be competent under section 33C(2). The Supreme Court further made it clear that its observation in *Punjab National Bank Ltd. v. Kharbanda*² that section 33C(1) is a provision in the nature of execution should not be interpreted to mean that the scope of section 33C(2) is exactly the same as that of section 33C(1) and held as a matter of construction of section 33C(2) that all questions incidental to the decision of the specified Labor Court could be properly determined under section 33C(2).

7. In *Chief Mining Engineer, East India Coal Co. Ltd. v. Rameswar and others*,³ it was emphasised that Labor Court had jurisdiction to entertain a claim in respect of an existing right arising from the relationship of an industrial workman and his employer. This view was approved in *U.P. Electric Supply Co. v. R.K. Shukla*,⁴ Again in *R.B. Bansilal Abhirchand Mills Co. (P) Ltd. v. The Labor Court, Nagpur*,⁵ it was held that the Labor Court had jurisdiction to entertain application for lay-off compensation

under section 33C(2) and 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. Following upon these decisions, the Supreme Court in *National Buildings Construction Corporation Ltd. v. Pritam Singh Gill and others*⁶ held that section 33C(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.

8. These decisions of the Supreme Court with regard to the scope of section 33C(2) of the Act lay down,- (1)the scope of section 33C(2) is wider than that of section 33C(1) inasmuch as claims for money or benefit due otherwise than under settlements, awards or under Chapter Va of the Act are within the purview of the former section; (2) if the workman's right to receive the benefit is disputed, it may have to be determined by the specified Labor Court and the jurisdiction under section 33C(2) is not confined to admitted claims; (3) the specified Labor Court under section 33C(2) can hold an enquiry into the existence or the right before determining the money due even though the right to make such claim is disputed by the employer ; (4) while section 36A of the Act deals merely with the question of the interpretation of the Award where a dispute arises in that behalf, section 33C(2) deals with cases of implementation of individual rights of workmen falling under its provisions; (5) disputes which fall under section 10(1) of the Act cannot be adjudicated by the specified Labor Court under section 33C(2) like the dispute where the dismissal is challenged as wrongful; (6) a specified Labor Court has jurisdiction to entertain a claim in respect of an existing right arising from the relationship of an industrial workman and his employer; and (7) section 33C(2) takes 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.

9. On behalf of the respondents reliance has been placed upon the decision of the Supreme Court in *Kasturi & Sons (Private) Ltd. and Salivateeswaran* and another (1958) 1 LLJ 527. (7) This was a case under section 17 of the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955 which is in pari materia with section 33C(1) of the Act. This case does not help the respondents because the Supreme Court pointed out that the provisions of section 33C(2) indicate that where an employee makes a claim for some money by virtue of the benefit to which he is entitled, an inquiry into the claim is contemplated by the Labor Court, and it is only after the Labor Court has decided the matter that the decision becomes

enforceable under section 33C(1) by a summary procedure. If any thing, this case goes against the contention of the respondents. We may now briefly refer to the other cases relied upon by the respondents. The case *Central Inland Water Transport Corporation Ltd. v. The Second Labor Court West Bengal and others* ⁷ also does not help the respondent. In this case an application for winding up of the employer company was made and during these proceedings the Company applied for sanction of the scheme of arrangement or compromise under the Companies Act, 1956. The Company Judge sanctioned the scheme of arrangement on May 3, 1967. It appears that prior to this, on August 25, 1965 there had been a settlement of disputes between the employer and the employees. On appeal from the order sanctioning the scheme of arrangement the appellate Court modified the order of the trial Court in certain important matters. The appellate Court observed that four questions regarding (1) closure, (2) the enforceability of the settlement dated August 25, 1965, (3) whether the workmen were entitled to prefer their claims on the basis of the said agreement and (4) whether the said agreement was not capable of enforcement should be left to be determined in the proper forum and on proper materials and in the proper jurisdiction. It was in this background that the State of West Bengal made an order of reference under sub-section (2) of section 33C of the Industrial Disputes Act, 1947 as to whether the workmen mentioned in the list attached to the order of reference were entitled in terms of the settlement dated August 25, 1965 to receive from their employer benefits which were capable of being computed in terms of money. An argument was raised that the questions kept open by the appellate Court could be agitated before the specified court in pursuance of the reference as they were matters which arose out of the dispute relating to computation of benefits. This contention was not accepted and in this context it was observed that while it is true that the Tribunal in a proceeding under section 33C(2) acted as an executing court and as such entitled to interpret the award or settlement on the basis of which the benefit was claimed it could not in any event go beyond the order of reference to adjudicate upon matters not referred to it. This case is no authority for the proposition that the Labor Court under section 33C(2) does not have the jurisdiction to adjudicate upon the subsistence of relationship of Master and Servant if the same is denied. Such a view would be contrary to what the Supreme Court has said in the *Chief Mining Engineer, East Indian Coal Co. Ltd.* (supra), namely, that the right to claim a benefit which is sought to be computed must be an existing one i.e. either 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. An existing right does not mean an admitted right. It only means that the right to the

claim exists and vests in the workman. In *Sher Singh Verma v. Rup Chandra and another* ⁸ S. K. Kapur, J. held the view that where the existence of relationship of workman and employer is itself in dispute, the specified Labor Court cannot determine the same under section 33C(2) of the Act as the matter would fall under section 10 of the Act and the remedy available to the employee would be to raise an industrial dispute. In this case Tapeshari Dass made an application under section 33C(2) of the Act to the specified Labor Court alleging himself to be a workman and praying for computation of retrenchment compensation under section 25Fff of the Act. The employer raised an objection that the relationship of employer and workman never existed between the parties and the Labor Court had no jurisdiction to proceed on merits without deciding this issue. The learned Judge noticed the observations of the Supreme Court in the case of Central Bank of India, Ltd. (Supra) but on the scope and ambit of section 33C(2) made the aforesaid observation. The learned Judge was also of the view that the question whether the claimant is a workman or not is not incidental to the determination of the main question and that if the workman's contention be upheld, then most of the industrial disputes would fall under section 33C(2) and the provisions of section 10 would at least to a considerable extent be reduced to silence. With respect, we disagree. In an application under section 33C(2) of the Act, a workman has to establish his title to the money or benefit because it is the workman who is entitled to receive the money or benefit who can make the application. The title of the applicant as a workman is, Therefore, a condition precedent to the making of an application under section 33C(2). He has to show that he is a workman who is entitled to it. The objection of the employer denying the existence of relationship is a denial of title, that is, a denial that the condition precedent has been satisfied. The jurisdiction of the specified Labor Court is to grant the money or benefit only to a workman who is entitled. It is, Therefore, implicit in the exercise of jurisdiction that the specified Labor Court has to determine the title of the applicant as a workman and, Therefore, determine the existence of the relationship of workman and employer if it is denied. The jurisdiction of statutory authorities to determine questions which are by way of conditions precedent to the exercise by them of their jurisdiction has been expressed by *Lord Esher, M.R. in the Queen v. The Commissioners for Special Purposes of the Income Tax* :⁹ in the following words :-

"WHEN an inferior court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it

proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The legislature may entrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction."

This principle was accepted by the Supreme Court in *Rai Brij Raj Krishna and another v. S. K. Shaw and Brothers*¹⁰. This dictum was noted by a Division Bench of this Court (Deshpande and Rangarajan, JJ.) in *M/s. Martin Burn Limited v. T. G. Moorjani and others* (12). This was a case where an application was made for the payment of gratuity under section 7(1) of the Payment of Gratuity Act, 1972. The employer denied the relationship of employer and employee and the Controlling Authority decided the question against the employer. The employer filed a writ petition in this Court to quash the proceedings before the Controlling Authority on the ground, inter alia, that the jurisdiction of the Controlling Authority under section 7(4)(b) of the Payment of Gratuity Act, 1972 was confined to the determination of only the amount of gratuity payable to an employee. This contention is the same as the contention of the respondents that the jurisdiction of the specified Labor Court under section 33C(2) is confined to the computation of the money or benefit due and extends no further. After noticing the above quoted observations of Lord Escher, M. R. and other cases, the Division Bench observed :-

"THE jurisdiction of the Controlling Authority to determine the amount of gratuity depends on the pre-existence of the relationship of employer and employee between the petitioner and the respondents 2 and 3. These

jurisdictional conditions cannot be finally determined by the Controlling Authority. But this only means that the conclusion which the Controlling Authority may arrive at on this issue is impeachable by the aggrieved party in a civil court. This does not mean, however, that the Controlling Authority cannot at all inquire into this issue or that the petitioner can disable the Controlling Authority from making any inquiry by merely denying that the respondents 2 and 3 are its employees. On the contrary, the Legislature has intended that initially the Controlling Authority may find out whether the relationship of employer and employee exists. If he finds that it does not exist, then he would drop the proceedings. If he finds that it exists, he would continue the proceedings to determine the amount of gratuity. This is subject to the right of the aggrieved party to go to the civil court for a final determination of this issue which goes to the jurisdiction of the Controlling Authority.....A mere denial by the employer as to the coverage of his factory under the Act does not, however, mean that the Central Provident Fund Commissioner is disabled from holding the inquiry. On the contrary, he must hold an inquiry though his finding regarding the coverage of the factory may be challengeable in a civil court."

10. S. K. Kapur, J. was right in saying that a specified Labor Court under section 33C(2) of the Act cannot go into any question which can properly be the subject matter of an industrial dispute under section 10 of the Act. But the question whether the relationship of workman and employer exists is not such a question. In our opinion, the principle applicable should be that if an applicant who alleges himself to be a workman is met by a plea that the relationship of workman and employer does not exist as the services of the concerned workman have been terminated or that he has been dismissed, the workman cannot assert that the termination of his services or his dismissal was wrongful. In other words, if the workman admits the termination or dismissal but challenges the validity of it, he cannot invite a specified Labor Court under section 33C(2) to determine the question because he must first get his order of termination or dismissal set aside by raising an industrial dispute. This is the example which was given by the Supreme Court in the case of Central Bank of India, Ltd. (supra). But the workman can assert that there was in fact no termination or dismissal as alleged by the employer and in such a case, the specified Labor Court will have jurisdiction to determine the issue. If it finds that the services of the workman were terminated or that he had been dismissed before the period for which the claim is made, it has to stay its hands. If it does not find it so, it must proceed to determine the amount of money or compute the benefit. Therefore, a mere denial of the relationship

by the employer cannot oust the jurisdiction of the specified Labor Court. The specified Labor Court will have the jurisdiction to decide whether the applicant was a workman during the period for which the claim is made.

11. We, Therefore, do not agree with S. K. Kapur, J. when he says that a mere denial of the existence of the relationship of workman and employer would oust the jurisdiction of the specified Labor Court as this a matter which falls under section 10 of the Act. The decision of S. K. Kapur, J. was followed in three single Bench decisions of this court viz. *Writ petition No. 302-D of 1959 in re : M/s. Saran Motors Private Ltd. v. E. Krishna Murti and others decided on* ¹¹ *M/s. Flowmore (Private) Ltd. v. Ram Prakash and another* ¹² and *Tek Chand v. The Labor Court*, ¹³. These decisions contained no independent reasoning. For reasons already stated the view expressed in these cases also cannot be sustained. In our opinion, a mere denial by the employer about the existence of the relationship of workman and employer will not oust the jurisdiction of the specified Labor Court. But if it is contended by the employer that during the period for which the claim is made the applicant was not a workman as his services had been terminated or he had been dismissed, then the specified Labor Court will determine whether the services were terminated or the workman was dismissed as alleged but will not go into the question of the validity of the termination or dismissal. It would not matter if the applicant was not a workman on the date of his application; if it is proved that he was a workman during the relevant period for which the claim is made. We now come to deal with the individual writs. *Dev Raj Jaitly v. Labor Court, Delhi*, ¹⁴

12. The petitioner alleged that he was a workman as he was employed by Delhi Motor & Cycle Company (respondent No. 2) as a storekeeper. Respondent No. 2 pleaded that the petitioner was not a workman as he was a manager and, therefore, the application was not maintainable. By its order dated October 4, 1972, the Labor Court observed that disputed question of status cannot be decided by it under section 33C(2) of the Act in view of the decision of his Court in Flow more (Private) Ltd. (supra).

13. In view of our conclusions, the Labor Court had the jurisdiction to decide this question and, Therefore, it failed to exercise jurisdiction which vested in it. This writ petition is, Therefore, allowed. The impugned order dated October 4, 1972 in L.C.A. No. 192 of 1972 is quashed and we order that a writ be issued to respondent No. 1 to restore the application of the petitioner to its file and proceed to decide it on merits after determining the question whether applicant is a workman or a manager. The petitioner will have his costs of this petition. Counsel's fee Rs. 100. *Relu Mal Pawa v.*

Bir Singh and another. ¹⁵

14. This petition demonstrates how the jurisdiction of the specified Labor Court is sought to be ousted by a mere plea denying the existence of relationship as that of workman and employer.

15. The services of the petitioner were terminated by the management. The action of the management was held to be illegal by the Industrial Tribunal, Delhi, by its award dated August 9, 1971 made in a reference under section 10 of the Act to determine whether the termination of services of the petitioner was illegal and/or unjustified and if so, to what relief was he entitled and what directions were necessary in that respect. By this award, the relief of reinstatement was not granted to the petitioner but he was awarded compensation equal to one year's salary amounting to Rs. 4,260. Thereafter the petitioner filed an application under section 33C(2) of the Act alleging that he was in the employment of the Central Government Employees' Consumer Co-operative Society Ltd. (respondent No. 2) from October 26, 1963 to December 16, 1966 on a monthly salary of Rs. 355. In answer to the claim of the petitioner, the management denied the relationship and urged that the application under section 33C(2) was not maintainable. In spite of the award, respondent No. 1 held on the basis of the judgment of this Court in *Flow more (Private) Ltd. (supra)* that it could not go into the question whether the plea raised by the management was frivolous or not and it directed the return of the application to the petitioner.

16. Here also, in view of our conclusion, the Labor Court (respondent No. 1) failed to exercise jurisdiction which vested in it. This writ petition is, Therefore, allowed. The impugned order dated June 1, 1972 in L.C.A. No. 24 of 1972 is quashed and we order that a writ be issued to respondent No. 1 to restore the application of the petitioner to its file and proceed to decide it on merits after determining the question whether the applicant is a workman or not. The petitioner will have his costs of this petition. Counsel's fee Rs. 100. *K.P. Nigam v. B.B.L. Hajley*, ¹⁶

17. The petitioner made an application under section 33C(2) of the Act alleging that he had been retrenched from service. The petitioner alleged that he was a Secretary in M/s. Fonesca Private Limited (the management). In reply, the management denied that the petitioner was a workman and they denied the jurisdiction of the Labor Court to deal with the application. The Labor Court relied upon the judgments of this Court in *M/s. Saran Motors Private Ltd. and Flow more (Private) Ltd. (supra)* and held that the question whether the applicant was a workman or not, being a disputed question of

fact, could not be gone into in an application under section 33C(2) of the Act.

18. Here also, in view of our conclusions, the Labor Court (respondent No. 1) failed to exercise jurisdiction which vested in it. This writ petition is, Therefore, allowed. The impugned order dated September 19, 1972 in L.C.A. No. 259 of 1971 is quashed and we order that a writ be issued to respondent No. 1 to restore the application of the petitioner to its file and proceed to decide it on merits after determining the question whether the applicant is a workman or not. The petitioner will have his costs of this petition. Counsel's fee Rs. 100. *Yad Ram v. Bir Singh and another*,¹⁷

19. The petitioner, Yad Ram (since deceased), had made an application before respondent No. 1 under section 33C(2) of the Act claiming monies and equivalent of money for benefits due from respondent No. 2. The management denied that the applicant was a workman and asserted that he had absented himself without leave or taking prior permission and had abandoned his contract of service. It was further alleged that no relationship of master and servant or that of an employer and an employee either existed or subsisted between the petitioner and the management. Issue No. 1 was whether the petitioner was a workman or not. Issue No. 2 was whether the application was incompetent. On the plea raised by the management that the relationship of master and servant did not exist or subsist, the Labor Court by its order dated November 8, 1971 in L.C.A. No. 48 of 1971 held the view that it could not go into this plea which could be decided only in a regular reference under section 10 of the Act.

20. Thereafter, the petitioner filed this writ petition in this Court but died during its pendency whereupon his legal representatives were brought on the record. Apart from the question of the jurisdiction of the Labor Court to determine the question of relationship of employer and workman, two other questions arise. The first is whether the legal representatives can continue this petition under Article 226 of the Constitution of India and the second is whether they can continue the application under section 33C(2) of the Act which their predecessor-in-interest had made to the specified Labor Court. If the answer to the second question is in the negative, the further question which arises is whether this writ petition has become in fructuous and, if so, to what extent.

21. The specified Labor Court under section 33C(2) has a special and limited jurisdiction which can be invoked by a workman as defined in the Act. The definition of workman in section 2(s) of the Act does not include his heirs, successors and legal

representative. In exercise of powers conferred by section 38 of the Act, the Central Government made the Industrial Disputes (Central) Rules, 1957. Rule 62 provides for application for recovery of dues. It is in these terms:-

"(1) Where any money is due from an employer to a workman or a group of workmen under a settlement or an award or under the provisions of Chapter V-A, the workman or the group of workmen, as the case may be, may apply in Form K-1 for the recovery of the money due : Provided that in the case of a person authorised in writing by the workman, or in the case of the death of the workman the assignee or heir of the deceased workman, the application shall be made in Form K-2. (2) Where any workman or a group of workmen is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money, the workman or the group of workmen, as the case may be, may apply to the specified Labor Court in Form K-3 for the determination of the amount due or, as the case may be, the amount at which such benefit should be computed".

An application by the workman himself under section 33C(1) of the Act has to be made in form K-1. In the event of the death of the workman, application under section 33C(1) has to be made in form K-2 by the assignee or heir of the deceased workman. Application under section 33C(2) by the workman has to be made in Form K-3. These and other forms are prescribed by the Rules and form part of the Rules. There is no form for an application by the assignee or heir of a deceased workman when an application is to be made under section 33C(2) as is the case with an application under section 33C(1). In section 33C itself a distinction is made between an application under sub-section (1) and an application under sub-section (2) in that in the former case the application can be made even during his life time by any other person authorized by the workman in writing in this behalf and, in the case of his death, by his assignee or heir while in the case of the latter, a person authorized by the workman or his assignees or heirs are not mentioned. It, Therefore, appears to us that in the case of an application under section 33C(2), the legislature intended to give the right of making the application only to the workman personally and not to any other person authorized by him or to him or to his assignee or heir. The right to make an application under section 33C(2) can, Therefore, legitimately be said to be a personal right and, being so, it must die with him. This construction is supported by the further fact that a specified Labor Court is not expected to go into intricate questions of title or succession and its jurisdiction is limited in section 33C(2) to deal with the application only if made by the workman. Otherwise we do not find any justification for the

difference in the phraseology of sub-section (1) and subsection (2) of section 33C. The forms prescribed under the Rules, even though they may not be mandatory and be merely directory, support our conclusion as to the intention of the legislature and we use the specification of the forms only for this limited purpose.

22. Reliance has been placed on behalf of the legal representatives on a Division Bench decision of the Bombay High Court in *Sitabai Naruna Pujari and M/S. Auto Engineers (1972) 1 LLJ 290 (14)* where a contrary view has been taken and where they have disagreed with the view expressed in *U.P. Electric Supply Company Limited v. Meena Chatterji*,¹⁸ The Bombay High Court has held that the forms prescribed by the Rules are permissive and are for convenience. This decision is based only upon the permissiveness of the forms and not on the difference in the phraseology of sub-section (1) of sub-section (2) of section 33C as pointed out by us. For the reasons stated, we regret our inability to agree with the view of the Bombay High Court.

23. Reliance is then placed on section 306 of the Indian Succession Act, 1925 to urge that rights of a deceased survive to his executors or administrators. This general provision provides for survival of the right to sue but does not provide for the forum in which such right can be exercised. We are here concerned with the question as to who has locus standi to make an application under section 33C(2) of the Act and not the question whether the right to sue survives or not. For the same reasons, the decisions reported in *Piriska Rozario and others v. The Ford Foundation and another*:¹⁹ *Mst. Dhani Devi v. Santi Bihari Sharma and others, New India Assurance Co. Ltd. New Delhi and another v. Punjab Roadways, Ambala City and others*,²¹ and *Margarida Gomes and another v. Messrs. Machinnon Machenzie and Co. Pvt. Ltd. Bombay*,²² are not applicable.

24. Our conclusion, Therefore, is that an application under section 33C(2) of the Act can be made only by the workman himself and it must follow that if the workman dies during the pendency of such application, his heirs, successors and legal representatives cannot continue it in the specified Labor Court because this Court cannot recognize anybody other than a workman as the applicant before it. We should not be taken to have held that the right to sue for money or equivalent of money of the benefit due to a workman does not survive. It survives to the heirs, successors and legal representatives and they can take appropriate proceedings by way of a suit in a civil Court. They cannot, however, either continue after his death an application made by the workman under section 33C (2) or make such an application themselves in the event of his death.

25. Then we come to the first question. Here the position is slightly different. The right to continue the writ petition depends upon whether the right to sue survives. If the workman had a right to have a certain order which has been passed to his prejudice quashed, then the right must survive to his heirs, successors and legal representatives if such order is a hurdle in the way of any claim that may be made by them to the estate of the deceased workman. But the order impugned in this writ petition is not such an order. No rights have been determined by the Labor Court to the prejudice of the workman as might stand in the way of his heirs, successors and legal representatives in making a claim in an appropriate forum. All that the Labor Court has done is to decline to adjudicate upon such rights and ordered the return of the application to the workman. It will not be necessary for the heirs, successors and legal representatives of the deceased petitioner to have the aforesaid order set aside before taking appropriate proceedings in an appropriate forum. In these circumstances and in view of the fact that the heirs, successors and the legal representatives of a deceased workman are not entitled either to continue or to make an application under section 33C(2) of the Act, we hold that this writ petition does not survive. We, Therefore, dismiss it. In view of the fact that the writ petition is being dismissed on this technicality, we make no order as to costs.

Cases Referred.

1. (1963)II LLJ 89 SC (1).
2. (K. L.), (1962) 1 LLJ 234 (2)
3. (1968) I LLJ 6 SC (3
4. (1969)II LLJ 728 SC.
5. (1972)I LLJ 231 SC,
6. A.I.R. 1972 SC 857
7. 1971 Lab IC 229
8. (1965) 1 DLT 327,
9. (1888)21 Queen's Bench Division 313(10)
10. [1951] 2 SCR 145 (II)
11. January 20, 1967(12A),

12. [C. M. (Main) No. 15 of 1971] decided on May 26, 1971 12B)
13. 1973) 1 LLJ 470
- 14.(C.W. No. 961 of 1972).
15. (C.W. No. 1103 of 1072).
16. C.W. No. 1236 of 1972).
17. (C.W. 1278 of 1971)
18. (1969) 36 F.J.R. 308
19. AIR 1969 Cal 394 ;
20. [1969]2 SCR 507 ;
21. A.I.R. 1964 P&H 235.
22. AIR 1968 Bom 328,