

# GUJARAT HIGH COURT

Dahyabhai Ranchhoddas Shah

Vs.

Jayantilal Mohanlal

Special Civil Appln. No. 1532 of 1970

(P.N. Bhagwati, C.J. and D.A. Desai, J.)

18.03.1972

## JUDGMENT

### **D.A. Desai, J.**

1. The main question raised in this petition is about the jurisdiction of the Labour Court under Section 33C(2) of the Industrial Dispute Act, 1947. The petitioner herein made an application to the Labour Court at Ahmedabad, which came up for disposal before the Second Labour Court at Ahmedabad, alleging therein that respondents Nos. 2 and 3 who were carrying on business in the name of respondent No. 1 closed the undertaking with effect from 13th November, 1966; and consequently discharged the petitioner from service. The petitioner requested the Labor Court to Compute his retrenchment compensation, to which he was entitled, according to him under Section 25FFF of the Industrial Disputes Act. The respondent contested the application inter alia contending that the petitioner was not discharged from service as contended by him; but his services were terminated on 12th November, 1966 because of his old age, and, therefore, he was not entitled to compensation under Section 25FFF. It also appears to have been contended before the Labour Court that as the closure of the undertaking is not admitted, an issue would arise whether services of the petitioner were terminated on account of the closure of the undertaking and the Labour Court would have no jurisdiction to decide this issue in an application made under Section 33C(2). The Labour Court rejected the application observing that as closure of the undertaking is not admitted by the respondents, and, unless it is admitted, computation of the benefit could not be made, the Labour Court will have no jurisdiction to decide the question of closure because retrenchment of workmen and closure of establishment is an item in the Third Schedule of the Industrial Disputes Act and matters set out in Third Schedule are within the exclusive jurisdiction of the Industrial Tribunal. The petitioner had challenged the correctness of this decision in this petition under Art. 227 of the Constitution of India.

2. Industrial Disputes Act was enacted, as its preamble and long title show, to provide machinery

and forum for the investigation of industrial disputes and for the settlement thereof and for the purpose analogous and incidental thereto. Emergence of the concept of welfare State implied an end to exploitation of workmen and as a corollary thereto collective bargaining came into its own and lest the conflicting interests of the workmen and employer disturb the industrial peace and harmony, a machinery for adjustment of peace and conflicting interests became the felt needs of time. Industrial Disputes Act was enacted to provide machinery and forum for adjustment of such conflicting and seemingly irreconcilable interests without disturbing the peace and harmony in the industry, assuring industrial growth which was the pre-requisite for a welfare State. The Act in its broad outlines provides a method for bringing to the notice of the Government, which in a welfare State cannot afford to look askance at the industrial unrest, industrial disputes and once what are broadly described as industrial disputes came to the notice of the Government, the Government could compel the parties to resort to arbitration and for that purpose different forums were set up for the resolution of such disputes. The Act did not provide for any set of social and economic principles for adjustment of conflicting interests. Such norms had to be evolved and devised keeping in view social and economic conditions, the needs of the workmen, the requirements of the industry, social justice, relative interests of the parties and national good. Once these norms for adjustment of conflicting interests were evolved or devised by awards of the Industrial Tribunals, or by terms of settlement between workmen and employer, those norms become rights. Rights in themselves mean nothing, unless they are enjoyable, and if enjoyment of a right after its acquisition is denied, there must be machinery for its enforcement. Rights without machinery for their enforcement in case of denial are mere platitudes.

3. Before the introduction of Chapter V and Section 33C therein, there was no provision in the Industrial Disputes Act for enforcement of rights or benefits acquired under the awards of the Industrial Tribunals, or terms of settlement between workmen and employers or rights conferred by the very Act or by some other Acts, or acquired in some other manner. In order to do away with this glaring lacuna, Section 33C was introduced in the Industrial Disputes Act. The purpose behind introduction of Section 33C has been noticed by the Supreme Court in *The Central Bank of India Ltd. v. Rajagopalan*<sup>1</sup>, At page 747, their Lordships observed as under :

"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 Section 33A in the Act in 1950 and added Section 33C in 1956. These two provisions illustrate the cases in which individual workmen can enforce their rights without having to take recourse to Section 10(1) of the Act, or without having to depend upon their union to espouse their cause. Therefore, in construing Section 33C we have to bear in mind two relevant considerations ....

Similarly having regard to the fact that the policy of the Legislature in enacting Section 33C 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."

The Act having set up machinery for collective bargaining provided for enforcement of rights thus acquired by collective bargaining at the hands of individual workmen by introducing Section 33C. Therefore, whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of

<sup>1</sup>[1963 - II L.L.J. 89]; A.I.R. 1964 S.C. 743

money, and is denied such benefit, he can approach the labor Court under Section 33C(2) for recovering both monetary or non-monetary benefit which can be computed in terms of money and which he is entitled to receive from his employer. The benefit sought to be recovered must necessarily be a pre-existing benefit or benefit flowing from a pre-existing right. While construing the scope and ambit of Section 33C(2), it is necessary to bear in mind the vital difference between a pre-existing right or benefit, or the right or benefit which is considered just and must, therefore, be acquired or granted by the employer. The workman approaching the Labor Court under Section 33C(2) for enforcement of right or benefit must be able to point to some pre-existing right or benefit which he seeks to enforce. If he seeks some new rights or change in conditions of service, or some new benefit, neither acquired nor granted nor conferred by the statute, he must pursue his remedy under Section 10. He cannot approach the Labor Court under Section 33(2). If the workman is in a position to show that there is right in his favor or there existed some right to which he is entitled, the case would squarely fall under Section 33C(2). If, on the other hand, he claims what ought to be the relation between him and his employer, remedy does not lie under Section 33C(2).

4. The contention, however, is that Section 33C(2) merely confers jurisdiction to quantify or compute the monetary benefit in respect of pre-existing benefit or right, but where the benefit or right itself is in dispute, the Labour Court has no jurisdiction to decide whether the right or benefit exists. In other words, it was contended that Section 33C(2) merely confers jurisdiction to enforce rights which are admitted by the employer for their quantification in money value and for recovery of the money. But whenever such right or benefit is disputed or denied, the workman must take recourse to the collective bargaining under Section 10. We need not examine the contention on merits because exactly an identical contention was taken in Central Bank's case (supra) and has been negated. In this connection it has been observed as under, at page 748, para 16 :

"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 'such workman is admittedly, or admitted to be, entitled to received 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-s. (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 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 inquiry 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-s. (2) .....

We must accordingly hold that Section 33C(2) takes within its purview cases of workmen who claimed 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."

The Court in that case finally concluded that :

"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 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 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 the necessary computation can arise."

5. It was, however, contended that the expression "workman entitled to receive any benefit from his employer" would unmistakably show that the title of the workman to the benefit is not in dispute and there is some controversy between the parties at a stage subsequent to the workman having acquired title to the benefit. Consequently it was urged that the Labour Court functioning under Section 33C(2), being a Tribunal of limited jurisdiction, cannot proceed to examine the very title which is the foundation of its jurisdiction. In our opinion, expression "entitled to receive" means no more than this that the claim is referable to a pre-existing right or liability already acquired by the workman or incurred by the employer to his workman. In *New Taj Mahal Cafe (Private) Ltd. v. Labour Court, Hubli*<sup>2</sup>, it was contended before the Supreme Court that the entitlement to some amount claimed by the workman is a condition precedent to an application being presented under Section 33C(2) and consequently if the right of the workman to claim any amount at all is itself not admitted by the employer, the Labour Court cannot proceed under Section 33C(2). After observing that the point is concluded by a decision of the Supreme Court in *Chief Mining Engineer, M/s. East India Coal Co. Ltd., Dhanbad v. Rameshwar and others*<sup>3</sup>, it

was observed as under :

"This decision plainly lays down that, if the money or the benefit is claimed by a workman on the basis that the right is denied, it is competent for the Labour Court in proceeding under Section 33C(2) to decide whether the right does or does not exist."

Incidentally, we may point out that same view of the jurisdiction of the Labour Court under Section 33C(2) has been taken by the Division Bench of this Court in *Ambalal Shivlal v. D. M. Vin and others*<sup>4</sup>,

6. Mr. Shelat next contended that a bare perusal of Section 10 and Schedules II and III of the Industrial Disputes Act would show that there is a well-demarkated division of jurisdiction between the Labor Court and Industrial Tribunal, and one cannot trench upon

<sup>2</sup>[1970 - II L.L.J. 51]

<sup>4</sup>(1964) 5 Guj. L.R. 609 : (AIR 1964 Guj 192)

<sup>3</sup>[1968 - I L.L.J. 6]

the jurisdiction of the other. Proceeding further it was urged that item No. 10, "Retrenchment of workmen and closure of establishment", is in the Third Schedule, and any dispute in respect of the said claim cannot be entertained by the Labour Court. It was urged that if there is any industrial dispute in respect of items mentioned in the Second Schedule, that dispute has to be referred to the Labour Court for its settlement and similarly if there is any industrial dispute with reference to any of the items mentioned in Third Schedule, recourse has to be taken to the Industrial Tribunal for its resolution. It was further contended that there is thus a very well-demarkated division of functions and powers between the Labour Court and Industrial Tribunal and that, therefore, it would be beyond the competence of the Labour Court to decide any question which has reference to any of the items mentioned in Schedule III and vice versa. Consequently, it was contended that if the Labour Court has jurisdiction to decide the very existence of a right or benefit claimed, and if the right or benefit is in respect of any items in the Third Schedule over which the Labour Court has no jurisdiction and Industrial Tribunal alone has exclusive jurisdiction, the Labour Court would thereby trespass upon the jurisdiction exclusively vested in the Industrial Tribunal. There is a two-fold fallacy in this submission.

7. Sections 10 and 33C(2) operate in entirely different fields. Section 10 enables the Government to refer the existing or apprehended industrial dispute to Labour Court, if the disputes are with regard to any of the items mentioned in Second Schedule and to the Industrial Tribunal, if the disputes are in respect of any of the items mentioned in the Third Schedule, for their resolution. In respect of disputes relating to items mentioned in the Second Schedule, reference would ordinarily be made to the Labour Court and if the disputes are in respect of items set out in Third Schedule, reference would ordinarily be made to the Industrial tribunal. This scheme is devised for deciding forums for resolution of disputes. Section 7 confers power upon the appropriate Government to set up Labour Courts. Section 7A confers similar power upon the Government to

constitute Industrial Tribunals. Section 10 enables the Government to refer certain disputes to Labour Court and certain other disputes to the Industrial Tribunal as discussed above. Jurisdiction is thus conferred upon the Industrial Tribunal and Labour Court to adjudicate upon the dispute thus referred to them. Division of functions is with regard to resolution of the industrial disputes referred by the appropriate Government under Section 10. But this scheme does not preclude the Parliament from conferring upon the Labour Court some additional functions. While conferring additional functions on the Labour Court, it is not necessary to keep in view division of functions between the Industrial Tribunal and the Labour Court. Jurisdiction conferred on the Labour Court by Section 33C is an additional function for the enforcement of rights conferred by the Act or acquired under the awards of the Labour Court or the Industrial Tribunal or under the settlement between the workmen and employer. As the workman may acquire right from any of the aforementioned sources, one single machinery for enforcement of right was set up by conferring the power of enforcement on the Labour Court. At the time of enforcement or execution of a right by praying for computation of monetary benefit the original source from where the right was acquired or accrued becomes irrelevant.

8. Again, it is not correct to say that there is a well-demarcated division of functions or carving out of exclusive jurisdiction between the Industrial Tribunal and the Labour Court with regard to resolution of industrial disputes for their settlement referable to items mentioned in Schedule II and Schedule III. This becomes clear from the first proviso to Section 10, which enables the appropriate Government to refer the dispute relating to any matter specified in the Third Schedule, which are ordinarily referable to the Industrial Tribunal, to the Labour Court for resolution, if the dispute is not likely to affect more than 100 workmen. The provision contained in the first proviso would show that there is nothing like well-de-marcated division of jurisdiction or functions between the Labour Court and the Industrial Tribunal. Even in respect of a dispute relating to matters set out in Schedule III, if the workmen affected thereby do not exceed 100, reference can as well be made to the Labour Court. Undoubtedly for the purpose of resolution of an industrial dispute, the appropriate Government, while making reference under Section 10, would ordinarily refer industrial dispute either to the Labour Court or to the Industrial Tribunal, as the case may be, keeping in view the nature of the dispute, the matters which are in dispute and number of workmen affected by the industrial dispute. But it would not be correct to say that the Labour Court would be wholly precluded from examining any dispute if it is in respect of matters falling under Third Schedule and vice versa.

9. Mr. Shelat, however, in this connection invited our attention to *U.P. Electric Supply Co. Ltd. v. R. K. Shukla and another*<sup>5</sup>, In that case, applications were made by the employees of the U.P. Electric Supply Co. Ltd. after the company was taken over by the State Electricity Board, U.P., for retrenchment compensation under Section 6H(2) of the U.P. Industrial Disputes Act, 1947. It must at once be stated that Section 6H(2) of the U.P. Industrial Dispute Act, 1947 is in pari materia with Section 33C(2) of the Industrial Disputes Act, 1947. There were number of applications and all these applications were contested inter alia contending that the Labour Court

had no jurisdiction to entertain these applications because retrenchment of workmen and closure of establishment are matters falling within Second Schedule of the U.P. Industrial Disputes Act, 1947, and in respect of which, the Industrial Tribunal has exclusive jurisdiction. This contention found favor with the Supreme Court. In this connection it has been observed as under :

"Matters which do not fall within the terms of Section 33C(1) may, if the workman is shown to be entitled to receive the benefits, fall within the terms of Section 33C(2). If the liability arises from an award, settlement or under the provisions of Chapter V-A, or by virtue of a statute or a scheme made thereunder, mere denial by the employer may not be sufficient to negative the claim under Section 33C(2) before the labour Court. Where, however, the right to retrenchment compensation which is the foundation of the claim is itself a matter which is exclusively within the competence of the Industrial Tribunal to be adjudicated upon on a reference, it would be straining the language of Section 33C(2) to hold that the question whether there has been retrenchment may be decided by the Labour Court. The power of the Labour Court is to compute the compensation claimed to be payable to the workmen on the footing that there has been retrenchment of the workmen. Where retrenchment is conceded, and the only matter in dispute is that by virtue of Section 25FF no liability to pay compensation has arisen the Labour Court will be competent to decide the question. In such a

<sup>5</sup>[1969 - II L.L.J. 728]; (1969) 2 S.C.C. 400

case the question is one of computation, and not of determination, of the conditions precedent to the accrual of liability. Where, however, the dispute is whether workmen have been retrenched and computation of the amount is subsidiary or incidental, in our judgment, the Labour Court will have no authority to trespass upon the powers of the Tribunal with which it is statutorily invested."

The ratio of the decision would seem to indicate that where the benefit claimed is with reference to some matters mentioned in Schedule III and the right itself is disputed, if the Labour Court entertains an application under Section 33C(2) and proceeds to decide the existence of the right, it would be trespassing upon the jurisdiction exclusively vested in the Industrial Tribunal by the statute. This would considerably narrow down the jurisdiction of the Labour Court under Section 33C(2). Right contemplated by Section 33C(2) may have been acquired anywhere and may be in respect of any matter falling for the purpose of Section 10 either under Second Schedule or Third Schedule. If a right in respect of any of such matters has yet to be acquired, the workman has to proceed under Section 10, but if it is once acquired, and its existence is disputed, the Labour Court would have jurisdiction to decide whether the right exists or not. Controversy on this point has been finally set at rest by the latest decision of the Supreme Court in which the aforementioned observation of the Supreme Court in U.P. Electric Supply Co. Ltd., [1969 - II L.L.J. 728], has not been approved. In *R. B. B. A. Mills Co. Ltd. v. Labour Court, Nagpur*<sup>6</sup>, the question raised was about the jurisdiction of the Labour Court to entertain an application for lay-off compensation under Section 33C(2). Right to lay-off compensation is conferred by Section

25KKK, which finds its place in Chapter V. That right was disputed and denied. The question arose whether the Labour Court can inquire into the question whether there was in fact lay-off, if it was disputed and its computation denied. The Supreme Court in terms held that the Labour Court has jurisdiction to decide existence of that right, meaning thereby, to decide the question whether there was in fact lay-off or not, and once it is held that the workers were laid off, then to proceed to compute the benefit to which they would be entitled by way of lay-off compensation. The employer had questioned the jurisdiction of the Labour Court to decide the question whether the workmen were in fact laid off. In support of it, reliance was placed by the counsel upon the ratio of the U.P. Electric Supply Co. Ltd., case, G. K. Mitter is party to both these decisions. Speaking for the Court in the latest case, after referring to the observations quoted by us above from U.P. Electric Supply Co. Ltd., case, (supra), it has been in terms observed that these observations cannot be considered binding on the Court, as all the aspects were not placed before the Court then. Thus, the ratio of the earlier case was in terms disapproved. In the case which we are just considering, it is finally observed as under :

"In substance the point urged by the appellants was that if a claim is made on the basis of a lay-off and the employer contends that there was no lay-off but closure, it is not open to a Labour Court to entertain an application under Section 33C(2). The more so, it was stated, when the dispute was not between a solitary workman on the one hand and the employer on the other but a whole body of workmen ranged against their employer who was faced with numerous applications before the Labor Court for computation of benefit in terms of money. As has been said already, the Labour Court must go into the matter and come to a decision as the

<sup>6</sup>[1972 - I L.L.J. 231] : A.I.R. 1972 S.C. 451

whether there was really a closure or a lay-off. If it took the view that there was a lay-off without any closure of the business, it would be acting within its jurisdiction if it awarded compensation in terms of the provisions of Chapter V-A."

It was also observed that "the Labour Court's jurisdiction could not be ousted by a mere plea denying the workman's claim to the computation of the benefit in terms of money. The Labour Court had to go into the question and determine whether, on the facts, it had jurisdiction to make the computation. It could not, however, give itself jurisdiction by a wrong decision on the jurisdictional plea." We may incidentally say that whether the workman is entitled to receive benefit from the employer is a collateral question, on the decision of which the jurisdiction of the Labour Court would depend, as would seem to be the view of the Supreme Court in the R.B.B.A. Mills Co., case or it is a question, determination of which is entrusted by the Legislature to the Labour Court on a question in issue under Section 33, as would appear to be the view gathered from Central Bank's case, [1963 - II L.L.J. 89]; A.I.R. 1964 743. It is not necessary for us to decide in this case.

10. It is, however, crystal clear that where a workman claims benefit flowing from a preexisting

right and approaches the Labour Court for computation of the right in money, and the employer disputes existence of the right, the Labour Court will have jurisdiction to determine the question whether the right existed and if existence of the right is established, then to proceed to compute the benefit flowing therefrom into money and on its decision recovery proceeding can start.

11. Turning to the facts of this petition, the petitioner applied for compensation on the allegation that the undertaking, of which he was the workman, was closed down and therefore, he is entitled to retrenchment compensation under Section 25FFF. The employers appeared and contested the application inter alia urging that the petitioner was not discharged on account of closure of the undertaking, but his services were terminated on account of his old age, the petitioner on the date of discharge being over 70 years of age. On these rival pleadings, the issue would necessarily arise whether the undertaking was closed down and the petitioner was discharged from service on account of the closure of the undertaking. The learned Judge of the Labour Court declined to examine this question on the ground that under Section 33C(2) he had no jurisdiction to do it. The Labour Court has jurisdiction to determine the question whether the right from which benefit is claimed does or does not exist. That question has to be decided. Therefore, the only thing that we can do in the matter is to quash and set aside the order of the learned Judge of the Labour Court dated 6th August, 1970 and remand the application to the Labour Court for disposal according to law. Rule made absolute with costs.

Application remanded.