**BOMBAY HIGH COURT**

Savatram Ramprasad Mills Co. Ltd

Vs.

Baliram Ukandaji

Special Civil Appeal No. 360 of 1961 with special Civil Applns. Nos. 381 and 382 of 1961

(N.L. Abhyankar and D.G. Palekar, JJ.)

25.08.1962

**JUDGMENT**

**Abhyankar, J.**

1. The order in this application will also govern Special Civil Applications Nos. 381 and 382 of 1961.

2. The petitioner in Special Civil Application No. 360 of 1961 is Messrs. Sawatram Ramprasad Mills, Company, and the contesting respondent is one of their workers, Baliram. In the other two petitions, Nos. 381 and 382 of 1961, the petitioner is Rai Saheb Rekhchand Mohota Spinning and Weaving Mills at Hinganghat, and in each the contesting respondent is one of the workers in the Mill. In all the three cases an employee of the Mills, which are all textile Mills in Vidarbha region, filed an application before the presiding officer of the Labor Court, Bombay, at Nagpur. The claim in each of the application was for payment of lay-off compensation on the ground that the worker was illegally laid off by the employer and was entitled to compensation under Section 25A (sic 25C) of the Industrial Disputes Act, 1947. Specific amounts have been claimed as lay-off compensation. The workers claimed the amount by making an application under Section 33C of the Industrial Disputes Act, 1947 which shall be hereafter referred to as the Central Act.

3. In each of these cases the Mills raised preliminary objections to the jurisdiction of the Labor Court to entertain the application or to adjudicate on the same. The Mills denied the liabilities. They also denied that any of the claimants was entitled to make the application or that the period during which the worker was not on duty was a period of lay-off or that there was any lay-off. In respect of the Sawatram Ramprasad Mills at Akola, it was contended that the closure of the Mills was brought about by a huge gathering of the Mill employees surrounding the general office. The gathering of the employees started shouting slogans. The inmates were not allowed to go to their residence for rest and were illegally confined. The employees denied this allegation about

demonstration by shouting of slogans and threats. Thus, as a result of the situation created by the employees a notice was put up on the next day under Standing Order 19 by which all the employees were laid off as working had become impossible.

4. The tenability of the application and the jurisdiction of the Labor Court to adjudicate the issues raised were treated as preliminary issues. The Labor Court held that it had jurisdiction to entertain the application and adjudicate on the matter, and that the applicants in each case were entitled to make this application under Section 33C of the Central Act.

5. Against this order the Mills have come up to this Court under Articles 226 and 227 of the Constitution. In support of the petitions two points were raised and argued at length :

> (1) Whether the Industrial Disputes Act, 1947 (Act XIV of 1947) is applicable to the textile industry in Vidarbha region in view of the local Act, viz., the C. P. and Berar Industrial Disputes Settlement Act, 1947, being in operation in this region.
> (2) Whether the Labor Court appointed under Section 7 of the Central Act has power either under sub-section (1) or sub-section (2) of Section 33C of the Central Act to adjudicate on the issues raised by the Mills when the amount payable to the claimants as lay-off compensation has not been previously determined by any competent authority. We shall deal with these contentions in the same order.

6. To understand the first contention it is necessary to consider the history of legislation by the Central Legislature and the State Legislature; when the Industrial Disputes Acts were put on the statute book.

7. Industrial Disputes Act, 1947 (XIV of 1947) passed by the Dominion Legislature of India came into force in the whole of India on 1st of April 1947. As the preamble to the Act shows, the Act was passed because it was considered expedient to make provision for the investigation and settlement of industrial disputes and for certain other purposes. It is not disputed that the Act applied to textile industry according to the definition of "industry" in Section 2(j) of the Central Act. The Legislature of the C. P. and Berar passed an Act called "C. P. and Berar Industrial Disputes Settlement Act (Act XXIII of 1947)" and this Act came into force in C. P. and Berar on 2nd of June 1947. But on that date only the first section of the Act came into force because the Provincial Government had to issue a notification for bringing the remaining sections or any of them into force in any area or in any industry on a specified date. The preamble to the C. P. and Berar Act also shows that it was put on the statute book because it was expedient to make provision for the peaceful settlement of industrial disputes by conciliation and arbitration and for certain other purposes. By a notification date 20th November 1947 issued by the Provincial Government, the remaining section viz., Sections 2 to 61 of the C. P. and Berar Act were brought into force from 21st November 1947 in all the industries except the textile industry. Thus, the position was that so far as textile industry was concerned, it was outside the purview of the C. P. and Berar Act. However, by a subsequent notification issued by the State Government on 22nd

February 1951, the provisions of Sections 2 to 61 of the C. P. and Berar Act were also made applicable to textile industry from 1st March 1951. This latter notification is to be found at page 105 of the M. P. Labor Manual, volume I.

8. The Central Act was amended several times since its enactment in 1947, but it will be necessary here to notice the amendment to the relevant provisions with which we are concerned an this petition. The Parliament passed Act XLIII of 1953, by which a new Chapter called Chapter VA comprising of Sections 25A to 25J, was added to the Central Act. By the same Act a definition of "lay-off" was incorporated in Section 2(kkk) of the principal Act. The next important amendment of the Central Act was effected under the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (Act XXXVI of 1956). By virtue of this amendment a new forum called the Labor Court was constituted under the provisions of Section 7. Section 25-1 of the Act, which was in Chapter VA of the Central Act, was omitted. A wholly new section, Section 33C (1), (2) and (3) was added instead. Section 39 which empowered Government to delegate its powers was also amended enlarging the ambit of delegation by appropriate Government. By virtue of the power under the amended Section 39 of the Central Act the State Government has issued a notification on 30th September 1957 authorising specified officers to exercise its powers under Section 33C(1) of the Central Act. Under this notification the presiding officer of the Second Labor Court Nagpur is authorised to exercise the powers of the State Government under Section 33C(1) of the Central Act also in the districts in Vidarbha region.

9. Now, the material provisions of Chapter VA of the Central Act, which provides for lay-off compensation, as they now stand on the date of the application are to be found in the following sections, namely, Sections 25A, 25B, 25C, 25D, 25E, 25FFF and 25J.

10. It is not disputed that there is no provision in the C. P. and Berar Industrial Disputes Settlement Act, 1947 for payment of any lay-off compensation. It is true that the worker who has been laid-off under the provisions of the Standing Order settled in respect of a particular Mill may raise a claim in respect of the period of lay-off, but such a claim is not capable of being taken before any authority by individual worker under the provisions of the C. P. and Berar Industrial Disputes Settlement Act. The only remedy under the C. P. and Berar Act so far as the right of an individual employee to make an individual grievance and obtain relief before a competent authority constituted under that Act is concerned, is by an application under Section 16 or 41 of the Act. Under Section 16 of the local Act the specified authority which is the Labor Commissioner or his Assistant, has the power to decide an industrial dispute touching the dismissal, discharge, removal or suspension of an employee. If it is found that the dismissal, discharge, removal or suspension was in contravention of any provisions of the Act or any standing order made under that Act, a complete machinery for adjudication of such a claim on behalf of an individual employee and also for payment of wages or compensation payable is provided in Section 16 of the C. P. and Berar Act. It is also not disputed that an individual worker will not be entitled to make an application under any provision of the C. P. and Berar Act for

payment of lay-off compensation as an individual grievance.

11. Mr. Bobde's contention regarding the first point is that the C. P. and Berar Industrial Disputes Settlement Act, 1947, is a State Act on a subject in the Concurrent List. This legislation is referable to item 22 of List III which is in the Concurrent List in the Seventh Schedule of the Constitution. Under that item legislation is permissible either by the Parliament or by the State Legislature in respect of trade unions or industrial and labor disputes. Actually the original statutes were enacted by the Dominion Legislature and the Provincial Legislature in 1947 in exercise of identical powers in item 29, Part II of the Third List of the Seventh Schedule to the Government of India Act, which is also for trade unions and industrial and Labor disputes. According to Mr. Bobde, the Central Act may have been applicable to the textile industry till 1st of March 1951, but on and from that date the C. P. and Berar Industrial Disputes Settlement Act, 1947 was made applicable to the textile industry in Vidarbha region by the appropriate Government. The effect of that notification was to put into eclipse and to make inapplicable on and from that date any provisions of the Central Act. From that date according to Mr. Bobde, the field of industrial disputes was exclusively held by the statute passed by the Provincial Legislature and made applicable to textile industry. As the legislation was on the same subject in the Concurrent List, provisions of Article 254(2) had to come into operation and therefore the State Law being repugnant to the provisions of the Central Act, holds the field. Now, the provisions of Article 254 of the Constitution on which reliance is placed are to the following effect :

> "(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State :
> Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

It is pointed out that the C. P. and Berar Industrial Disputes Settlement Act was reserved for the assent of the Governor-General and his assent was given on 23rd May 1947 and that assent was first published in the C. P. and Berar Gazette of 2nd June 1947. Provisions identical to Article 254 of the Constitution in most respects are to be found in Section 107 of the Government of India Act, 1935. Under Section 107(1) if any provision of a Provincial law is repugnant to any provision of the Dominion Law which the Dominion Legislature is competent to enact with respect to one of the many matters enumerated in the Concurrent List, then the Dominion Law is to prevail whether passed before or after the Provincial Law. To this main provision an exception is carved out in sub-section (2). That exception is that where a Provincial law with respect to one of the matters enumerated in the Concurrent List, contains any provision repugnant to the

provisions of the earlier Dominion law, and if such Provincial law has been reserved for consideration by the Governor-General and received assent of the Governor-General then the Provincial law prevails in that province. But even this exception can be made nugatory if there is a further legislation with respect to the same matter by the Dominion Legislature.

12. Under Article 254 of the Constitution, powers of the Parliament to make law overriding the provisions of a State law which would otherwise prevail under clause (2) of Article 254 are slightly larger than they were under Section 107(2). of the Government of India Act. Under the proviso added to Article 254(2) it is provided that nothing in clause (2) of Article 254 shall prevent the Parliament from enacting any law at any time with respect to the same matter, and further the Parliament has been given the power of adding to, amending, varying or repealing the law made by the Legislature of the State on the same subject.

13. Mr. Bobde's contention is that the C. P. and Berar Industrial Disputes Settlement Act is a complete Code in respect of settlement of industrial disputes and includes specified rights of an individual worker to ventilate his grievance. By reference to Section 25J of Chapter VA of the Central Act it is contended that the effect of the provisions of sub-section (2) of Section 25J is to incorporate all the provisions of Chapter VA into any State legislation with respect to industrial disputes. According to him, one must read all the provisions of Chapter VA into the C. P. and Berar Industrial Disputes Settlement Act, 1947, as if they form a substantive part of State legislation. According to him, that is the effect of Section 25J (2) in Chapter VA. By adopting this construction of the effect of Section 25J of Chapter VA of the Central Act the petitioners contend that the new rights created by Chapter VA have been as if incorporated in the C. P. and Berar Industrial Disputes Settlement Act and a worker having any claim in respect of lay-off or retrenchment compensation, can raise an industrial dispute. It is admitted that an individual worker cannot raise an industrial dispute in respect of his individual grievance, so far as his claim for lay-off compensation or retrenchment compensation is concerned. The right given to an individual worker under the C. P. and Berar Industrial Disputes Settlement Act is limited to relief for a specified grievance, namely, his dismissal, discharge, removal or suspension in contravention of the provisions of that Act or standing orders sanctioned under that Act. In view of this difficulty it is argued that there is nothing to prevent either the representative of the employees or a recognized union to raise an industrial dispute in respect of the claim of lay-off compensation payable to a single worker before the authorities created under the C. P. and Berar Industrial Disputes Settlement Act. During the arguments it was not made clear by what procedure such a dispute could be raised even by a recognized union or a representative of the employees except perhaps by a notice under Section 32 of the C. P. and Berar Act. Under that section a representative of the employee desiring a change in any standing order or in respect of other industrial matter, is entitled to give 14 days notice in the prescribed manner for making a claim. By reference to this section it is urged that the definition of the word "industrial matter" in the C. P. and Berar Act was wide enough to include the claim of individual worker for lay-off compensation. In our opinion, it is difficult to construe Section 32 as giving any such right. But

in any case such a right is available to a recognized union or a representative of the employees and not to an individual worker. This lacuna in the State Act will have a bearing in considering whether the Central Legislation and the State Legislation are really in respect of the same matter or operate in the same field.

14. Now, it is not disputed that under the Central Act if provisions of Section 33C are applicable to the claim in respect of any benefit, then an individual employee or workman will be entitled to make an application. Section 33C(1) provides the machinery for recovery of money due to a workman either by a settlement or by an award or under the provisions of chapter VA. Thus, any money due to a workman as lay-off compensation can be recovered by the workman making an application to the appropriate Government. There is no such provision as shown above in the State legislation.

15. We have also found it difficult to accept the contention on behalf of the petitioners that Section 25J(2) of the Central Act has the effect of transposing the provisions of Chapter VA into the State Acts relating to industrial disputes. The difficulty of accepting this construction would be obvious when it is found that the definition of "workman" under the Central Act is considerably wider than corresponding definition of an employee given in the C. P. and Berar Act. Moreover, such an artificial construction is bound to lead to other difficulties in the application of the provisions of Chapter VA. What is contended by Mr. Bobde is that only the provisions of Chapter VA must be taken to have been incorporated in the State Act and not other provisions of the Central Act. It is difficult to see how, without having recourse to the definition of 'lay-off' or 'workman' given in Section 2(kkk) or Section 2(5) of the Central Act, it will be possible in a given case to decide whether there has or has not been a lay-off. If rights are to be worked out according to the provisions of Chapter VA and if Chapter VA has to have overriding effect as stated in Section 25J, then other provisions of the Central Act, to which reference must necessarily be made for interpretation of Chapter VA, must also be deemed to be incorporated in the State Act : In our opinion, there is no principle of construction of statutes which would enable us to adopt this mode of interpretation. On the other hand, it must be held that the overriding effect of the provisions of Chapter VA which creates special rights in respect of an individual workman must be given effect to independently of any State legislation. We therefore rejected the contention of the petitioners that Chapter VA of the Central Act should be deemed to have been incorporated in the C. P. and Berar Act.

16. Once it is found that the provisions of Chapter VA cannot be taken to have been grafted on the State legislation, Mr. Bobde's contention based on Article 254 of the Constitution or on Section 107 of the Government of India Act, must fail.

17. In *State v. Zaverbhai*[1], on a difference of opinion between Mr. Justice Bavdekar and Mr. Justice Chainani (as he then was) the matter came up before Chief Justice Mr. Chagla. The learned Chief Justice agreed with Chainani J. and observed in his opinion as follows at page 382

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> "In my opinion it is correct that as far as our Constitution is concerned, the doctrine of occupied field cannot be applied. If that doctrine means that if Parliament legislates on a particular subject and thereby occupies the field, the State Legislature is completely debarred from legislating on the same subject. The very fact that a particular subject is in the Concurrent List means that both Parliament and the State Legislature are entitled to legislate with regard to that subject. Therefore. Parliament cannot exclude or oust the State Legislature merely legislating on any particular subject. Our Constitution clearly recognises the right of both Parliament and the State Legislature to legislate concurrently with regard to a subject mentioned in the Concurrent List, and therefore the doctrine of repugnancy we must apply here is not so stringent as would be applied in other countries where the constitutional position is different. In my opinion the repugnancy that has got to be found is the repugnancy in the actual provisions of the two laws and not with regard to the subject-matter of the two laws. Therefore the proper test is what was suggested by Sulaiman J. viz., whether effect can be given to the provisions of both the laws or whether both the laws can stand together. If effect cannot be given to both the laws and both the laws cannot stand together, then thy law made by Parliament must prevail as against the law made by the State Legislature."

[1] AIR 1953 Bom371

In that case it was found that the Parliament had made a later law which paled into inactivity the earlier provision of the State law. This decision of the Bombay High Court was examined by the Supreme Court in *Zaverbhai Amaida v. State of Bombay*[2] At page 807 (of SCR) : (at p. 757 of AIR) we find the following observations :

> "If the later legislation deals not with the matters which formed the subject of the earlier legislation but with other and distinct matters though of a cognate and allied character, then Article 254(2) will have no application. The principle embodied in Section 107(2) and Article 254(2) is that when there is legislation covering the same ground both by the Centre and by the Province, both of them being competent to enact the same, the law of the Centre should prevail over that of the State."

18. Applying the principles of this decision to the instant case, there is no doubt in our mind that Chapter VA incorporated in the Central Act in 1953 is a law with respect to other and distinct matters not covered by any provisions of the C. P. and Berar Industrial Disputes Settlement Act. It is urged on behalf of the petitioners that the topic of legislation is industrial disputes and settlement of industrial disputes in both the Acts. It is therefore urged that whether one kind of right or another is created will not be a matter for distinction in considering whether the legislation is with respect to other and distinct matters. In our opinion, this contention is not well founded. Even with regard to this aspect of the matter, namely, the content, object and vision of the Central Act and the C. P. and Berar Act, their Lordships of the Supreme Court had occasion

to pronounce. In *C. P. Transport Service Ltd. v. Raghunath*[3], at p. 109 it is observed in paragraph 10 that even though the two enactments are pieces of what is termed Labor legislation, their objects and their vision are different, Mr. Bobde relied on the observations in the judgment of their Lordships of the Supreme Court in *Deep Chand v. State of U.P*[4]., at pp. 664 and 665. In paragraph 29 the three tests of inconsistency or repugnancy referred to by Nicholas in his book of Australian Constitution are referred. They are :

> (1) There may be inconsistency in the actual terms of the competing statutes;
> (2) Though there may be no direct conflict, the State law is intended to be a complete exhaustive code; and
> (3) Even in the absence of intention, a conflict may arise when both State and the Centre seek to exercise their power over the same subject-matter. It is then observed that the Supreme Court in *Tika Ramji v. State of Uttar Pradesh*[5], accepted the same rules as useful guides to test the question of repugnancy. In our opinion, in the instant case no occasion arises for applying the second test, namely, complete occupation of identical field by the State Act inasmuch as we have come to the conclusion that there is no State legislation with regard to individual right of a workman to claim a lay-off and retrenchment compensation. We have already rejected Mr. Bobde's contention that the provisions of Chapter VA should be deemed to be incorporated in the State Act, and even then an individual workman must be left to have his rights worked out through an industrial dispute to be raised by a recognized union or a

[2](1955) 1 SCR 799: AIR 1954 SC 752 [4] AIR 1959 SC 648
[3] AIR 1957 SC 104 [5]1956 SCR 393; AIR 1956 SC 676

> representative of the employees by a notice under Section 32. It is not possible to accept this construction of the provisions of the State Act or of the Central Act which to our mind is not only labored but untenable taking into consideration the scheme of the two Acts.

19. There is another aspect of the question. It may be possible for the petitioner to argue that so far as industrial disputes are concerned, as soon as the C. P. and Berar Act was made applicable to the textile industry with regard to those provisions, namely, constituting a tribunal for settlement of industrial disputes within the meaning of Section 2(k) and Section 10 of the Central Act, it was no longer possible for an employee in the textile industry to have recourse to the Central Act from 1st March 1951. But it is pointed out on behalf of the respondents that the addition of Chapter VA to the Central Act in 1953 has the effect of the Parliament enacting a law on the same matter at a later date. In fact, it would appear from the facts in Zaverbhai's case which was the subject-matter of the decision in 1955-1 SCR 799 : AIR 1954 Supreme Court 752 (supra), that the contention which was accepted in the High Court and Supreme Court was that the later amendment, made to the Essential Supplies (Temporary Powers) Act (Act XXIV of 1946) by substituting Section 7 regarding punishment, superseded or made void the provisions of the Bombay Act 36 of 1947 regarding the maximum punishment. On parity of reasoning, therefore, it is contended on behalf of the respondent that by the addition of Chapter VA to the

Central Act the Parliament has made a new law on a subject in the Concurrent List under item 22 and therefore that being a later law the provisions of earlier law, namely, the C. P. and Berar Industrial Disputes Settlement Act so far as this region is concerned cannot prevail. We find considerable substance in this contention.

20. We may at this stage notice another contention of Mr. Bobde as to the availability of the procedure of Section 33C to a workman having a claim under Chapter VA to recover his dues. The petitioners would have us exclude the operation of Section 33-C also on the same reasoning. It is not possible to accede to this contention especially because by the amending Central Act 36 of 1956, by which Section 33C with its three sub-sections was added, original Section 25-I was deleted. We shall have occasion to deal with the history of the provisions providing machinery for enforcement of rights under industrial law when we consider the other contention of Mr. Bobde. At this stage it is sufficient to notice that so far as the Central Act is concerned there is no other section providing the machinery except Section 33C to work out the rights of the individual workman or what is due to him under a settlement or an award or under the provisions of chapter VA of the Central Act. That being the admitted position, we have no doubt that all the provisions of the Act apply to a workman in Vidarbha region as well so far as his rights under the Act are concerned.

21. It is also possible to meet the objections of the petitioners from another angle. Even assuming that the petitioners are right in contending that with the application of the provisions of the C. P. and Berar Industrial Disputes Settlement Act to textile industry from 1st of March 1951, identical provisions with respect to the same matter in the Central Act became repugnant and void under clause (2) of Article 254 of the Constitution, it cannot be reasonably contended that the effect of so applying the provisions of the State Act to textile industry was to make the provisions of the Central Act nugatory or that the Central Act was wiped off from the statute so far as this region is concerned. Article) 13(1) of the Constitution also uses similar words, providing that all laws in force in the territory of India immediately before the commencement of the Constitution in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

22. Now, what is meant by "void" in such context is considered in some decisions of the Supreme Court. In *Bhikaji Narain Dhakras v. The State of Madhya Pradesh*[6], it is pointed out that the true effect of Article 13(1) is to render an Act Which is inconsistent with a fundamental right, inoperative to the extent of the inconsistency; it is overshadowed by the fundamental right and remains dormant but is not dead. This principle is sometimes described as a doctrine of eclipse of earlier law by later law. The majority view of their Lordships of the Supreme Court in AIR 1959 Supreme Court 648 is stated as under at pp. 652-653 :

> "A post-Constitution law may infringe either a fundamental right conferred on citizens only or a fundamental right conferred on any person, citizen or non-citizen. In the first

case the law will not stand in the way of the exercise by the citizens of that fundamental right and, therefore, will not have any operation on the rights of the citizens, but it will be quite effective as regards non-citizens. In such a case the fundamental right will, qua the citizens, throw a shadow on the law which will nevertheless be on the Statute Book as a valid law binding on non-citizens and if that shadow is removed by a constitutional amendment, the law will immediately be applicable even to the citizens without being re-enacted. The decision in *John M. Wilkerson v. Charles A. Rahrer*[7] cited by our learned Brother is squarely in point. In other words the doctrine of eclipse as explained by this Court in *Bhikaji Narain Dhakras v. State of Madhya Pradesh*[8], also applies to a post-Constitution law of this kind." Thus, after the amendment effected in 1953 by addition of Chapter VA. Central Act, which was in shadow, came out and began to operate with full force and vigour in respect of rights under Chapter VA.

23. If the test laid down in AIR 1959 Supreme Court 648 is applied to the instant case, it can be said that with the application of the State Act to the textile industry in 1951 the Central Act may be said to have been put into shadow, but the moment a new Chapter creating new rights was added as Chapter VA in the Central Act in 1953, which is a later law, what was dormant with respect to the subject-matter covered by the State Legislation became alive and fully efficacious so far as the rights created by the new amendment and cognate matters were concerned. It revived the Act and made the Central Act wholly applicable in respect of the rights conferred by Chapter VA at any rate to all workmen in Vidarbha region in spite of the existence of the operation of the C. P. and Berar Industrial Disputes Settlement Act, 1947, in this region. We therefore hold that the provisions of the Central Industrial Disputes Act, 1947, are available to the respondents workers and that there is no repugnancy between any provisions of the C. P. and Berar Industrial Disputes Settlement Act and the Industrial Disputes Act, 1947, as amended by Parliament so far as the questions raised in the application of the workers are concerned.

24. The petitioners invited our attention to a decision of the Supreme Court in

[6]1955-2 SCR 589 : AIR 1955 SC 781

[7](1891) 140 US 545 : 35 Law Ed 572

[8]1955-2 SCR 589 : AIR 1955 SC 781

*Newspapers Ltd. v. State Industrial Tribunal, U. P*[9]*.,* in which it is held that so far as the Central Act is concerned, the grievance of a single individual is not within the ambit of "industrial dispute" as defined in Section 2 (k) of the Central Act and no reference can be made under Section 10 in respect of such industrial dispute by the Government. It is undoubtedly true that so far as machinery for settlement of industrial disputes is concerned, the rights and obligations in respect of an industrial dispute can only mean a collective dispute i.e. a dispute in which more than one worker are interested, or a dispute even though regarding the grievance of a single individual is adopted as a cause of industrial dispute by the union or representative of the employees, raising it to the status of a collective dispute. But we do not think, and it could not be seriously contended, that the rights and obligations created under Chapter VA of the Industrial Disputes Act, 1947 can only be worked out as a collective dispute. As far as we can see, every individual workman is entitled to a lay-off compensation or retrenchment compensation. For

availing the provisions of Chapter VA, a workman is not required to depend for enforcement of his rights under that Chapter on the will of the union or to make it a collective dispute before he can get relief. In our opinion, the reference in Section 25-J (1) to any other law including the orders made under the Industrial Employment Standing Order Act, 1946, clearly show that even though either legislation of the State or of the Centre may create rights and create machinery for their enforcement in favor of an individual worker, the rights created by Chapter VA have to be worked out according to the provisions of that Chapter and those rights are the rights of each and every individual workman. We therefore do not think that the fact that an industrial dispute contemplated under the Central Act has to be a collective dispute is an impediment in a workman enforcing his individual rights created under Chapter VA by the machinery provided by the Act.

25. One more argument was pressed on us, based on the provisions of sub-section (2) of Section 25-J. It was contended that the rights and liabilities of employers and workmen in so far as they relate to a lay-off are determined in accordance with the provisions of this Chapter. There is no provision in any of the sections of Chapter VA, after Section 25-I was deleted there from, which provides for the forum or prescribes the powers and jurisdiction of any authority which will work out or determine the rights and liabilities of employers and workmen in respect of lay-off and retrenchment. It is therefore contended that Chapter VA alone being made applicable to all workmen wherever they may be, and there being no machinery provided in Chapter VA, creating either a forum or authority to adjudicate in respect of these rights and liabilities, the provisions of the Chapter are incomplete by themselves unless recourse is had to a State Act for enforcement of the rights. This contention is not well founded. We have already held that it is not only Chapter VA which is applicable to a workman after its addition, but all the provisions of the Act are available including Section 33-C which is a specific provision creating machinery for recovery of benefits available to a workman. Section 33-C cannot be read in isolation. In fact, the Act which added Section 33-C to the Central Act i.e. Central Act 36 of 1956, itself deleted Section 25-I from the principal Act. It would therefore be clear from this that whereas prior to addition of Section 33-C some kind of machinery was provided by Section 25-I, after the omission of that section and addition of new Section 33-C in the Act the Legislature has taken care to see that the rights and liabilities which are created under Chapter VA are duly enforced even at the instance of an individual

[9] AIR 1957 SC 532

workman by making use of the machinery under Section 33-C.

26. Mr. Bobde also invited our attention to the following decisions in support of his interpretation that it is the State Act and not the Central Act which should hold the field. *Stewart v. Brojendra Kishore*[10]*, Nagalinga Nadar Sons v. A. T. H. L. C. Worker's Union*[11]*,* and *Ayyaswami Nadar v. Joseph*[12]*,* These precedents are of no assistance to the petitioner inasmuch as we have rejected the contention of the petitioners that there is any repugnancy between the provisions of the State Act and the Central Act in the absence of any provision for lay-off and retrenchment

compensation in the State legislation.

27. Now, this takes us to the second point urged by the petitioners namely the powers and jurisdiction of the Labor Court to adjudicate on the merits of the claim in the instant case. In this connection it is to be observed that the Industrial Disputes Act, 1947, until it was amended in 1953 and 1956, did not provide any machinery or did not constitute any forum for enforcement of individual right of a workman, or to give assistance for recovery of any amount due to a workman on account of any benefits. For comparison we may refer to the provisions of Section 16 of the C. P. and Berar Industrial Disputes Settlement Act, 1947, which not only created a right in favour of an individual workman against dismissal, discharge, removal or termination of service contrary to the Act or Standing Orders, but also provides a complete machinery for adjudication of a claim made by an individual workman if he were so dealt with by the employer. The section also provides for determination of an amount of back wages or compensation due and its recovery as an arrear of land revenue.

28. The Central Legislature passed an Act called "The Industrial Disputes (Appellate Tribunal) Act" (Act 48 of 1950) which came into force on 23rd May 1950. Section 20 of that Act was in the following terms :

> "20. Recovery of money due from an employs under an award or decision. (1) Any money due from an employer under any award or decision of an industrial tribunal may be recovered as arrears of land revenue or as a public demand by the appropriate Government on an application made to it by the person entitled to the money under that award or decision.
> (2) Where any workman is entitled to receive from the employer any benefit under an award or decision, of an industrial tribunal which is capable of being computed in terms of money, the amount at which, such benefit should be computed may, subject to the rules made under this Act, be determined, by that industrial tribunal, and the amount so determined may be recovered as provided for in Sub-Section (1).
> (3) For the purpose of computing the money value of a benefit, the industrial tribunal may, if it, so thinks fit, appoint a commissioner, who shall, after taking such evidence as may be necessary, submit a report to the industrial tribunal, and the said tribunal shall determine the amount after considering the report of the commissioner and other circumstances of the case."

[10] AIR 1939 Cal 628 [12] AIR 1952 Tranvancore Cochin 371
[11] AIR 1951 Tranvancore Cochin 203

The Supreme Court had to deal with the question of ambit of jurisdiction of the authority entertaining a claim for recovery of money under Section 20 (2) in the case of *S. S. Shetty v. Bharat Nidhi, Ltd*[13]*.,* It is observed as follows :

> "The purpose of the enactment of Section 20 (2) of the Act is not to award to the workman compensation or damage for a breach, of contract or at breach of a statutory

obligation on the part of the employer. Any money which is due from an employer under the award can by virtue of the provision of Section 20 (1) of the Act be recovered by the appropriate Government on an application made to it by the workman. Where however any benefit which is not expressed in terms of money is awarded to the workman under the terms of the award it will be necessary to compute in terms of money the value of that benefit before the workman can ask the appropriate Government to help him in such recovery. Section 20 Sub-Section (2) provides for the computation in terms of money of the value of such benefit and the amount at which such benefit should be computed is to be determined by the Industrial Tribunal to which reference would be made by the appropriate Government for the purpose. Such computation has relation only to the date from which the reinstatement of the workman has been ordered under the terms of the award and would have to be made by the industrial Tribunal having regard to all the circumstances of the case. The Industrial Tribunal would have to take into account the terms and Conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by Industrial Tribunals in the event of industrial disputes arising between the parties in the future."

29. Mr. Bobde also invited our attention to a decision of the Calcutta High Court in *R. F. Co-operative Society v. Fourth Industrial Tribunal*[14], In that case that view was laken that computing a benefit in terms of money a not construction of a previous award so as to give it a meaning that the award should have retrospective effect and not prospective effect. It was held that the Tribunal must take the award as it is and proceed to translate the benefit there under in terms of money and do nothing to enlarge or restrict the nature and scope of the Award. Under sub-section (2) of Section 20 of the Act the Tribunal could only evaluate the award in terms of money and could do no more. Mr. Bobde has also relied upon the interpretation put on the ambit of enquiry under Section 25-I in Chapter V-A of the Central Act in certain other decisions. He has invited our attention to *Behariji Mills Ltd. v. State of Bihar*[15], It was held in that case that the right of the Government to order recovery of the amount from an employer springs into existence only when there is an ascertainment of the liability of the employer by a competent authority. The State Government has no power to make an enquiry into the liability to pay compensation under Section 25F if there was a dispute between the employer and the workman whether there was retrenchment or not. There was no such machinery provided in the Act under Section 25-I.

[13]1858 SCR 442 at p. 436 : ( AIR 1958 SC 12. at p. 17)
[14] AIR 1959 Cal 349
[15] AIR 1957 Pat 488

30. In our opinion, the interpretation put on Section 25-I of the Industrial Disputes Act, 1947, or Section 20(1) of the Industrial Disputes (Appellate Tribunal) Act of 1950 will not be

assistance in determining the ambit of jurisdiction of the authority created under Section 33C(2). The history of legislation already noticed shows that so far as the Central Act is concerned, there is a progressive enlargement of remedies being made available for enforcement of the rights of individual workman under each amendment. The Central Act 43 of 1953 amended certain provisions of the Industrial Disputes Act, 1947. It is this Act which introduced Chapter VA in the Central Legislation. This was the first attempt made by amendment of the Central Act to provide machinery of a limited character for recoveries of moneys due from the employers in respect of claim under Chapter VA and that provision is to be found in the original Section 25-I of Chapter V introduced under the Act. The next step was deletion of Section 25-I and introduction of Section 33-C in the Central Act. It appears that for some time twofold remedies may have been available to an individual workman, to recover his dues or have benefits to which he was entitled computable in terms of money adjudicated and paid under Section 25-I of the Central Act and also under Section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950. This latter Act was, however, repealed on 28-9-1956 and this has resulted in the provisions of Section 33C of the Central Act alone being on the statute book so far as Parliament is concerned for adjudication and recovery of benefits available to an individual worker, in certain cases.

31. Now, Mr. Bobde's contention objecting to the jurisdiction of the Labor Court to adjudicate on merits of the claim for a benefit by an individual worker is founded on the contention that the Labor Court cannot claim greater powers under sub-section (2) than those exercisable by such Court under sub-section (1) of Section 33C. It is urged that under Section 33C(1) what can be recovered by Government by coercive process is only an ascertained sum of money. Until it is ascertained how much money is due by previous adjudication by a competent tribunal whether under a settlement or award or under the provisions of Chapter VA. there is no power in the Government or its delegate to order recovery of any amount as the money due to a worker. In our opinion, this contention is well founded so far as the ambit of jurisdiction of the authority empowered to recover any amount due to a workman under Section 33C(1) is concerned. Mr. Bobde has invited our attention in this respect to the decision of the Madhya Pradesh High Court reported in *Bengal Nagpur Cotton Mills Ltd. v. State of M.P*[16]*.,* In that case it has been held that an amount due means an amount which has been ascertained and has become payable. Section 33C(1) therefore deals with a 'recovery of the amount which has already been ascertained and not ascertainment of the amount payable to an employee.

32. When we come to Section 33C(2), however, the words of that sub-section do not appear to bear any analogy to the words of sub-section (1). In order to accept the contention of Mr. Bobde that the jurisdiction of the Court in terms empowered under sub-section (2) to determine the amount at which any benefit, capable of being computed in terms of money, accrued, we must restrict the computation merely to conversion of the benefit into money or its quantification. Though it is undoubtedly true that every quantification is in terms of money, in our opinion, it is not permissible so narrowly to

[16]1960-2 Lab LJ 551 : AIR 1960 Mad Prad 319

construe the sub-section which provides determination by a Labor Court when the next sub-section permits appointment of a commissioner to take evidence and submit a report to the Labor Court, and then requires the Labor Court to determine the amount after taking the report of the commissioner and other circumstances into consideration. In the instant case the petitioner Mills have joined issues at the very threshold. The Mills say that there was no lay-off within the meaning of Chapter VA, that if there was any stoppage of work it was wholly due to the intransigent and hostile attitude taken by the laborers, that individual laborers did not put in 1 year's service within the meaning of the law, and that therefore the application is not tenable at all. Thus, what in effect is contended is that the claim itself is not tenable and the claim not being tenable the Labor Court had no jurisdiction to adjudicate on the tenability of the claim or the merits of the claim. Thus, the question that falls for our consideration is whether the ambit of powers given to the Labor Court under sub-sections (2) and (3) of Section 33C is so narrow and limited as to oust its jurisdiction to decide whether the claimant is a workman at all within the meaning of the Act or whether he has established conditions which are to be satisfied in order that the title to the benefit may arise. In all these cases the benefit claimed by the worker is lay-off compensation. The petitioners say that there is no lay-off and there the matter ends. The question is whether jurisdiction of a tribunal can be ousted merely because the opponents deny the very existence of facts or circumstances which would give jurisdiction to that Court.

33. There is no doubt that there is some divergence of judicial opinion as to the ambit of jurisdiction of the Labor Court under sub-sections (2) and (3) of Section 33C of the Act. Mr. Bobde has invited our attention to a decision of the Madras High Court in *Deniel Dorairai v. Buckingham and Carnatic Co Ltd*[17]*.,* In that case the claim was founded on an award made under the provisions of the Indian Arbitration Act. The Court held that the words "any benefit" in sub-section (2) of Section 33C of the Act means only that which flows from a settlement or an award or under the provisions of Chapter VA of the Industrial Disputes Act. In our opinion, so far as the present dispute is concerned, this case does not come in the way of the workers getting any benefit.

34. The next decision on which Mr. Bobde relies is another decision of the same High Court by the same learned Judge, reported in *Lakshmi Mills Co. Ltd. v. Labor Court, Coimbatore*[18]*,* The view taken in that case by Mr. Justice Veeraswami no doubt supports the contention of the petitioners. In that case there was an award fixing different scales of wages for workers among whom respondent No. 2 was working as a fitter. He applied for benefit under Section 33C(2) of the Act. The employer opposed the application and contended that the respondent was working only as a fitter helper. It was held that where the award between the parties fixed the scale of wages for a fitter without laying down or describing the duties and nature of work of a fitter, a workman could not invite the Labor Court to decide the question whether he is performing the duties of a fitter and as such entitled to the benefit of the scale of wages of a fitter, in an application under Section 33C(2) of the Act, where the nature of the work done by him was in dispute. According to the learned Judge the question whether the claimant was a fitter or fitter-

helper not having been raised as a dispute did not form part of a prior award. According to this view that question could not be regarded as ancillary or incidental question. In our

[17]1962-1 Lab LJ 91 : (AIR 1962 Mad 212)

[18]1962 1 Lab LJ 493 : (AIR 1962 Mad 335)

opinion, there are indications as to the principle of interpretation of Section 33C(2) at least in two decisions of the Supreme Court and decisions of this Court and other decisions of the Madras High Court, which lead us to the contrary conclusion.

35. The matter came up before the Supreme Court, though indirectly, in Kasturi and Sons a Salivateswaran, 1958-1 Lab LJ 527 : AIR 1958 Supreme Court 507. In that case an application was made under Section 17 of the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, and the question was whether the State Government of the authority specified by it under Section 37 of the Act had jurisdiction to examine and decide the merits of the claim preferred under Section 17 of the Act. Their Lordships compared the provisions of Section 17 with the provisions of Section 33C(f) of the Industrial Disputes Act, 1947. Their Lord ships observed that the provisions of Section 17 of Working Journalists Act, which were analogous to sub-section (1) of Section 33C of the Industrial Disputes Act, 1947, show that the enquiry contemplated by Section 17 is a summary enquiry of a very limited nature as to what amount is actually due to be paid to the employee under the decree or other valid order after establishing, his claim in that behalf. In emphasizing the limited scope of the enquiry both under Section 17 of that Act and under Section 33C(1) of the Industrial Disputes Act, 1947, their Lordships compared the provisions of the two sub-sections of Section 33C and as a result of this comparison the following observations were made at p. 531 (of Lab LJ) : (at p. 516 of AIR) :

> "In this connection, we may also refer to the provisions of Section 33C of the Industrial Disputes Act 14 of 1947. Sub-section (1) of Section 33C has been added by Act 36 of 1956 and is modeled on the provisions of Section 17 of the present Act. Section 33C, sub-section (2), however, is more relevant for our purpose. Under Section 33C, sub-s.(2) where any workman as entitled to receive from his employer any benefit which is capable of being computed in terms of money, the amount at which such benefit may be computed may, subject to any rules made under this Act, be determined by such Labor Court as may be specified in this behalf by the appropriate Government, and the amount so determined should be recovered as provided in sub-section (1). Then follows Sub-Section (3) which provides for an enquiry by the Labor Court into the question of computing the money value of the benefit in question. The Labor Court is empowered under this sub-section to appoint a commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labor Court, and the Labor Court shall determine the amount after considering the report of the commissioner and other circumstances of the case. These provisions indicate that, where an employee makes a claim for some money by virtue of the benefit to which he is entitled, an enquiry 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."

In our opinion, this is a clear pronouncement for the proposition that these provisions indicate that where an employee makes a claim for some money by virtue of the benefit, to which he claims title, an enquiry into the merits of claim by the Labor Court is contemplated and not mere computation. The respondents have also relied on another decision of the Supreme Court reported in *Punjab National Bank. Ltd. v. Kharbanda*[19], In

[19]1962-1 Lab LJ 234 : AIR 1963 SC 487

that case even though the principal question canvassed was regarding interpretation of the provisions of sub-section (2) of Section 33C as computing monetary as well as non-monetary benefits, the actual dispute related to the category in which the workman making the claim fell. The nature of this dispute is pin-pointed at p. 237 (of Lab LJ) : (at p. 489 of AIR) where it is observed as follows :

> "The respondent was appointed on the initial basic salary of Rs. 120 per mensem. The dispute between the parties is that the respondent claims that his basic salary should be fixed under Para. 292(7) according to the supervisors' scale for the purposes of the proviso while the appellant claims that it can only be fixed at the highest on the scale for graduate clerks, and the appellant fixed the respondent's pay on that basis, and that led to the respondent's making the present application under Section 33C(2) of the Act....."

Thus, one of the questions which fell for consideration before the Labor Court was whether the claimant was in one category or the other according to the award, and that question was found to be within the ambit of the powers of adjudication by the Labor Court.

36. It appears that even in the Madras High Court a view of the law favourable to the view canvassed by the respondents has been taken, in *South Arcot Electricity Distribution Co. Ltd. v. Elumalai*[20], in a dispute between the South Arcot Electricity Distribution Company and one of its workers. Mr. Justice Balakrishna Ayyar, J. held that Section 33C(2) covers monetary benefits which require computation or determination; that the provisions of sub-section (3) of Section 33C does not suggest that the section is limited to non-monetary benefits; and that the line of division between sub-sections (1) and (2) of Section 33C would be analogous to that between execution proceedings and trial proceedings. The learned Judge further observed that it could not be contended that the use of the word "entitled" in Section 33C(2) related to the stage when the title of the workman to receive the money has been already established, and that where there is a controversy about the claim of the workman, some competent authority must have previously decided that his claim is good, and that it is only thereafter that the Labor Court can proceed to determine how much the amount due is. One purpose of the Industrial Disputes Act is to set up a complete machinery which would expeditiously dispose of the disputes between the employers and the workmen. We respectfully agree with this interpretation of the provisions of Section 33C, sub-sections (2) and (3).

37. The same view has been taken by Mr. Justice Rajagopala Ayyangar in the Madras High Court in *Railway Employees' Co-operative Bank, Ltd. v. Labor Court, Madras*[21], In that case the claim was founded on a right to compensation acquired under the Madras Shops and Establishments Act. That Act also provided for machinery for adjudication of disputes under the Shops Act. The proceedings before the Labor Court were sought to be prohibited by an appropriate writ on the ground that the ambit of enquiry under Section 33C must be confined to an 'award or settlement or a claim under Chapter VA of the Industrial Disputes Act, and cannot include adjudication regarding a benefit under some other law. This contention was repelled, and it was observed at P. 348 (of Lab LJ) : (at p.

[20]1959-1 Lkb LJ 624 : AIR 1959 Mad 401

[21]1960-1 Lab LJ 345 : AIR 1960 Mad 345

347 of AIR) as follows :

> ".....I hold that the jurisdiction of a tribunal for of the Labor Court under Section 33C(2) extends to the computation in terms of money not merely of all benefits; which workmen are entitled to receive from the employer under a settlement or award under the Industrial Disputes Act but also any benefit to which they might be entitled in their character as workmen under contract or by virtue of any other enactment."

We are referring to this decision not with a view finally to determine the ambit of subject-matters which may be within the jurisdiction of the Labor Court but only to show that this view does not restrict the jurisdiction of the Labor Court under Section 33C(2) and (3) to merely a monetary computation of a liability which is already admitted and not disputed. We are not called upon in this case to decide whether the jurisdiction of the Labor Court under Section 33C(2) also embraces benefits under other laws or even under a contract between an employee and his employer. We are concerned here with the claim to lay-off compensation claimable under Chapter VA of the Central Act, and we are clear in our minds that so far as the claims under the Act are concerned, the jurisdiction of the Labor Court is not restricted. In this Court the matter came up before a Division Bench in the case reported in *Shree Amarsinhji Mills. Ltd. v. Nagrashna*[22], A reference was made to the decision of the Madras High Court in South Arcot Electricity Distribution Company's case, 1959-1 Lab LJ 624 : AIR 1959 Madras 401. This Court observed at page 583 as follows :

> "We should have set out those observations and discussed the reasons which found favour with Mr. Justice Balakrishna Ayyar in some detail but we do not think it is necessary to do so, since we prefer to found our judgment not on any argument based on analogy but by reading the Sub-section (2) of Section 33C for ourselves, and, as we have already observed, the expression 'benefit' is one of wide import and connotation."

It was also observed that one thing is certainly very clear that there is nothing in the language of sub-section (1) which in any manner controls or affects the ambit and operation of sub-section (2). Further, this Court observed (at pp. 582-583) as follows :

"......we have to see what is the meaning that can be attributed to the material language of Sub-section (2) relating to a claim in respect of any benefit which is capable of being computed in terms of money. To accede to the argument of learned Counsel, it seems to us, would be to give a very limited and rigid construction to the expression 'any benefit'. This expression 'benefit' is of amplitude and one of wide import. Under modern concept of industrial relations, numerous benefits are conferred upon and recognized in favour of the workmen and this, at times, apart from any principles of social justice. It would be impossible to enunciate or catalogue what those benefits will be, and we do not think any attempt has been made by any Court or would be made to do so. One other consideration which must weigh with the Court is that in interpreting this sub-section, it must bear in mind the object of the legislation and the scheme of the

[22]1961-1 Lab LJ 581 (Bom)

enactment. If the object of the legislation and the scheme of the Act is to be regarded as important consideration, there is every reason why this sub-section (2) should be interpreted in a broad general manner and not in a restricted and cramped manner, as Mr. Gandhi asks us to do..... Considered in the light of these few observations which we have made, it seems to us that the words 'any benefit which is capable of being computed in terms of money' would certainly include a claim for compensation by a workman who is laid off. That it is a benefit, in our opinion, is manifest. That it is capable of being computed in terms of money is equally manifest." In a still later decision of this Court reported in *Abdul Rahaman v. R. N. Kulkarni*[23], it is held that under Section 33C(2) of the Industrial Disputes Act the Labor Court has jurisdiction to entertain an application to determine the amount due to a workman under Section 25 FFF of the Act and that it is open to the Court to determine not only the monetary value of non-monetary benefits but also the actual amount due where it is alleged that certain monetary benefits are not given.

38. The respondents have also urged that liberal construction ought to be put in interpreting provisions of Chapter VA of the Industrial Disputes Act, 1947. The statute is designed to relieve hardship and in this connection our attention is invited to the decision of their Lordships of the Supreme Court in *Associated Cement Companies v. Their Workmen*[24], In paragraph 13 at page 63 it is observed that the right of workmen to lay-off compensation is obviously designed to relieve the hardship caused by unemployment due to no fault of the employee; involuntary unemployment also causes dislocation of trade and may result in general economic insecurity; therefore, the right is based on grounds of humane public policy and the statute which gives such right should be liberally construed, and when there are disqualifying provisions, the latter should be construed strictly with reference to the words used therein.

39. The respondents also contend that the provisions of the Payment of Wages Act and the ambit of jurisdiction of the Payment of Wages authority created under that Act are pari materia with the provisions now under discussion. The provisions of the Payment of Wages Act have been interpreted in considering the ambit of jurisdiction of the Payment of Wages Authority. The

respondents rely on three decisions of this Court reported in (1) *A.D. Divekar v. A. K. Shah*[25], *Valajibhai v. Chimanlal*[26], and (3) *Balkrishna v. A. S. Rangnekar*[27], In Divekar's case, 57 Bom LR 1074, it was held that retrenchment compensation payable to the employees under Section 25F(b), Industrial Disputes Act, is also remuneration payable to the employees on the termination of their services, and therefore 'wages' as defined in the Payment of Wages Act. It was further held that Section 15 of the Payment of Wages Act does not limit the jurisdiction of the Authority under the Act to entertain admitted claims arising out of deductions from wages or delay in payment of wages. In Valajibhai's case, AIR 1957 Bombay 109, it was observed that there is no warrant for holding that the jurisdiction of the Authority under Section 15 is of a summary character; it is not limited to entertaining admitted claims arising out of deductions from wages or delay in payment of wages; therefore, the fact that the employer denies liability and sets up some ground in support of the denial does not deprive the Authority of his jurisdiction

[23]63 Bom LR 994 : (AIR 1962 Bom 287) [25]57 Bom LR 1074, (2) [27] AIR 1957 Bom 288
[24] AIR 1960 SC 56 [26] AIR 1957 Bom109

to decide the claim if it is one relating to unlawful deductions or delay in payment of wages. It is to be noted that the Payment of Wages authority had to decide the question whether the establishment was governed by the Factories Act or the Bombay Shops and Establishments Act. We consider the pronouncement of this view as important inasmuch as it indicates the wide ambit of jurisdiction of the Payment of Wages Authority to determine the claims made under that Act. Similarly in Balkrishna's case, AIR 1957 Bombay 288, it is observed that the true position in law under the Payment of Wages Act is that the Payment of Wages Authority has jurisdiction to determine every question which is relevant to the determination of the amount payable to the employee, whether the dispute is as to the contractual terms or whether it is factual.

40. This question was also considered in a slightly different form in *Balaram v. M. C. Rangoliwalla*[28], The question raised there was whether the remedy of the worker under the Payment of Wages Act is barred if the same worker has also a remedy under the Minimum Wages Act. It was held that there is no such bar. This decision meets a point made by Mr. Bobde that the interpretation canvassed by the respondents will lead to multiplication of tribunals or duplication of remedies available to a workman. In our opinion, whether or not any other remedy is available to a workman to work out his rights and recover the amount claimable as a benefit, there is no doubt that the provisions of Section 33C(2) empower the Labor Court to adjudicate on the merits of the claim when the tenability of the application is disputed by the employer either because the jurisdictional facts such as a lay-off having taken place or the workman being a workman within the meaning of the Act or having put in one year's continuous service are put in issue by the contentions of the respective parties. In this connection reference may also be made to the decision of their Lordships of the Supreme Court regarding the ambit of jurisdiction of Payment of Wages Authority. In the case reported in *Ambica Mills Company Ltd. v. S. B. Bhatt*[29], the following observations are to be found at p. 8 (of Lab LJ) : (at p. 975 of AIR) :

> "It (definition, of 'wages' in Section 2(vi) ) also provided that the word 'wages' did not

include live kinds of payments specified in clauses (a) to (e). Now, if a claim is made by an employee on the ground of alleged illegal deduction or alleged delay in payment of wages, several relevant facts would fall to be considered : Is the applicant an employee of the opponent? and that refers to the subsistence of the relation between the employer and the employee. If the said fact is admitted, then the next question would be : What are the terms of employment? Is there any contract of employment in writing or is the contract oral? If that is not a point of dispute between the parties, then it would be necessary to enquire what are the terms of the admitted contract. In some cases a question may arise whether the contract which was subsisting at one time had ceased to subsist and the relationship of employer and employee had come to an end at the relevant period. In regard to an illegal deduction a question may arise whether the lockout declared by the employer is legal or illegal. In regard to contracts of service sometimes parties may be at variance and may set up rival contracts, and in such a case it may be necessary to enquire which contract was in existence at the relevant time."

[28] AIR 1961 Bom 59
[29]1961-1 Lab LJ 1 : AIR 1961 SC 970

It we are right in our view that the question of jurisdiction of authority under the Payment of Wages Act and the provisions of that Act are pari materia within the ambit of jurisdiction of the Labor Court and the provisions of Section 33-C of the Industrial Disputes Act, in our opinion, the interpretation put on the provisions of the Payment of Wages Act in this Court and in the Supreme Court would lead to the conclusion that the jurisdiction of the Labor Court under Section 33C, sub-sections (2) and (3), is wide enough to permit adjudication of all relevant and incidental questions and that the enquiry and determination are not limited to quantification of money value of an admitted claim.

41. The same result will follow if the scheme of sub-sections (2) and (3) of Section 33C and the words used therein are properly scrutinized. The first fact that strikes anyone is that the forum for adjudication is a Labor Court. The powers of the Labor Court created under Section 7 are given in sufficient detail in Section 11. The Labor Court has been invested with the same powers as are vested in the Civil Court under the Code of Civil Procedure when trying a suit in respect of enforcing attendance, compelling production of documents, issuing commissions and other matters as may be prescribed. In addition to these powers sub-section (3) empowers the Labor Court to appoint a commissioner to take evidence and submit a report. The Labor Court is then required to determine the amount after taking into consideration this report of the commissioner and 'other circumstances of the case'. In our opinion, this latter expression "other circumstances of the case" indicates that the jurisdiction and ambit of enquiry before the Labor Court are of a wider amplitude and not restricted as contended by the petitioners. It is also significant that the words "which is capable of being computed in terms of money" appearing immediately after the word "benefit" are descriptive of the benefit to which a workman is entitled and lays a claim. A workman will have to establish first his title to the benefit. He will have also to establish that he is a workman entitled to the benefit within the meaning of the Act. It was not seriously disputed

that the question whether a particular claimant is or is not a workman entitled to the benefit is not beyond the jurisdiction of the Labor Court under sub-section (2). In our opinion, it cannot also be disputed that whenever a question as to the title of the workman to any benefit is disputed by the opposite party, that question will also be required to be decided by the Labor Court. In the instant cases the petitioners have denied that there has been any layoff at all within the meaning of Chapter VA. Thus, at the very threshold of the enquiry the petitioners challenged the jurisdiction of the Court to entertain the application on the ground that there is no lay-off at all. It cannot be disputed that a Labor Court to whom a claim is made in respect of a benefit arising out of a lay-off will have no jurisdiction to give relief unless it is first established that there has been a lay-off. It is also to be established that the workman making the claim satisfies the requirements of Chapter VA and other provisions of the Act which entitle such a workman to claim lay-off compensation. We fail to see how any benefit or its monetary value can be determined unless these questions when disputed are first determined. In our opinion, it is not possible, therefore, to accept the contention of the petitioners that the only enquiry that can be made by the Labor Court is quantification of a benefit capable of being computed in terms of money and not whether or not the claimant has a right to that benefit or whether or not facts and circumstances exist which gave rise to that right. As observed by this Court in Amarsinhji's case, 1961-1 Lab LI 581 (Bom), the ambit of enquiry under sub-section (2) is of much wider amplitude than under sub-section (1) of Section 33C which is strictly limited to a recovery of a claim already adjudicated and quantified by competent authority. It is also significant to note that after the claim is so determined, the procedure for recovery available under sub-section (1) is available for recovery of the amount determined by the Labor Court for which express provision is made under sub-section (2) of Section 33C.

42. Relying on the observations in the two Madras cases which favour a wider interpretation of Section 33C, sub-sections (2) and (3), at one stage it was urged on behalf of the respondents that benefits which can form subject-matter of enquiry before a Labor Court under sub-sections (2) and (3) of Section 33C are not necessarily benefits which arise out of an award or a settlement or under the provisions of Chapter VA of the Central Act. In our opinion, we are not called upon to decide this question in these petitions, and the respondents have not pressed the argument further. As far as we can see, only those claims to benefit can be taken by a workman before the Labor Court for computation which arise under the Industrial Disputes Act. In particular, in the absence of an award or a settlement, specific rights created in favour of a workman under Chapter VA are well within the category of benefits which a workman can claim to receive under the Act if they are capable of being computed in terms of money. We therefore hold that the jurisdiction of the Labor Court in an application under Section 33C(2) covers the jurisdiction to adjudicate on every question which is necessary to be decided in order to give relief to a workman in respect of a benefit which he can claim under any of the provisions of the Central Act, and in particular, under the provisions of Chapter VA of the Act.

43. Thus, the result is that both the contentions raised by the petitioners in each of these petitions

fail. The petitions are therefore dismissed with costs in each case.
Petitions dismissed.