

Sudhindra Kumar Deb and ors. Vs. the State of Assam and ors.

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Court : Guwahati

Decided On : Jul-10-1958

Judge : Sarjoo Prosad, C.J. and G. Mehrotra, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 10 and 33; [General Clauses Act, 1897](#) - Sections 21

Appeal No. : Civil Rule No. 81 of 1958

Appellant : Sudhindra Kumar Deb and ors.

Respondent : The State of Assam and ors.

Advocate for Def. : P. Choudhuri, G.K. Talukdar and D.C. Sharma, Advs.

Advocate for Pet/Ap. : N.M. Lahiri, Adv.

Disposition : Petition allowed

Judgement :

Sarjoo Prosad, C.J.

1. This is an application for a writ of certiorari and/or mandamus for quashing the order of the Labour Court dated 26-4-1958, and for preventing the respondent, the State of Assam from taking any action under its notification dated 10-4-1958, whereby it purported to cancel a notification of an earlier date, dated 28-11-1957, under Section 33C(2) of the [Industrial Disputes Act, 1947](#) (Act No. XIV of 1947),

as amended (hereinafter called the Act).

2. It appears that the petitioner was serving as a head clerk in the Martycherra Tea Estate, which is also a respondent to this application represented by its management. For reasons to which it is not necessary to refer, he was dismissed from service by the Manager of the Tea Estate on 1-3-1955. An attempt was made to effect conciliation of the dispute, which followed the dismissal of the petitioner, between the Union to which the petitioner belonged and the Tea Estate in question

but it proved ineffective and the Government of Assam by notification dated 25-7-1955, referred the matter in dispute for adjudication to the Judge, Industrial Tribunal.

The said reference was made under Section 10(1)(c) of the Act. The Tribunal by an award dated 7-11-1956, which was published by the Government in the Assam Gazette on 5-12-1956, found that the dismissal was not justified. It was, however, of opinion that it was not in the interest of the Tea Estate to direct the reinstatement of the petitioner, but allowed the alternative relief of compensation to be paid by the management to the petitioner on account of his dismissal. The relevant portion of the said award, which has led to the present application, is as follows:

'If Deb is put back to his old post he will again be in trouble and that will disturb the peace and harmony in that Estate. The presence of Deb in Martycherra Tea Estate as Head Clerk will not at all be conducive to the well being of the Industry. Deb's position as Head Clerk will always be embarrassing to the Company and as well as to Deb. I, therefore, allow the alternative relief of compensation. Sri S.K. Deb, the ex-Head Clerk of Martycherra Tea Estate will be entitled to his back wages from the date of his dismissal till the date of payment with all allowances and other benefits that accrued to him during the period of his forced unemployment.

The Company will calculate the amount and pay to Deb within a month from the date of its publication in the Assam Gazette. He will also be entitled to all the money that stands to his credit. These two issues are also answered in favour of

the workman and the case is disposed of.'

The petitioner claims that the terms of the award were not implemented by the management of the Tea Estate and he, therefore, moved the State Government for action under Section 33C of the Act, As a result the Government by its notification dated 28-11-1957, issued under Sub-section (2) of Section 33C of the Act (as amended by Act XXXVI of 1956), authorised the Labour Court to go into the dispute between the management of the Tea Estate and the petitioner and to determine the amount payable to the workman, if not already paid according to the terms of the Award.

The Labour Court registered a miscellaneous proceeding in respect of this dispute and called upon the parties to submit their statements. The management in a counter affidavit states that it discharged its obligations within the time stated in the Award and although it made efforts to make the payment of the amount due, the petitioner avoided accepting the amount with the result that the management filed a petition on 19-12-1956 before the Tribunal who made the Award, seeking permission to deposit the amount payable to the petitioner. The management claimed that as the petitioner had been employed elsewhere with effect from 1-7-1955, the company was liable to pay the petitioner's wages only upto 30th June, 1955.

It is further stated that the Tribunal verbally directed the management to remit the calculated amount to the last known address of the petitioner, which was done by the management under a registered cover, but the cheque covering the amount was returned to the management on 10-1-1957 as the addressee could not be traced. Apparently, there is a dispute between the parties as to the amount actually payable under the Award in question, in which it is not necessary for me to enter at this stage. After the case before the Labour Court had proceeded to ascertain stage, there was the notification dated 10-4-1958 issued by the Government, which is no v in question in this application,, cancelling the previous notification. The Labour Court then on 26-4-1958 recorded the order, which is also sought to be quashed by the petitioner. The order is as follows :

'Considered letter dated 16-4-58 from the Eastern Tea Estates Ltd., and telegram dated 15-4-58 from the Union praying for stay of proceedings. Also seen copy of Union's petition to Government.

Since Government cancelled the initial order of authority, I do not see any reason as to why I should keep this matter pending.

In this view, the case is dropped and disposed of accordingly. Inform parties.'

3. The petitioner challenges the authority of the Government cancelling the previous notification after once a reference had been made to the Labour Court and he further submits that the Labour Court should not have acted upon that illegal order of cancellation and proceeded to exercise its jurisdiction to deal with the matter instead of dropping the proceedings as it purports to have done by the said order. The two questions, therefore, which arise for consideration in this case, are whether, after having made a reference under Section 33C(2) of the Act, the Government had jurisdiction to cancel the notification and thereby remove the case from the jurisdiction of the Labour Court.

In this connection, it has been further urged that the order of cancellation was made without any opportunity being given to the petitioner to be heard in the matter. If it is found that the impugned notification is without jurisdiction, it would follow that the order of the Labour Court terminating the proceedings on the authority of the said notification would equally be bad and would amount to failure to exercise jurisdiction which the Labour Court possessed in disposing of the matter according to law.

The other question, which has also been argued with great persistence by the learned counsel for the respondent, is that Sub-section 3(2) of Section 33C had no application to the case and therefore, the Government had no jurisdiction to make any such reference to the Labour Court; and when the Government realised the error, they were justified in cancelling the previous notification. These questions, therefore require to be answered.

4. It would be convenient to dispose of the second question first, because if Section 33C(2) itself had no application to the matter in dispute between the parties, then obviously the previous notification making a reference to the Labour Court was without jurisdiction, because then, in any case, the Labour Court will have no jurisdiction to determine the matter. Mr. Choudhury for the respondent Tea Estate has relied upon the terms of Sub-section 3(1) of that section to indicate that this was a matter in which the appropriate Government, if satisfied, alone had authority to issue a certificate to the Collector to recover any amount found due.

He contends that this was merely a matter of calculation of the amount of money payable to the petitioner under the Award, which had been given by the Labour Tribunal. As such, this could be done by the Government. It is better to quote the relevant provisions of Section 33C at this place:

'33C. Recovery of money due from an employer. (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA, the workman may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

(2) Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under this Act, be determined by such Labour Court as may be specified in this behalf by the appropriate Government, and the amount so determined may be recovered as provided for in Sub-section (1).

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the commissioner and other circumstances of the case.'

If it had been a pure case of calculation of money or wages payable under the award, then the contention of the learned counsel would be well-founded; but the argument apparently proceeds upon a misconception of the directions in the award itself. Under the terms of the award, the petitioner was entitled not only to back wages from the date of the dismissal to the date of payment with all allowances, but he was also held entitled to other benefits that accrued to him during the period of his forced unemployment.

The words 'other benefits' clearly take the case out of Sub-section (1) of Section 33C and it is within the purview of Sub-section (2) of that section. These other benefits have to be calculated in terms of money payable to the petitioner and for this purpose, in our opinion, an action under Section 33C(2) of the Act was perfectly justified.

In other words, after the entire amount payable under the Award has been so computed and determined that the amount could be recovered as provided by Sub-section (1) of the section. The decision of the Supreme Court in *S.S. Shetty v. Bharat Nidhi Ltd.* AIR 1958 SC 12 (A) to which the respondent referred in this context was a case falling under Sub-section (1) of Section 33C and not under Sub-section (2). It follows, therefore, that the notification previously issued by the Government specifying the Labour Court, which had jurisdiction to deal with the matter was not out of order.

Mr. Choudhury has further contended that even the first notification in that case was unnecessary, because in Assam there is only one Labour Court and if that Labour Court could deal with the matter, no specification of the Labour Court was necessary. Of course, Sub-section (2) speaks of Government specifying the Labour Court to deal with the matter; nevertheless, the statute confers jurisdiction on the Labour Court to act under Sub-section (2) of Section 33C and no other Tribunal. It is admitted here that there is only one Labour Court and thus there is substance in the argument that where there is only one Labour Court, apparently that Court alone will have jurisdiction to deal with the matter irrespective of any notification by the Government.

It is only where there are a number of Labour Courts functioning in a State that specification of the particular Labour Court to take up the matter on the authorisation of Government may be necessary to avoid any conflict of jurisdiction between them; but where there is only one Court, no such conflict arises and that Court will have, on the terms of the statute itself, jurisdiction to determine the dispute between the parties and act under the section aforesaid.

If this argument prevails, as in my opinion it should, then obviously both the Government notifications were uncalled for and the Labour Court had jurisdiction to proceed to dispose of the matter according to law. Consequently, the order passed by the Labour Court dropping the proceedings is clearly misconceived; and, irrespective of the notifications published by the Government, amounts to failure to exercise jurisdiction, which that Court possessed under the law. We have, therefore, no option but to quash the said order of the Labour Court dated 26-4-1958 dropping the proceedings.

I have already said that I am inclined to hold this contention of the learned counsel for the respondent as well-founded and on this argument alone the petition for a writ of certiorari against the order in question and for a further direction to the Labour Court to dispose of the matter according to law, should succeed.

5. In that view it may be unnecessary to deal with the contention of the petitioner, as to the power of the Government to cancel the previous notification. The petitioner's contention is that once a reference has been made, the Government had no such power; the matter is then in seisin of the Labour Court concerned and that Court has to dispose of the matter according to law,

He submits that if the power to cancel at any stage were assumed to exist in the Government, then they can at any moment divest the Court of the jurisdiction, which it has already acquired in the case, by virtue of an earlier notification made according to law, irrespective of the progress which the adjudication may have made in that Court, to the utter harassment of the parties.

Reliance has been placed on behalf of the petitioner on a decision of the Patna High Court in *D.N. Ganguly v. State of Bihar* AIR 1956 Pat 449 (B). In the case in

question, Ramaswami, J. as he then was, held that Section 10 of the Act does not merely give a power to the State Government to make a reference in its discretion; but on the contrary, it imposes a statutory duty to make a reference on the industrial dispute to the Tribunal if the prescribed conditions were satisfied. He also held that there was no express provision either under Section 10 or any other section of the Act, which empowered the State Government to withdraw a reference after such a reference had been already made to the Industrial Tribunal; and as such, as a pure matter of construction there was no implied power in the State Government to withdraw and cancel any such reference.

Section 21 of the General Clauses Act was only a rule of construction and the question as to the existence of an implied power of cancellation had to be determined with reference to the context and the subject matters of the statute. The learned Judge also distinguished the decision of the Supreme Court in *Strawboard . v. Gutta Mill Workers' Union* AIR 1953 SC 95 (C) on the ground that the point at issue related to extension of time for giving an award and there was no question of withdrawal of any dispute or cancellation of any reference in that case. Das, C.J., who was also a party to the decision, sought to rest his judgment on a different basis.

He was of the view that Section 21 of the General Clauses Act could not be so used as to nullify the provisions of the Industrial Disputes Act; and if the effect of the cancellation or modification of the reference made by the Government was to wipe out the proceedings taken before the Tribunal and to overrule the order of the Tribunal, such a power could not be exercised by the Government under cover of Section 21 of the General Clauses Act.

Mr. Choudhury very strongly urged that the power to issue the notification also involves the power to cancel the same and under Section 21 of the General Clauses Act, such a power could be exercised by the State Government. He contends that the decision of the Supreme Court in AIR 1953 SC 95 (C) could not be brushed aside as a mere obiter, which appears to have happened in the Patna decision.

It is conceded that in the Supreme Court case the question of interpretation of Section 10 of the Act did not of course arise; but it is contended that the case had a bearing on the interpretation of Section 21 of the General Clauses Act; because their Lordships purported to decide the case on the assumption that such a power of amendment or modification within the meaning of Section 21 was vested in the State Government; but it could not have any retrospective operation so as to validate an award, which had been made after the expiry of the time specified in the original order and before the date of the amending order, during which period the adjudicator became functus officio. Sinha, J. in a decision in *Harendra Nath v. Judge, 2nd Industrial Tribunal*, 62 Cal WN 248 : (AIR 1958 Cal 208) (D), to which Mr. Choudhury has referred in the course of his arguments, recognised that regard being had to the decision of the Supreme Court, it was perhaps no longer open to contend that Government, could not cancel a reference; and that the power of cancellation was implied under Section 21 of the General Clauses Act.

The learned Judge in that case was, however, not concerned merely with the question of cancellation, but with the question of transfer of a case, which had been already duly referred from one Tribunal to another Tribunal. According to the learned Judge, the Government had no power express or implied under the Industrial Disputes Act to withdraw a pending reference from one Tribunal and transfer the same to another Tribunal.

This question, however, of the power to transfer becomes somewhat academic in view of the new provisions contained in Section 33B of the Act, as amended by Act XXXVI of 1956, which confers on the appropriate Government the power to withdraw by an order in writing and for reasons to be stated therein any proceeding under the Act pending before a Labour Court or Tribunal and transfer the same to another Labour Court or Tribunal, as the case may be, for disposal of the same.

In *Rivers Steam Navigation Co., Ltd. v. Radhanath Hazarika*. Civil Rule No. 181 of 1956, D/-18-7-1957 (E) which is a Division Bench judgment of this Court, I distinguished the decision in the Patna case and held that there was nothing in law to prevent the Government from modifying a notification issued by them so long as

the amendment had not the effect of nullifying any provision of the Industrial Disputes Act.

The principle which emerges from all these decisions is that in appropriate cases. Government may have the power to cancel or modify a reference made to the Labour Court or Tribunal provided such reference or modification does not defeat the provisions of the Industrial Disputes Act itself and nullify its purpose. The order of reference or cancellation, though administrative, is justiciable and in appropriate cases a writ may lie against those orders.

The question then is whether in this case, the Government were justified in cancelling the said notification and thereby taking the case out of the jurisdiction of the Labour Court which jurisdiction that Court alone possessed. It seems to me that such a cancellation was not permissible as it was calculated to defeat the provisions of Section 33C(2) of the Act.

I have already held that irrespective of any such notification, the Labour Court had jurisdiction to deal with the dispute and to calculate in terms of money the amount at which the benefits allowed to the petitioner under the award in question should be computed; but, since the impugned notification had the effect of causing all the misconception resulting in the dismissal of the proceedings, I think it right that we should direct that the notification in question also should be ordered to be quashed as being illegal and unwarranted by law.

6. The application must, therefore, be allowed and a writ of certiorari issue quashing the impugned notification of the Government as also the order of the Labour Court dated 26-4-1958 and a further direction should issue to that Court asking it to proceed to dispose of the case according to law. The petitioner is entitled to his cost; hearing fee Rs. 50/-.

G. Mehrotra, J.

7. The petitioner No. 1 Sri Sudhindra Kumar Deb was the Head Clerk of Martycherra Tea Estate. In the year 1953, as the representative of the Indian Tea Employees Union at Silchar--petitioner No. 2 in the present case, petitioner No. 1

raised a dispute with the management of the company regarding the cut in the pay scale. As he refused to withdraw the dispute, he was dismissed in the year 1953. Thereafter some dispute again arose between the management and the workers of the Tea Estate.

On 15-2-1955, the management issued a charge-sheet upon the petitioner No. 1 and asked for an explanation from him. On 18-2-1955 the petitioner No. 1 submitted his explanation denying all the charges and by the order dated 1-3-1955 the management dismissed the petitioner No. 1 from service. Some attempt was made to effect a settlement which ultimately failed.

The petitioner then moved the Govt. for referring the matter to the Tribunal for adjudication and the Govt. by its notification dated 25-7-1955 referred the matter to the Judge, Industrial Tribunal. Assam in the exercise of the powers conferred by Clause (c) of Sub-section (1) of Section 10 of the Industrial Disputes Act. The Judge of the Tribunal held that the dismissal was illegal and unjustified and not bona vide and gave the award on 7-11-1956 which was published in the Assam Gazettee dated 5-12-1956.

The Tribunal however, instead of directing reinstatement, awarded compensation to the petitioner for the wrongful dismissal. As the award was not implemented by the management of the Martycherra Tea Estate, the petitioner moved the Govt. for action under Section 33(c) of the Industrial Disputes Act and the matter was referred by the Govt. on 28-11-1957 to the Presiding Officer, Labour Court, Assam, Gauhati--Opposite Party No. 2 in this petition under Section 33(c)(2). The Labour Court, on reference, registered the case as Misc. Case No. 1 of 1958.

No steps were taken by the opposite party to defend the case and he took time to prolong the matter. The opposite party No. 3 represented to the Govt. and stated that the reference was not maintainable. A notice was received by the petitioner No. 1 and the petitioner represented to the Govt. on 17-3-1958 that the contention of the opposite party was wrong and fallacious. The Govt. of Assam however wrote to the Labour Court by its letter dated 10-4-1958 that the reference under the Industrial Disputes Act should be treated as cancelled. On the receipt of the aforesaid notification, the Presiding Officer, without giving any opportunity to the

petitioner to contest the position, by its order dated 26-4-1958 dropped the case.

8. The petitioner then filed the present petition under Article 226 of the Constitution praying for a direction in the nature of Mandamus directing the opposite party No. 2 to cancel, recall or otherwise forbear from giving effect to his order dated 20-4-1958 and for a writ of Certiorari quashing the aforesaid order. The mandamus was also claimed directing the opposite party No. 2 not to act under the terms of the order dated 10-4-1958 passed by opposite party No. 5 the Govt. of Assam and direct him to proceed with the Misc. Case No. 1 of 1958.

The petition has been opposed by the opposite parties and the main contention raised by the opposite parties is that the Govt. having referred the matter to the Labour Court had ample jurisdiction to recall its order of reference and that this Court will not issue a writ directing the Labour Court to proceed with the investigation of the matter. On the merits it was contended that the award did not give any benefit to the petitioner capable of being computed in terms of money, but it gave a money relief to the petitioner which could only be enforced under Clause (1) of Section 33(c) and was not covered by clause 33(c)(2).

The reference, under the circumstances, was incompetent and the Govt. was legally justified in revoking the said reference. It was also contended that the Industrial Disputes Appellate Tribunal Act 1950 was repealed by the provisions of the Industrial Disputes Amending Act on 28-8-1956; but Section 33(c) came into force in March 1957. At the time when the award was given neither the Industrial Appellate Tribunal Act was in force nor Section 33(c) was in force. It was therefore not open to the petitioner to apply for a reference to the Labour Court under Section 33(c)(2) as it would be giving retrospective effect to the provisions of Section 33(c).

The main ground on which the petitioner has challenged the validity of the order passed by the Labour Court is that the Govt. having once specified the Court to which the matter of determination of the money value of the benefit had been referred had no jurisdiction to recall its order and that the matter had to be decided by the Labour Court. It was urged that the case was covered by Section 33(c)(2) and it was not a case where money relief had been granted; the case was not

covered by Section 33(c)(1) but by Section 33(c)(2).

9. The last point urged may be disposed of first. The award was given on 7-11-1956 and it was published by the Govt. in the Assam Gazette dated 6-12-1956. The Industrial Disputes Amending and Miscellaneous Provisions Act 1956 received the assent of the President on 28-8-1956. By Section 33 of the Amending Act, the Industrial Disputes Appellate Tribunal Act 1950 was repealed. This section came into force on 28-8-1956.

On that date therefore, there was no provision for the enforcement of the award. Section 20 of the Industrial Disputes Appellate Tribunal Act 1950 laid down the procedure for the enforcement of the award, that having been repealed on the date when the award was given, admittedly there was no enactment under which the award could be enforced. The Industrial Disputes Amending Act 1956 provided that the provisions of the Act would come into force from the date of the notification by the Central Government.

It was further provided therein that the different provisions could be enforced on different dates. Section 33c which is the relevant section was enforced sometime in March 1957. The contention of the opposite party is that as on the date when the award came into existence, there was no provision under which the award could be enforced, it is not open to the petitioner to apply for the enforcement of the award under Section 33(c)(2) as it would be giving retrospective effect to the provisions of the said section.

Section 33(c) is only a procedural section; it provides the procedure for the enforcement of the award and there is nothing in Section 33(c) which makes it applicable only to the awards given after the coming into force of this section. On the date when Section 33(c) came into existence, there was a subsisting valid award. Therefore in the absence of anything to the contrary in Section 33(c), such an award could be enforced under that section.

An Act is ordinarily prospective and retrospective effect cannot be given to an amending[^] Act so as to affect the settled rights under the unamended Act. But where the amending provisions are merely procedural provisions, it cannot be

argued that the subsisting rights cannot be enforced under the procedure provided in the amending Act. Section 33(c) has been added to the Industrial Disputes Act 1947 by the amending Act of 1956 and is as follows;

(After quoting Sub-sections (1) and (2) as given in Para 4 above, the judgment proceeds thus:)

The contention of the opposite party is that Section 33(c)(2) gives power to the Govt. to specify the Labour Court which has to determine the amount at which the benefit given under the award could be computed and such a power to specify the Court could always be amended, rescinded and cancelled by the State Govt. There is nothing in Section 33(c)(2) which empowers the State Govt. to cancel or amend the order specifying a particular Labour Court to determine the amount at which the benefit awarded under the award can be computed.

10. Reliance has been placed on Section 21 of the General Clauses Act of 1897 which provides that if under an Act the Central Govt. Has a power to issue notifications, orders, rules, or bye-laws, that power includes a power exercisable in the like manner and subject to the like sanction and conditions to add, to amend, vary or rescind any notifications, orders, rules or bye-laws so issued. This section, in terms, in my opinion, will not apply to the present case. It embodies a rule of interpretation.

If under an Act, the power has been conferred to issue notifications or orders such a power contains within its ambit--power to add, to amend and vary such an order. Unless therefore the Act gives power to the appropriate Govt. to issue an order, the question of amending or varying such an order will not arise and Section 21 will not be attracted. Section 33(c) only gives power to specify the Court which has to determine the amount of money, but it gives no power to issue any order to that effect.

Reliance has been placed on a number of cases dealing with the power of the Govt. to withdraw a reference made under Section 10 of the Industrial Disputes Act. Section 10 provides that where the appropriate Govt. is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing

refer the dispute to a Board for adjudication.

This section specifically empowers the appropriate Govt. to refer the dispute by an order in writing and thus Section 21 of the General Clauses Act applies in terms to the order passed under Section 10. Section 33(c)(2) on the contrary does not empower the appropriate Govt. to pass any order specifying the Labour Court which has to determine the amount of the benefit awarded under the award. Section 21 of the General Clauses Act does not in terms therefore apply to the present case.

11. The respondent relied upon the case reported in 1953 SCR 439: (AIR 1953 SC 95) (C). In that case, the State of U. P. or the Governor of U. P. referred an Industrial dispute to the Labour Commissioner on 18-2-1950 and the award was to be submitted not later than 5-4-1950. The award was however submitted on 13th April and the Governor issued a notification on 26th April for making the award by the 30th April.

In the circumstances it was held by the Supreme Court that after the time had expired, the Govt. had no power to extend it by a fresh notification. That case is therefore no authority for the proposition that the reference if once made can be revoked. Reference was made to the following observations in this case:

'In the circumstances, if the State Govt. took the view that the addition of those two issues would render the time specified in the original order inadequate for the purpose it should have cancelled the previous notification and issued a fresh notification referring all the issues to the adjudicator and specifying a fresh period of time within which he was to make his award. The State Govt. did not adopt that course.'

This passage only sets out the argument of the counsel and does not decide the question of the power of the State Govt. to withdraw an order passed under Section 10 of the Industrial Disputes Act.

12. Reliance was placed on the case reported in 62 Cal WN 248: (AIR 1958 Cal 208) (D). In that case the reference was withdrawn from one Tribunal and was

transferred to the other Tribunal and the validity of that order was questioned. It was held that the observations made by the Supreme Court in the case referred to above do not apply to the case of withdrawal from one Tribunal and transfer to the other.

By necessary implication it can be argued that the court held that the Supreme Court observations pointed to the fact that such a power existed in the Govt. to withdraw the reference made under Section 10; but the Calcutta case had not decided the question of the Govt.'s power to withdraw a reference once made under Section 10 of the Industrial Disputes Act.

13. On behalf of the petitioner reliance was however placed on the case reported in AIR 1956 Pat 449 (B) in which it was held that as a matter of construction the State Govt. had no implied power to cancel or withdraw a reference which had been already made under Section 10 of the Industrial Disputes Act. Section 21 of the General Clauses Act is only a rule of construction and the question as to the existence of an implied power of cancellation must be determined with reference to the context and the subject matters of the statute. Das C.J. had however held that the power given by Section 21 of the General Clauses Act cannot be used in such a way as to nullify in effect some of the other provisions of the Industrial Disputes Act. Section 33(c)(2) gives power to the Govt. only to specify the court which had to determine the amount at which the benefit which is capable of being computed in terms of money could be valued.

The entire scheme of Section 33(c) is to provide the machinery to enforce the award and if the power is given to the Govt. at its sweet will to revoke its order by which it specifies the Labour Court for determining the money value of the benefit under the award, it will nullify the whole object of Section 33(c)(2). It will always depend upon the Govt. to deprive the workman of the benefit given to him under an award. Section 21 of the General Clauses Act cannot therefore be invoked in such circumstances as it will have the effect of nullifying Section 33(c)(2).

14. Reliance was placed by the counsel for the respondent on an unreported decision of this Court in Civil Rule No. 181 of 1956, D/- 18-7-1957 (E). In that case the Patna case has been considered and distinguished. As observed in the

decision of this Court, relied upon by the respondent, the effect of Section 10 of the Industrial Disputes Act read with Section 21 of the General Clauses Act is that it was open to the Govt. to modify and amend the order of reference.

It gives no power to the Govt. to withdraw the reference altogether so as to nullify the effect of the other provisions of the Industrial Disputes Act. In our opinion, therefore, Section 21 of the General Clauses Act does not apply to the present case both on the ground that the order of the Govt. specifying the Court which had to determine the amount of the benefit is not an order within the meaning of Section 21 and also on the ground that if the provisions of Section 21 of the General Clauses Act are made applicable, such an interpretation will nullify the effects of Section 33(c) of the Industrial Disputes Act.

15. The next contention was that the award gives no benefit to the employees which could be computed in terms of money, consequently Clause (2) of Section 33(c) did not apply. It was a case, according to the respondent, covered by Clause (1) and thus it was outside the operation of Clause (2). Whether the award is covered by provisions of Section 33(c)(2) and where the employee had a right to claim the determination of the amount by an appropriate Labour Court under Section 33(c)(2) is a matter which will have to be determined on the interpretation of the award and the provisions of Section 33(c)(2).

Even when the amount is determined by the Labour Court, the realisation is yet to be made by a certificate to be issued by the Govt. under Section 33(c)(1). These two clauses therefore are not mutually exclusive. In cases where under the award itself some money is due to a workman, there is no question of determining the money value of the benefit, obviously the amount can be realised and the Govt. has only got to issue a certificate to the Collector who shall then proceed to recover the same in the manner as an arrear of land revenue.

Before issuing a certificate, the Govt. is to satisfy itself if the money is due, but cases where the amount is not specified in the award itself and the value is to be determined, such a case will be covered by Clause (2) of Section 33(c). The Govt. in this case itself thought that the case was covered by Section 33(c)(2) and made a reference to the court. What was the reason which subsequently led the Govt. to

withdraw the reference is not before us and it cannot be examined by this Court.

The notification purported to be one under Section 33(c)(2) and the main question really is whether there is any power to withdraw such a reference, after having made the reference. But even assuming that this Court can examine the question as to whether the case was or was not covered by Section 33(c)(2), we are of opinion that it is so covered. The relevant portion of the award has been quoted in para 4 (b) of the affidavit-in-opposition.

The petitioner was entitled to his back wages from the date of his dismissal till the date of payment that accrued to him during the period of his forced unemployment. The petitioner was not only entitled to get his back wages, but also all other benefits. As an employee the petitioner may even be entitled to several benefits which could be computed in terms of money. It cannot therefore be said that any money was due to the workman under the award and thus the case was not covered by Section 33(c)(2).

16. In support of his contention, the respondent had relied upon two cases. Firstly reliance was placed on the case of Behariji Mills Ltd. v. State of Bihar, reported in AIR 1957 Pat 488 (F) and secondly on the case reported in AIR 1958 SC 12 (A). The Patna case related to an assessment of compensation under Section 25(f) of the Industrial Disputes Act as it

stood before the amendment of 1956 and it was held that under the unamended section, the Govt. had no power to make an enquiry into the liability of the company.

Reliance was however placed on the following observations: 'The newly inserted Section 33-C(1) expressly grants power to the appropriate Government to make an enquiry about the legal liability of the employer to pay compensation under any provisions or Ch. V-A. After the Government is so satisfied it is empowered to issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

In that case, reference was made to Section 33(c)(2) to point out the difference in the language between the Clause (1) of Sections 33(c) and 25(f) as unamended and emphasis was laid on the fact that by the amendment, power has been given to the Govt. to determine the amount due. The Patna Court was not considering the question in what cases Section 33(c)(2) will apply. In the Supreme Court case, the appeal proceeded on the basis that the benefit of reinstatement which the appellant was entitled to get under the award could be computed in terms of money and that position was not disputed by the respondent, It was thus a case where admittedly Section 33(c)(2) applied, and the Supreme Court only laid down certain principles on which the amount was to be ascertained. The following observation was relied upon by the respondent:--

'The purpose of the enactment of Section 20(2) of the Act is not to award to the workman compensation or damages for a breach of contract or a 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 provisions 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.'

It was argued that the Supreme Court clearly laid down in this case that Section 20 Clauses (1) and (2) of the Industrial Appellate Tribunal Act were mutually exclusive of each other and they provided separately for different contingencies.

In that case, the Supreme Court was dealing with the provisions of Section 20 of the Industrial Appellate Tribunals Act and although so far this argument is concerned, there is no difference between the provisions of Section 20 and Section 33(c); but as I have already pointed out, each case will depend upon the terms of the award and it will have to be determined on the language of the award

as to whether it was a case where any money is due to an employee or it is a case where some benefit has been granted to an employee which can be computed in terms of money.

The terms of the present award are wide enough to cover benefits which could be computed in terms of money. In the circumstances, therefore, it cannot be said that on the face of it, the award is such that no reference could be made under Section 33(c)(2) to a Labour Court.

17. The next contention was that Section 33(c)(2) only authorises the appropriate Government to specify the particular Labour Court which will determine the amount at which the benefit given under the award is to be computed. This section presupposes the existence of a number of Labour Courts and as in the present case, admittedly there is only one Labour Court the question of specifying any particular Court does not arise, and therefore there could be no notification issued under Section 33(c)(2).

The Government is therefore justified in revoking the said notification. There are two answers to this contention. Firstly that if the effect is given to this argument, the original notification by which the reference was made to the Court will itself be without jurisdiction and the question of cancellation will not arise.

Apart from it, Section 33 provides for the remedy for the enforcement of the award and if there is only one Court which is empowered to determine the amount and it is not necessary, to specify the Court the Labour Court in question was the only competent Court to proceed with the determination of the amount and the order by which it refused to proceed any further as the Government had cancelled the previous notification was, on the face of it, illegal.

The next answer to the contention is that even if there is only one Labour Court, Section 33(c)(2) can still be operative. Labour Court has been defined as a court constituted under Section 7. Section 7 of the Industrial Disputes Act provides that the appropriate Government may by notification constitute one or more Labour Courts for the adjudication of industrial disputes in respect of matters specified in the second schedule and to discharge any other function assigned to it. The

dispute regarding the actual amount of the benefit under the award is not a dispute relating to any of the matters specified in the second schedule.

The Labour Court will thus acquire jurisdiction for the determination of the said amount only if this function is assigned to it by the appropriate Government. The assignment can take place in specific cases as well as by a general notification. The notification by which the Labour Court was authorised to determine the amount in this case was the assignment of power under Section 7. It cannot therefore be said that the notification of the Govt. by which the Court was authorised to determine the amount was illegal.

18. In the result, therefore, in my opinion, the petition should be allowed with costs the order of the Government cancelling the provisions of the notification should be set aside and a direction be issued to the Court to proceed on with the determination of the amount.

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