

Achutan Vs. Babu

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Court : Kerala

Decided On : Jun-12-1996

Reported in : [1996(74)FLR2422]; (1997)ILLJ621Ker

Judge : K.P. Dandapani, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 33C(2); Apprenctice Act, 1961 - Sections 2

Appeal No. : O.P. No. 6981/1990

Appellant : Achutan

Respondent : Babu

Advocate for Def. : T.A. Ramadas and; N. Radhakrishnan, Govt. Pleaders

Advocate for Pet/Ap. : U.K. Ramakrishnan and; P.V. Lohithaksan, Advs.

Disposition : Original petition allowed

Judgement :

K.P. Dandapani, J.

1. Petitioner challenges Ext. P2 order passed by the Labour Court, Kannur, the 2nd respondent.

2. First respondent herein filed a claim petition (C.P.66/89) under Section 33C(2) of the Industrial Disputes Act before the second respondent for determining the amount due to him. First respondent's case was that he was employed as a worker in the studio owned by the petitioner herein. He was 'promised' by the petitioner herein to pay wages in lumpsum on demand since that amount is also utilised for the improvement of the studio. According to him, he joined the service of the petitioner herein on September 16, 1985 and he was paid Rs. 350 only. He left the studio in June, 1988. He claimed Rs. 24,087 including wages, bonus, leave wages etc.

3. Petitioner, who is the owner of the studio, disputed the said claim and contended, inter alia, that the application itself is not maintainable; that the applicant was only given an opportunity for studying photography as he was personally known to him and that the applicant can at best, claim the status of an apprentice. The applicant was paid Rs. 2 to Rs. 25 out of humanitarian ground though he was not entitled for any amount.

4. P.W.1 was examined and Ext. P1 series were marked on the side of the applicant, R.W.S. 1 and 2 were examined on the side of the studio owner. On analysis of the entire evidence produced before the court, 2nd respondent came to the conclusion that the applicant was not an employee under the opposite party, but is entitled to get stipend as an apprentice and proceeded to fix basic wages' as stipend at the rate Rs. 325 per month. This order is under challenge.

5. I heard teamed counsel for the petitioner and the first respondent. The files were placed before me. I have perused the entire files.

6. The case of the first respondent before the Labour Court was that he was employed by the petitioner. On the other hand, petitioner herein maintained that the first respondent was only an apprentice in the studio. After having analysed the evidence adduced and Ext. P1 series of documents produced, the Labour Court came to the conclusion that it cannot be held that the first respondent herein was an employee in the studio under the petitioner. The Labour Court has rejected the evidence of PW.1 and held that the first respondent is not an employee. It further accepted the evidence of the employer and held that the applicant was only an

apprentice. The said finding is in page 14 of the original petition. It reads as follows:

'He was an apprentice from September 1985 to September 1988. Ext. P1 series alone cannot be relied on to hold that PW.I was an employee of RW. 1Therefore, it is safe to accept the case of respondent on this point. An apprentice is entitled to get stipend.'

Thus, it has been clearly found that the first respondent herein is not an employee in the studio, but was only an apprentice. This portion of the finding has not been challenged by the first respondent worker herein before this Court. Learned counsel for the first respondent has admitted before this Court that the first respondent has not chosen to challenge the impugned order so far. Therefore, the finding that he was not a worker but an apprentice, has become final between the parties.

7. A Division Bench of this Court has held in *President, K.P. Co-op. Society v. E.S.I. Corporation, Trichur and Anr.*, 1975 KLR 670 thus:

'In the case of an apprentice though he may also assist in the work of the factory and he may also turn out work it is not to get such out turn, that he is permitted to work but to enable him to learn the trade. He may be given some incentive such as the prospect that he may be absorbed in the establishment and his training in the establishment may stand him in good stead elsewhere. While it may be said that he is working in the factory it cannot possibly be said that he is employed for wages in the factory as in the case of a workman in the factory.'

Thus, it can be said that an apprentice can, at best, have a prospective hope that he will be absorbed in the establishment later and he is not entitled to wages.

8. After having found that the claimant is only an apprentice, the Labour Court proceeded further to fix the 'basic wages' of the claimant. The finding of the Labour Court in Ext P2 in that regard is extracted here:

'In the absence of any evidence to prove the stipend, I fix the basic wages claimed by the petitioner as stipend i.e., Rs. 325 per men-sum'.

The further finding is as follows:

'Admittedly PW. 1 is not working in the studio of RW 1 since September 1988, PW. 1 has no case that employment was dented to him. This is a circumstance which would indicate that the case of PW.I cannot be accepted in its entirety. Therefore, the amount due to the applicant is determined as Rs. 325 per mensum from September 1985 to September, 1988".

9. The next question for consideration, therefore, is whether the Labour Court has powers to calculate the amount of money due to the apprentice while dealing with the petition under Section 33-C(2) of the Industrial Disputes Act. This Court has held in Divisional Personnel Officer, Southern Railway v. Kalalam and Ors. 1988 (2) KLT 835 thus:

'Labour Court while dealing with a petition under Section 33C(2) of the Industrial Disputes Act is to calculate the amount of money due to the workman from his employer. If the workman is entitled to any benefit which is capable of being computed in terms of money, that can be computed and the workman given the money. The said calculation or computation should be on the basis of an existing right to money or benefit which had been previously adjudicated. If the right to the money or benefit which is sought to be computed is disputed the Labour Court cannot adjudicate on that in a petition filed under Section 33C(2). The question as to whether the workman is entitled to the benefit is beyond the purview of the jurisdiction of the Labour Court under Section 33C(2) of the Industrial Disputes Act. In other words, the determination of the question as to whether the employee is entitled to the right claimed by him as also to whether the employer is liable to pay the amount claimed by the employee are not to be adjudicated upon by the Labour Court while dealing with the petition under Section 33-C(2) of the Industrial Disputes Act'.

10. In a recent decision of the Supreme Court in Municipal Corporation of Delhi v. Ganesh Razak and Anr. (1995-I-LLJ-395), it is held at p.400:

'.....The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workman to a certain benefit is disputed, there being

no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33C(2) of the Act. The Labour Court has no jurisdiction to first decide the workman's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation of enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution'.

11. In the present case, the employer has disputed the status of the claimant and has successfully proved before the Labour Court that the claimant was not appointed as a workman in the establishment. The court found that he was not a workman. Section 33-C(2) of the Act provides a remedy only to a workman to a workman to make application for recovery of the amounts due to him. Only an employee can file an application under Section 33-C(2) of the Act against his employer. Insofar as an apprentice is concerned, there is no employer-employee relationship. An apprentice is only a student and the premises are only his training ground. By assisting the employer in the studio, he may also turn out work where he is permitted to work; but it is only to enable him to learn the trade. He attends the studio not to work as an employee, but only to learn the work. Hence, the application under Section 33-C(2) is not maintainable for recovery of stipend. Stipend is not remuneration payable by an employer to his employees. Section 33-C(2) of the Act gives a right only to a workman to claim the amount due to him.

For the above reasons, the original petition is allowed and Ext.P2 order is quashed insofar as it directs payment of amount to the first respondent herein. No costs.