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Court : Kerala

Decided On : Mar-12-1998

Reported in : [1998(79)FLR753]; (1999)ILLJ780Ker

Judge : Ar. Lakshmanan, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 33C(2); [Minimum Wages Act, 1948](#) - Sections 2(1) and 12

Appeal No. : O.P. No. 547/1996-M

Appellant : Ajithkumar B.

Respondent : Presiding Officer, Labour Court and ors.

Advocate for Def. : Muraleedharan Nair, G.P. for Respondent No. 1 and; K. Gopalakrishna Kurup, Adv. for Respondent No. 3

Advocate for Pet/Ap. : Ashok B. Shenoy, Adv.

Judgement :

Ar. Lakshmanan, J.

1. Heard Mr. Ashok B.Shenoy for petitioner and Mr. Gopalakrishna Kurup for respondent No. 3 and Muraleedharan Nair, Government Pleader for respondent No. 1. The petitioner is a workman who was employed as a salesman in the

second respondent Co-operative society. He was appointed by the third respondent, President, Ponkunnam Consumer Sahakarana Sangham Ltd. and was placed on probation for a period of one year. According to the petitioner he was not paid the wages at the rate of minimum rate of wages fixed by the Government of Kerala by notification No:GO(RT) 750/87/LBR dated May 15, 1987 issued under Section 5 of the [Minimum Wages Act, 1948](#) in respect of employees in shops and commercial establishments. According to the petitioner the provisions of the said Act squarely govern the petitioner and the second respondent society. It is his case that he was paid wages at the rate lesser than the minimum rate of wages as fixed by the aforesaid notification. Being entitled under Section 12 of [Minimum Wages Act, 1948](#), to get the wages at the minimum rate of wages fixed aforesaid, the petitioner requested the respondents 2 and 3 to pay him wages as per minimum wages notifications aforementioned. The request of the petitioner was never heeded to. Therefore the petitioner filed an application under Section 33-C(2) of the [Industrial Disputes Act, 1947](#) before the Labour Court claiming from the respondents 2 and 3 a sum of Rs. 11,739.35 as balance wages for the period from May 18, 1991 to August 31, 1992 after setting off the wages already paid to the petitioner from the prescribed minimum rate of wages payable to him.

2. The respondents filed the written objection contending that the application is not maintainable under Section 33-C(2) of the Act, that as per Rule 134 of the Kerala Co-operative Societies Rules every employee appointed to any of the categories of service is to be on probation for one year liable to be extended upto two years, that there is no prescribed minimum wages for a probationer and the notification dated May 15, 1987 is inapplicable to the petitioner, that the petitioner was appointed as a salesman on probation for one year as per order dated May 17, 1991 and that he was dismissed from service on December 31, 1992, that against dismissal from service the appeal filed by him under Section 18 of the Kerala Shops & Commercial Establishments Act is pending and therefore the petitioner has to approach the authorities under the Kerala Co-operative Societies Act and not under Section 33-C(2) of the Industrial Disputes Act. It is also stated that the calculation of amounts claimed is wrong.

3. The petitioner in reply to the written objection filed by the respondents, filed a detailed replication specifically refuting the 2nd and 3rd respondents contention and contending inter alia that the 2nd respondent though a Cooperative society formed under the Kerala Co-operative Societies Act is a 'shop' as defined in Section 2(6) of Kerala Shops and Commercial Establishments Act, 1960 and therefore the salesman working therein is entitled to minimum wages payable to employees in shops as per notification No:GO(RT) 750/87/LBR dated May 15,1987. It is also contended that the petitioner being a probationer cannot be a ground to deny payment of notified minimum wages applicable to employees in shops and that his claim for minimum wages can be the subject matter of an application under Section 33-C(2) of the [Industrial Disputes Act, 1947](#) and that the calculation made by him is only to be upheld.

4. No oral evidence was adduced before the Labour Court. Ext. P1 was marked from the side of the petitioner and Exts. D1 to D15 were marked from the side of respondents 2 and 3.

5. The Labour Court, however without going into the merits of the claim by order dated October 31, 1995 held that the claim of the petitioner under notifications dated May 15, 1987 is disputed and hence the petitioner cannot invoke Section 33-C(2) of the Industrial Disputes Act. It was held that the petitioner being only a probationer in trial run and his status is in dispute and therefore the Labour Court has no jurisdiction to compute the claim under Section 33-C(2) of the Industrial Disputes Act. On these findings the Labour Court dismissed the claim application filed by the petitioner and the order dated October 31, 1995 by the Labour Court is marked as Ext.PI in this petition.

6. Aggrieved by the order of the Labour Court dismissing the petition on the ground of maintainability the petitioner filed the above original petition under Articles 226 and 227 of the Constitution of India.

7. I have heard Mr. Ashok B.Shenoy for the petitioner and Mr. Gopalkrishna Kurup for respondent No. 3. The contentions raised before the Labour Court and as incorporated above have been reiterated again before me at the time of hearing. The question which arise for consideration is as to whether the petitioner can

invoke Section 33-C(2) of the Industrial Disputes Act and whether he is entitled to receive the benefit under the said provisions of the Act. A further question arises as to whether the Labour Court has jurisdiction to deal with the claim, if workmen's right to receive the benefit is disputed. In support of his claim Mr. Ashok B. Shenoy has cited Cannanore Co-operative Milk Supply Union v. Labour Court 1983 KLT 685 (Balagangadharan Nair, J). The learned Judge of the Court held as follows:

'While the existence of right is a condition precedent to an applicant under Section 33-C(2) the fact that it is (sic) or that the examination of the claim requires an enquiry into the existence of the right, has not excluded the jurisdiction of the Labour Court.'

A. P. Sankara Wariyar v. The North Labour Dist. Co-op. Supply and Marketing Society Ltd. (U.L.BHAT, J) while considering the scope and ambit of powers of the Labour Court while dealing with cases under Section 33-C(2) of the Industrial Disputes Act, the learned Judge held as follows:-

'Held, the provision contemplates an enquiry into the existence of the right, such an enquiry is only incidental to the main determination which has to be made by the Labour Court. The proceeding is in the nature of execution proceeding in which the Labour Court decides the amount due or makes computation. However, under the guise of taking such a decision, Labour Court cannot arrogate to itself the functions of an Industrial Tribunal which is entitled to adjudicate matters covered by Section 10(1)(c) and to decide rights of workman or the existence of liability on the part of the employer. At the same time a mere assertion by the employer that the applicant has no right or status or that the employer has no liability will not oust the jurisdiction of the Labour Court to take decision. Labour Court can go into the question of right or status though it may not be able to go into the validity of an order passed by the employer regarding the termination of service or dismissal, discharge, etc. A blank or mala fide denial on the part of the employer and the status or the right of the applicant cannot oust the jurisdiction of the Labour Court, but where the basis and the foundation of a claim is seriously and genuinely disputed and the decision on that factor will involve an elaborate process it has to be decided by an Industrial Tribunal on a reference and not by

the Labour Court under Sections 33-C(2) of the Act. If the decision involves an interpretation of an award, settlement or order or a rule that will be well within the providence of the Labour Court to do.'

8. In *Central Bank of India Ltd. v. P.S. Rajagopalan etc.* (1963-II-LLJ-89) (SC) (five Judges) the question that came up for consideration is as to whether a claim by a workman for computation of benefit in terms of money is maintainable, the Court held that the said Section applies even if right to benefit is disputed by the employer and that the Labour Court has jurisdiction to determine whether the workman has right to receive the benefit. The principal contention which has been raised before the Supreme Court was one of jurisdiction. It was argued that the Labour Court has exceeded its jurisdiction in entertaining the application made by the respondents because the claims made by the respondents in their respective applications are outside the scope of Section 33-C(2) of the Act. The questions urged by the appellants before the Supreme Court is reproduced here under:-

'The question which arises for our decision is, however, slightly different. It is urged by the appellant that Sub-section(2) can be invoked by a workman who is entitled to receive from the employer the benefit there specified, but the right of the workman to receive the benefit has to be admitted and could not be a matter of dispute between the parties in cases which fall under Sub-section (2). The argument is, if there is a dispute about the workman's right to claim me benefit, that has to be adjudicated upon not under Sub-section (2) but by other appropriate proceedings permissible under the Act and since in the present appeals, the appellant disputed the respondents' right to claim the special allowance, the Labour Court had no jurisdiction to deal with their claim. In other words, the contention is that the opening words, of Sub-section (2) postulate the existence of an admitted right vesting in a workman and do not cover where the said right is disputed.'

The Supreme Court in para 16 held as follows:-

'16. Let us then revert to the words used in Section 33-C(2) in order to decide what would be its true scope and effect on a fair and reasonable construction. When Sub-section (2) refers to any workman entitled to receive from the employer any

benefit there specified does it mean that he must be a workman whose right to receive the said benefit is not disputed by the employer? According to the appellant, the scope of Sub-section (2) is similar to that of Sub-section (1) and it is pointed out that just as under Sub-section (1) any disputed question about the workmen's right to receive the money due under an award cannot be adjudicated upon by the appropriate Government, so under Sub-section (2) if a dispute is raised about the workmen's right to receive the benefit in question, that cannot be determined by the Labour Court. The only point which the Labour Court can determine is one in relation to the computation of the benefit in terms of money. We are not impressed by this argument. In our opinion, on a fair and reasonable construction of Sub-section (2) it is clear that if a workman's right to receive the benefit is disputed, that may have to be determined by the Labour Court. Before proceeding to compute the benefit in terms of money, the Labour Court inevitably has to deal with the question as to whether the workman has a right to receive that benefit. If the said right is not disputed, nothing more needs to be done and the Labour Court can proceed to compute the value of the benefit in terms of money; but if the said right is disputed, the Labour Court must deal with that question and decide whether the workman has the right to receive the benefit as alleged by him and it is only if the Labour Court answers this point in favour of the workman that the next question of making the necessary computation can arise. It seems to us that the opening clauses of Sub-section (2) does not admit of the construction for which the appellant contends unless we add some words in that clause. The clause 'Where any workman is entitled to receive from the employer any benefit' does not mean 'where such workman is admittedly, or admitted to be, entitled to receive such benefit'. The appellant's construction would necessarily introduce the addition of the words, 'admittedly or admitted to be' in that clause, and that clearly is not permissible. Besides, it seems to us that if the appellant's construction is accepted, it would necessarily mean that it would be at the option of the employer to allow the workman to avail himself of the remedy provided by Sub-section (2) because he has merely to raise an objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour Court to entertain the workman's application. The claim under Section 33-C(2) clearly postulates that the determination of the question about computing the benefit in

terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by Sub-section (2). As Maxwell has observed 'where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, of employing such means as are essentially necessary to its execution.' We must accordingly hold that Section 33-C(2) takes within its purview cases of workmen who claimed that the benefit to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers.'

9. Counsel for the respondent however cited Divisional Personnel Officer, Southern Railway v. Kamdam and Ors. (1995-III-LLJ-(Suppl.)-1) (Ker) wherein Sreedharan, J. held that the Labour Court has no jurisdiction to adjudicate upon when the right to money or benefit which is sought to be computed is disputed. In other words the determination of the question is 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. Before the learned Judge the judgment of the Supreme Court reported in Central Inland Water Transport Corporation Ltd. v. The Workmen and Anr. AIR 1974 S.C. 1604 (2 Judges) was cited. In that case, the Supreme Court held that since a proceeding under Section 33-C(2) is in the nature of an execution proceedings it should clearly understand the limitations under which it is to function and it cannot arrogate to itself the functions of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations referred to above or proceed to compute the benefit by dubbing the former as incidental to the main business of computation.

10. I am of the view that the judgment of the learned single Judge in Divisional Personnel Officer, Southern Railway v. Kamalam and Ors. (Supra) is in direct conflict with the decision of the Supreme Court (1963-II-LLJ-89) (Supra) - (5 Judges) wherein the Supreme Court has specifically considered in paras 9 and 15 of its judgment the scope and interpretation of Section 33-C(2) and the claim by the workman for computation of the benefit in terms of money under the said

section and that the said section applies even if the right to benefit is disputed by the employer. Applying the principles laid down by the Supreme Court in AIR 1964 SC 743 I hold that if a workman has right to receive the benefit under the Minimum Wages Act, which is disputed by the management in this case, the same have to be determined by the Labour Court and before proceeding to compute the benefit in terms of money, the Labour Court has to necessarily deal with the question as to whether the workman has a right to receive that benefit and if the Labour Court decides that the workman has a right to claim the benefit, he can proceed to compute the value of the benefit in terms of money.

11. In *Namor Ali Choudhury and Ors. v. The Central Inland Water Transport Corporation Ltd.* (1978-I-LLJ-167) (SC) similar question arose for consideration. The Supreme Court held as follows:-

'Where the only dispute in the proceeding under Section 33-C(2) between the management and a section of its workmen is whether those workmen are entitled to take advantage of a settlement and the quantum or rate of extra wages to which the workmen would be entitled under the settlement is not in dispute, the application under Section 33-C(2) could not be rejected on ground that there is no dispute about the money due. The provisions of Section 33-C(2) do not require that for conferring jurisdiction on a Labour Court not only that the workmen should be entitled to any money due but also that there should be a dispute about the amount of that money. Civil Rule No. 778 of 1972, dated May 2, 1973 (Gauhati), Reversed (para4).

On a plain reading of the wordings of Section 33-C(2) it would be found that where any workman is entitled to receive from the employer any money and if any question arises as to the amount of money due, then the question may be decided by the Labour Court. The expression, 'if any question arises as to the amount of money due' embraces within its ambit any one or more of the following kinds of disputes:-

1) Whether there is any settlement or award as alleged?

2) Whether any workman is entitled to receive from the employer any money at all under any settlement or an award etc.?

3) If so, what will be the rate or quantum of such amount?

4) Whether the amount claimed is due or not? Broadly speaking, these will be the disputes which will be referable to the question as to the amount of money due. If the right to get the money on the basis of the settlement or the award is not established, no amount of money will be due. If it is established, then it has to be found out, albeit, it may be by mere calculation, as to what is the amount due. For finding it out it is not necessary that there should be a dispute as to the amount of money due also. The fourth kind of dispute obviously and literally will be covered by the phrase 'amount of money due.' A dispute as to all such questions or any of them would attract the provisions of Section 33-C(2) of the Act and make the remedy available to the workman concerned.'

In the above judgment the Supreme Court has followed the principles of law enunciated by the Supreme Court in several decisions reported in (1963-II-LLJ-89), AIR 1972 SC 451 and AIR 1975 SC 1745.

12. The Labour Court relied on *Municipal Corporation of Delhi v. Ganesh Razak and Anr.* (1995-I-LLJ-395) (SC) and few other decisions. According to the Labour Court those decisions show that the Labour Court cannot arrogate to itself a power to make adjudication in the nature of determination which some other authority or Court is competent to do. I am of the view that the opinion expressed by the Labour Court is not correct in view of the several decisions. To me the view I have expressed above is plainly and squarely covered by the principles of law enunciated by this Court in several decisions and also of the Supreme Court reported in (1963-11-LLJ-89) and (1978-I-LLJ-167) and other decisions. Learned Counsel for the petitioner cited *Hindi Prachar Press v. State of Kerala and Ors.* 1982 KLT 285 and *Vimal Printers v. Omana* (1983-I-LLJ-342) (Ker), in support of his contention that the claim for minimum wages is maintainable before the Labour Court. In 1982 KLT 285 this Court held as follows :-

'It is true that in a case where a separate self-contained machinery is specifically provided under a particular enactment, a claim based on the provisions of that enactment must ordinarily be made before the competent authority set up under that statute, and not under the general provisions of the Industrial Disputes Act. But where in a case, such as the present, a claim under the Minimum Wages Act had become barred and the order is not appealable to any higher authority under that Act, there is no taboo as such in law against an aggrieved employee approaching the authority invested with power under Section 33-C(2) of the Industrial Disputes Act. The object of the legislature behind all these enactments is to do justice to the employees who legitimately contend that they are denied their due share. Apart from all these, it has to be stated that the objection as to jurisdiction was not raised before the Tribunal. It is for the first time that the objection has been taken in the present proceedings. For all these reasons there is no substance in the contention regarding jurisdiction.'

In (1983-I-LLJ-342) in a similar question this Court held that such a claim is enforceable and can be agitated in proceedings under Section 33-C(2) of the [Industrial Disputes Act, 1947](#). It is held as follows:-

'The indication is that while enacting Section 24 the legislature had thought about the question whether other remedies for enforcing claims under the Act should be excluded or not, and that having so thought about it, it had decided that only remedies by way of suit need be excluded. Section 24 prevents a Court from entertaining suits for recovery of wages which could be recovered by filing an application under Section 20. It does not bar other methods of recovery. An intention to exclude recourse to remedies other than civil suits, is not disclosed; on the other hand, the specific exclusion of civil suits only implies that the legislature did not want to exclude other remedies. The Minimum Wages Act only prescribes the lowest limit to which wages can go in scheduled employments, under any contract. There are many other enactments dealing with payment of wages during holidays, periods of leave (including maternity leave), involuntary unemployment and the like. The Minimum Wages Act is thus not a self-contained code incorporating all the provisions relating to payment of wages, or even minimum wages; and the Act discloses no intention that proceedings for payment of

minimum wages shall be the exclusive preserve of the authority appointed under Section 20. Claims arising under the Act could also be tackled under Section 33-C(2) of the Industrial Disputes Act.'

I am therefore of the view that Ext. P1 order which is impugned in the petition declining to entertain the petitioner's claim for minimum wages merely on the Court that the Labour Court cannot invoke Section 33-C(2) of the Act is vitiated by patent error of law apparent on the face of the record. As already noticed this Court has clearly laid down the law that while existence of a right is a condition precedent to an application under Section 33-C(2) of the Act, the fact that it is denied or that the examination of the claim requires an enquiry into the existence of the right, does not exclude the jurisdiction of the Labour Court. Section 33-C(2) of the Act clearly contemplates an enquiry into the existence of the right and such an enquiry is only incidental to the main determination which has to be made by the Labour Court. A mere assertion by the employer that the applicant has no right or status or that the employer has no liability will not oust the jurisdiction of the Labour Court to take a decision on merits. The Labour Court can go into the question of right or status though it may not be able to go into the validity of an order passed by an employer regarding termination of service or dismissal, discharge etc. A blank or mala fide denial on the part of the employer of the status or the right of the petitioner cannot oust the jurisdiction of the Labour Court. In fact, if the decision involves an interpretation of an award, settlement or a rule, that is well within province of the Labour Court to do. Thus as per the law laid down by the Hon'ble Supreme Court and of this Court, power under Section 33-C(2) of the Industrial Disputes Act is not taken away by the denial of the right by the employer or the necessity of an enquiry before enforcing the right. However, the Labour Court without advertent to these principles of law laid down, by Ext. P1 order nastily went on to conclude the petitioner's claim as not maintainable on the count that it is disputed by the Management. Ext. P1 order is therefore illegal and liable to be quashed.

13. In the light of the fact that the petitioner's claim was only for minimum wages due under the Minimum Wages Act which came to be disputed by the Management solely on the ground that the petitioner being a probationer is not entitled to minimum wages, the only simple question that falls for consideration

before the Labour Court was whether the petitioner was entitled to receive minimum wages under the Minimum Wages Act. This question is only an incidental one to the main determination under Section 33-C(2) of the Act which involves only an interpretation of the Minimum Wages Act. This question by no stretch of imagination necessitated any adjudication under Section 10 of the Industrial Disputes Act. Though it is argued before me that the employer shall pay to every employee engaged in a schedule of employment under him the minimum rate of wages notified etc., I am not considering the claim of the petitioner on merits which is left open to be decided by the Labour Court. The Labour Court shall advert to the said question and consider as to whether the probationer also fell to be an employee under Section 2(i) of the Minimum Wages Act and then decide the question on merits and in exercise of its jurisdiction vested in it. The Labour Court shall consider and decide under Section 2(i) of the Minimum Wages Act whether, once the relationship between the employer and the employee is established, its duration is material or not. The Labour Court shall also decide the distinction between probationer, permanent or temporary workman under Section 2(i) of the Minimum Wages Act.

14. I have already noticed some of the decisions cited by the respondent before the Labour Court which has been referred to in Ext.P1 order. In those cases, the very status of the workmen was in dispute. In the instant case, there is no dispute as to the employer-employee relationship between 2nd respondent and the petitioner. Therefore, Ext.P1 which was based on the decisions relied on by the respondents, is out of context and is illegal and therefore the said order is liable to be quashed.

15. In the light of the fact that the petitioner's claim was only for minimum wages due under the Minimum Wages Act, which claim is disputed by the 2nd respondent solely on the ground that the petitioner, being a probationer, is not entitled to minimum wages, the only simple question that will now arise for consideration before the Labour Court is whether the petitioner was entitled to receive minimum wages under the Minimum Wages Act. This question is only an incidental one to the main determination under Section 33-C(2) of the Industrial Disputes Act and it involves only an interpretation of the Minimum Wages Act,

particularly Section 2(i) of the [Minimum Wages Act, 1948](#) to see whether a probationer is an employee thereunder, who is entitled to claim minimum wages.

For all the foregoing reasons, the order of the Labour Court, impugned in this writ petition, is quashed and the entire matter is remitted to the Labour Court and C. P. No. 30 of 1993 is restored to file. Both the parties are at liberty to adduce both oral and documentary evidence before the Labour Court in order to establish their respective claim. Since the claim petition is of the year 1993, the Labour Court shall decide the matter within six month from the date of receipt of the records and copy of this judgment from this Court.

The original petition is allowed as above. There will be no order as to costs.

The office shall dispatch the entire records back to the Labour Court with copy of this judgment.

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