HIGH COURT OF GUJARAT *(F.B.)*

NIZAMUDDIN SULEMAN
V/S
NEW SHORROCK SPG AND MFG MILLS COMPANY LIMITED NADIAD

Date of Decision: 24 November 1978

Citation: 1978 LawSuit(Guj) 132

Hon'ble Judges: B J Divan, A D Desai, S B Majmudar

Eq. Citations: 1979 (1) GLR 290, 1979 (2) LLJ 36, 1979 (39) FLR 287, 1980 LabIC 397, 1979 (55) FJR 115

Case Type: Special Civil Application; Special Civil Application

Case No: 1122 of 1973; 936 of 1975

Subject: Constitution, Labour and Industrial

Head Note:

[A] Industrial Disputes Act (XIV of 1947) - Sec.33C(2) - Application under Sec.33C(2) must be about existing right - Sec.33C(2) providing for statutory remedy for recovery of dues against workmens employer - A question arises whether the workman rightly of wrongly dismissed or retrenched - Such disputes cannot be dealt with by the Labour court u/s 33C(2) - Application must be based on existing right. [B] Industrial Disputes Act (XIV of 1947) - Sec. 33C(2) - Jurisdiction of the Labour Court - Based on the averments made in the application, the jurisdiction is based - The jurisdiction of the Labour Court is not ousted due to plea raised by the employer of same other dispute - If application discloses existence of relationship of employer & employee and on basis of existing right, Labour Court has jurisdiction. [C] Industrial Disputes Act (XIV of 1947) - Sec.33C(2) - if employee entitled to retrenchment compensation in view if

existing right Labour Court has jurisdiction u/s 33C(2). [D] I.D.A. (XIV of 1947) - Sec 33C(2) - The Labour Court can decide whether there was a closure of factory or whether the applicant left the job on his own as alleged by the opponent - Merely such allegation does not take jurisdiction of the labour court u/s 33C(2). [E] Constitution of India, 1950 - Art.141 - Apparent conflicts between the decisions of the supreme court - proper course to be followed.

The workman must proceed on the footing of an existing right. The existing right may be under the terms of the settlement of an award or the right may have been provided for either by custom or by law or by agreement but there must be an existing right and so long as there is that existing right which is claimed by the workman he can apply to the Labour Court under sec. 33C(2) of the Industrial Disputes Act and the Labour Court will have jurisdiction to deal with application on merits. Sec. 10 of the Act which deals with reference to both Court of Inquiry Labour Court or an Industrial Tribunal is wide enough to cover all industrial disputes including those which would fall under sec. 33C(2). Thus whereas sec. 10 deals with reference of cases to Industrial Disputes of all kinds sec. 33C(2) provides a speedier remedy for the recovery of the dues of a workman against his employer in certain specified type of cases and the basis is that there must be an existing right. (Para 2) Once the workman concerned bases his claim on an existing right namely on an adjudication the question whether the workman falls within the award of the adjudication is a matter which can be dealt with and should be dealt with by the Labour Court under sec. 33C(2). But if the question arises whether the workman has been rightly or wrongly dismissed or whether the workman has been rightly or wrongly retrenched the Labour Court cannot deal with that dispute under sec. 33C (2). To put it briefly so long as there is no dispute on the showing of the workman on the workmans application under sec. 33C(2) that the relationship of employer and employee has not ceased to exist and the claim which the workman puts forward in his application under sec. 33C(2) is based on an existing right the application under sec. 33C(2) is maintainable. (Para 7) So far as the scope of sec. 33C(2) is concerned all that has to be done is to follow the principles laid down by the Bench of five Judges of the Supreme Court in Central Bank of India v. Rajagopalan as explained in the latest decision in Beverages case (4). (Para 13 & 16) Industrial Disputes Act (XIV of 1947) - Sec. 33C(2) - Jurisdiction of the Labour Court- Jurisdiction based on the averments male in the appli- cation - Plea by employer raised of some other dispute does not oust the of the Labour Court - If application discloses existence of employer and employee and on basis of existing right Labour has jurisdiction.

In deciding maintainability of proceedings what is to be looked at is the plaint in a civil suit or the application in case arising under sec. 33C(Z) of the Industrial Disputes Act and not what the other side contends or urges in its reply or written Statement. Once the workmans case as disclosed in his application to the Labour Court shows that the existence of the relationship of employer and employee is not put in dispute by the workman himself and on the basis of an existing relation- ship of employer and employee and on the basis of existing right which may arise out of an adjudication or which may be provided for by custom or law or agree- ment the application under sec. 33C(2) is maintainable. The fact that the employer by his plea raises some dispute does not mean that the jurisdiction of the Labour Court to deal with the question is taken away. (Para 8) Industrial Disputes Act (XIV of 1947) - Sec. 33C (2) - If employee entitled to retrenchment compensation in view of existing right Labour Court has jurisdiction under sec. 33C(2). Held that in the instant case the workman was claiming dues under an existing right namely that in view of the condition which he had written on the printed form he was entitled to retrenchment compensation. The Labour Court had juris- diction under sec. 33C(2). (Para 19) Industrial Disputes Act (XIV of 1947) - Sec. 33C(2) - Labour Court can decide whether there was closure of factory or whether applicant left the job on his own account as alleged by the opponent- Merely such allegation does not take jurisdiction of the Labour Court under sec. 33C(2). The question whether on the facts which the workman was urging in his appli- cation under sec. 33C(2) the application under sec. 33C(2) was maintainable or not has to be decided by the Labour Court. It is after examining the evidence on merits that the Labour Court could have decided whether there was a closure of the factory or not and whether the applicant left the job on his own accord as the employer contended. But merely because of the disputes raised by the repondent- employer some issues were required to be gone into for the purpose of granting relief to the workman it could not be said that the application under sec. 33C(2 was not maintainable. (Para 20) Constitution of India 1950 - Art. 141- Apparent conflict between two decisions of the Supreme Court - Proper course to be followed laid down. The principle to be followed whenever there is even an apparent conflict bet- ween decisions of a larger Bench and smaller bench of the Supreme Court the proper course for a High Court in such a case is to try to find out and follow the opinions expressed by larger benches of the Supreme Court in preference to those expressed by smaller benches of the Court. Of course if the views expressed earlier by a larger bench of the Supreme Court have been

explained even by a smaller bench of the Supreme Court would be required to be followed by High Courts before whom the earlier decision of the larger bench and the subsequent explanation of the same judgment by the smaller bench are cited. Otherwise the High Court in bound to follow the decision of the larger bench of the Supreme Court.(Para 3) Central Inland Water Transport Corpo. Ltd. v. Workmen followed U. P. Electric Supply Co. Ltd. v. R. K. Shukla distinguished. Ambalal v. D. M. Vin overruled. Punjab Beverages v. Suresh Chand followed Namor Ali v. the Central Inland water Transport Corpo. Ltd. Central Bank of India v. Rajagopalan. Union of India v. K. S. Sawatram Sawatram Ramprasad Mills Co. Ltd. v. Baliram Topandas v. M/s. Gorakhram Gokalchand R. B. Bansilal Abirchand Mills Co. Pvt. Ltd. v. The Labour Court Nagpur Ramakrishna Ramnath v. Presiding Officer Nagpur Dahyabhai Ranchhoddas v. M/s. Jaynatilal Mohanlal Spl. C. A. No. 743 of 1967 decided by G.H.C. on 18-3-70 Board of Directors of South Arcot Electricty Distribution Co. Ltd. v. N. K. Mohammad Khana referred to.

Acts Referred:

Constitution Of India Art 141

Industrial Disputes Act, 1947 Sec 33C(2)

Final Decision: Petition allowed

Advocates: N J Mehta,K S Nanavati, I M Nanavati, M M Desai, Arvind J Patel, I G Shah , F I Desai, P C Master

Reference Cases:

Cases Cited in (+): **3**

Cases Referred in (+): **10**

Cases Overruled (+): **1**

Judgement Text:-

Divan, C J

[1] The Division Bench consisting of one of us (A. D. Desai J) and N, H. Bhatt J., has passed the following order of reference to a Full Bench in Special Civil Application No. 936 of 1975 with Special Civil Application No. 1122 of 1973 :-

"In view of the decisions of the Supreme Court which axe prima facie not reconcilable and far-reaching effect of the point of law involved, these two writ petitions are , referred to the Full Bench."

The order of reference then sets out the various decisions of the Supreme Court and the difficulty was felt particularly because of the decision of the Supreme Court in Central Inland Water Transport Corporation Ltd. v. Workmen, A.I.R. 1974 S. C. 1634 and the decision of the Supreme Court in U.P. Electric Supply Co. Ltd. v. R. K. Shukla, A.I.R. 1970 S.C. 237. The main point which is involved in this case is the exact scope of the proceeding} before the Labour Court in proceedings under sec. 33C(2) of the Industrial Disputes Act, 1947. Sub-sec. (2) of sec. 33C is in these terms :-

"(2) Where any workman is entitled to receive from the employer any money or any benefit :which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government."

So far as sub-sec. (1) of sec. 33C is concerned it may be pointed out that it provides for recovery of money due from an employer and the provision is -

"330. (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs 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 :

Provided that every such application shall be made within one year from the

date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period."

Thus, in order to appreciate the scope of sec. 33C (2), one must bear in mind that whereas sub-sec. (1) of sec. 33C deals with the case where the money is due to a workman from an employer under a settlement or an award in the form of retrenchment compensation under the provisions of Chapter ' VA, or lay-off compensation under Chapter V-A, sub-sec. (2) deals with the recovery by the workman of any money or any benefit which is capable of being computed in terms of money and it empowers the Labour Court concerned to deal with the question arising as to the amount of money due or as to the amount at which such benefit should be computed. 'Industrial Disputes (Gujarat) Rules, 1966 were made by the Government of Gujarat in exercise of the powers conferred by sec. 38 of the Industrial Disputes Act, 1947 and Rule 67(1) of these Rules provides that where any ; money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A, the application has to be made in Form XX-A for recovery of the money due to him and where .any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the workman concerned has to apply to the specified Labour Court in Form XX-B for the determination of the amount at which such benefit should be computed and where the Labour Court has determined the amount of the benefit under sub-rule (2) of Rule 67, the Workman has to apply in Form XX-C for the recovery of the money due to him. It may be pointed out at this stage that there is a decision of the Gujarat High Court in Ambalal v. D. M. Vin, (1964) 5 G.L.R. 609 which is also required to be considered in the light of the decisions of the Supreme Court.

[2] Our task has been made easier by two recent decisions of the Supreme Court delivered after the order of reference was made by the Division Bench to a larger

Beach, In Punjab Beverages v. Suresh Chanel, A.I.R. 1978 S.C. 995, Bhagwati J., speaking for the Supreme Court Bench of three Judges, has explained the scope of sec. 33C(2) in paragraph 4 at page 997 in these terms :

> "It is now well-settled, as a result of several decisions of this Court, that a proceeding under sec. 33C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from his employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. But the right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman, and his employer. Vide Chief Mining Engineer East India Coal Co. Ltd. v, Rameshwar, (1968) 1 S.C.R. 140 : (A.I.R. 1968 S.C. 218). It is not competent to the Labour Court exercising jurisdiction under sec. 33-C(2) to arrogate to itself the functions of an industrial Lribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject-matter of an industrial dispute in a reference under sec. 10 of the Act. Vide State Bank of Bikaner v. R. L. Khandelwal, (1968) 1 Lab. L.J. 589 (S C). Lhat is why Gajendragadkar, J., pointed out in The Central Bank of India Ltd. v. P. S. Rajagopalan etc., (A.I.R. 1964 S.C. 743) that 'if an employee is dismissed or demoted and it is his case that the dismissal or demotion is wrongful, it would not be open to him to make a claim for the recovery of his salary or wages under sec. 33-C(2). His demotion or dismissal may give rise to an industrial dispute which may be appropriately tried, but once it is shown that the employer has dismissed or demoted him, a claim that the dismissal or demotion is unlawful and, therefore, the employee continues to be the workman of the employer and is entitled to the benefits due to him under a pre-existing contract cannot be made under sec. 33C(2)'. Lhe workman, who has been dismissed, would no longer be in the service of the employer and though it is possible that on a reference to the Industrial Lribunal under sec. 10 the Industrial Lribunal may find, on the material placed before it, that the dismissal was unjustified, yet until such adjudication is made, the workman cannot ask the Labour Court in an application under sec. 33-C(2) to disregard his dismissal as wrongful and on that basis to compute his wages. Lhe application under sec. 33-C(2) would

be maintainable only if it can be shown by the workman that the order of dismissal passed against him was void abinitia."

Again in paragraph 13 at page 1002, Bhagwati J., has pointed out-

"It is also significant to note that if the contravention of sec. 33 were construed as having an invalidating effect on the order of discharge or dismissal, sec. 33-A would be rendered meaningless and futile, because in that event, the workman would invariably prefer to mike an application under sec. 33-C(2) for determination and payment of the wages due to him on the basis that he continues to be in service. If the workman files a complaint under sec. 33A, he would not be entitled to succeed merely by showing that there is contravention of sec. 33 and the question whether the order of discharge or dismissal is justified on the merits would be gone into by the Tribunal and if, on the merits, it is found to be justified, it would be sustained as valid despite contravention of sec. 31, but if, on the other hand, instead of proceeding under sec. 33-A, has makes an application under sec. 33C(2), it would be enough for him to show contravention of sec. 33 and he would then be entitled to claim wages on the basis that he continues in service. Another consequence which would arise on this interpretation would be that if the workman files a complaint under sec. 33-A, the employer would have an opportunity of justifying the order of . discharge or dismissal on merits, but if the workman proceeds under sec. 33C(2), the employer would have no such opportunity. Whether the employer should be able to justify the order of discharge or dismissal on merits would depend upon what remedy is pursued by the workman, whether under sec. 33A or under sec. 33C(2). Such a highly anomalous result could never have been intended by the legislature. If such an interpretation were accepted, no workman would file a complaint ; under sec. 33-A, but he would always proceed under sec. 33C(2) and sec. 33A would , be reduced to futility. It is, therefore, impossible to accept the argument that the contravention of sec. 33 renders the order of discharge or dismissal void and inoperative and if that be so, the only remedy available to the workman for challenging the order of discharge or dismissal is that provided under sec. 33A, apart of course from the remedy under sec. 10, and he cannot maintain an application under sec. 33C{2) for determination and payment of wages on basis that he continues to be in

service. The workman can proceed under sec. 33C(2) only after the Tribunal has adjudicated, on a complaint under sec. 33A or on a reference under sec. 10, that the order of discharge or dismissal passed by the employer was not justified and has ; set aside that order and reinstated the workman".

The law was thus also explained in NamorAll v. The Central Inland Water Transport Corporation Ltd., (A.T.R. 1978 S.C. 275). There the Supreme ' Court Bench consisting of Untwalia and Kailasam JJ. has considered the previous cases on the point and has summed up the legal position thus :-

"Where the only dispute in the proceeding under sec. 33C(2) between the management and a section of its workman is whether those workman 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 sec. 33C(2) court not be rejected on ground that there is no dispute about the money due. The provisions of sec. 33C(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".

The Bench further held that -

"On a plain reading of the wordings of sec. 33C(2) it would be found that where [any workman is entitled to receive from 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, about, 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 sec. 33C(2) of the Act and make the remedy available to the workman concerned."

It was further held that-

"It cannot be said that if there is a dispute as to any amount due, it is to be decided by the appropriate Government under sub-sec. (1) of sec. 33C and not by the Labour Court under sub-sec. (2)."

These two decisions and particularly the observations of Bhagwati J., in Punjab Beverages' Case that clearly point out so far as the workman is concerned, he must proceed on the footing of an existing right; the existing right may be under the terms of the settlement or an award or the right may have been provided for either by custom or by law or by agreement but there must be an existing right and so long as there is that existing right which is claimed by the workman, he can apply to the Labour Court under sec. 33C(2) and the Labour Court will have jurisdiction to deal with the application on merits. It must be pointed out that sec. 10 of the Act which deals with reference to both Court of Inquiry, Labour Court or an Industrial Tribunal is wide enough to cover all industrial disputes including those which would fall under sec. 33C(2). Thus where sec. 10 deals with references of cases to Industrial Disputes of all kinds, sec. 33C(2) provides a speedier remedy for

the recovery of the dues of a workman against his employer in certain specified type of cases and the basis is that there must be an existing right. Sec. 33C(2) is obviously not meant for creation of any new rights or fresh rights. All that it deals with is an existing right which, as we have observed above, may arise because of an adjudication in an earlier proceeding or which has been provided for either by custom or by law or by agreement.

[3] It must be pointed out that a Bench of five Judges of the Supreme Court has exhaustively dealt with the entire question of the scope of. sec. 33C(2) in Central Bank of India v. Rajagopalan, A.I.R. 1964 S.C. 743. It must also be pointed out that in all subsequent decisions of the Supreme Court the Bench of Judges has been either of two or three or four Judges and in all these cases less than five Judges. The principle to be followed whenever there is even an apparent conflict between decisions of a larger Bench and a smaller Bench of the Supreme Court, has been pointed out by Beg J., (as he then was) speaking for the Supreme Court in Union of India v. K. S. Subramanian, A.I.R. 1976 S.C. 2433 In paragraph 12 of the judgment at page 2437 he has observed-

"The proper course for a High Court, in such a case, is to try to find out and follow the opinions expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court. That is the practice followed by this Court itself. The practice has now crystallized into a rule of law declared by this Court. If, however, the High Court was of opinion that the views expressed by larger benches of this Court were not applicable to the facts of the instant case it should have said so giving reasons supporting its point of view".

Of course, if the views expressed earlier by a larger bench of the Supreme Court have been explained even by a smaller bench in a subsequent decision, the explanatisn by the smaller bench of the Supreme Court would be required to be followed by High Courts before whom the earlier decision of the larger bench and the subsequent explanation of the same judgment by the smaller bench are cited. Otherwise, as indicated by Beg, J., in Union of India v. K. S. Subramanian (Supra) the High Court is bound to follow the decision of the larger Bench of the Supreme Court.

[4] It may be pointed out that in none of the subsequent decisions has any Bench of the

Supreme Court dissented from the views expressed by the bench of five Judges in Central Bank of India v. Rajagopalan. Every one of the subsequent Benches has purported to follow the decision of the Supreme Court in Central Bank of India v. Rajagopalan.

[5] Gajendragadkar J., (as he then was) speaking for the Bench of five Judges in Central Bank of India v. Rajagopalan has fully explained the ambit of sec. 33C(2). It was pointed out in that case-

> "Though in determining the scope of sec. 33C Industrial Disputes Act, care must be taken not to exclude cases which legitimately fall within its purview, it must also be borne in mind that cases which fall within sec. 10(1) of the Act for instance, cannot be brought within the scope of sec. 33C".
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> According to the Supreme Court in Central Bank of India v. Rajagopalan in paragraph 18 at page 749-
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> "...there can be no doubt that when the Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing Court to interpret the decree for the purpose of execution. It is, of course, true that the executing Court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court; but like the executing Court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim under sec. 33C(2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under sec. 33-C(2). it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests."
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> It has also been pointed out-
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> ".....claims made under sec. 33-C(1), by itself can be only claims referable to the settlement, award, or the relevant provisions of Chapter V-A. These

words of limitations are not to be found in sec. 33-C(2) and to that extent, the scope of sec. 33C(2) is undoubtedly wider than that of sec. 33-C(1). It is true that even in respect of the larger class of cases which fall under sec 33C(2), after the determination is made by the Labour Court the execution goes back again to sec. 33C(1). That is why sec. 33C'(2) expressly provides that the amount so determined may be recovered as provided for in sub-sec. (I). It is unnecessary in the present appeals either to state exhaustively or even to indicate broadly what other categories of claims can fall under sec. 33C(2). There is no doubt that the three categories of claims mentioned in sec. 33C(1) fall under sec. 33C(2) and in that sense, sec. 33C(2) can itself be deemed to be a kind of execution proceeding; but it is possible that claims not based on settlements, awards or made under the provisions of Chapter V-A, may also be competent under sec. 33C(2) and that may illustrate its wider scope. We would, however, like to indicate some of the claims which would not fall under sec. 33C(2), because they formed the subject matter of the appeals which have been grouped together for our decision along with the appeals with which we are dealing at present. If an employee is dismissed or demoted and it is his case that the dismissal or demotion is wrongful, it would not be open to him to make a claim for the recovery of his salary or wages under sec. 33C(2). His demotion or dismissal may give rise to an industrial dispute which may be appropriately tried, but once it is shown that the employer has dismissed or demoted him, a claim that the dismissal or demotion is unlawful and, therefore, the employee continues to be the workman of the employer and is entitled to the benefits due to him under a pre-existing contract, cannot be made under sec. 33C(2). If the settlement has been duly reached between the employer and his employees and it falls under sec. 18(2) or (3) of the Act and is governed by sec. 19(2), it ' would not be open to an employee, notwithstanding the said settlement, to claim the benefit as though the said settlement had come to an end. If the settlement is intended to be terminated, proper steps may have to be taken in that behalf and a dispute that may arise thereafter may be dealt with according to the other procedure prescribed by the Act. Thus, our conclusion is that the scope of sec. 33C(2) is wider than sec. 33C(1) and cannot be wholly assimilated with it, though for obvious reasons, we do not propose to decide or indicate what additional cases would fall under sec. 33C(2) which may not fall under sec. 33C(1). In this connection, we may incidentally state that the observations made by this Court in the case of Punjab National Bank Ltd.,

(A.I R. 1963 SC 487) that sec. 33C is a provision in the nature of execution should not be interpreted to mean that the scope of sec. 33C(2) is exactly the same as sec. 33C(1)."

[6] In connection with the decision of the Bombay High Court in Sawatram Ramprasad Mills Co. Ltd. v. Baliram, 65 Bom. L.R. 91, the Supreme Court observed in Central Bank of India case (supra)-

".....the High Court was dealing with a claim made under Chapter V-A of the Act and there can be no doubt that such a claim together with all questions incidental to its decision can be properly determined under sec. 33C(2). In reaching its conclusion, the High Court has no doubt made certain broad and general observations in regard to the scope of the jurisdiction conferred on the Labour Court under sec. 33C(2). Those observations are in the nature of obiter dicta and in so far as they may be inconsistent with our present decision, they should be held to be not justified by the terms of sec. 33C(2)."

[7] It must be pointed out that in Central Bank of India v. Rajagopalan, (supra), the case of the workman concerned was that besides attending to his routine duties as clerk, he had been operating the adding machine provided for use in the clearing department of the Branch during the period mentioned in the list annexed to the petition and it was alleged that as such, he was entitled to the payment of Rs. 10/- per month as special allowance for operating the adding machine as provided for under paragraph 164(b)(1) of the Sastry Award. On this basis, each one of the respondents made his respective claim for the amount covered by the said allowance payable to him during the period specified in the calculations. The employer disputed the workmen's claim and it was urged that the workmen could claim only non-monetary benefits under the Award that were capable of computation and so, sec. 33C(2) was inapplicable to their claim. The Supreme Court in Central Bank of India v. Rajagopalan, went into the merits of this case ultimately and after considering the facts of the case and the question whether the workman concerned could be described as Composites, that is, those who are working on the computing machine, or whether they were merely operators of adding machines, the Supreme Court remanded the proceedings to the Labour Court with a direction that it should allow the parties to amend the pleadings, if so desired, and give its decision in respect of the respective cases; but the Supreme Court held that it was open to the Labour Court to decide whether the workman before it who was basing his rights on a

particular adjudication, namely, the Sastry Award, fell within the particular category for which special provision had been made in that adjudication. This order of the Supreme Court in Central Bank of India's case, therefore, illustrates that once the workman concerned bases his claim on an existing right, namely, on an adjudication, the question whether the workman falls within the award or the adjudication, is a matter which can be dealt with and should be dealt with by the Labour Court under sec. 33C(2) But if the question arises whether the workman has been rightly or wrongly dismissed or whether the workman has been rightly or wrongly retrenched, the Labour Court cannot deal with that dispute under sec 33C(2). To put it briefly, so long as there is no dispute on the shoving of the workman on the workman's application under sec. 33C(2) that the relationship of employer and employee has not chased to exist and the claim which the workman puts forward in his application under sec. 33C(2) is based on an existing right, the application under sec. 33C2) is maintainable.

[8] In this connection it may be pointed out that under the principle of Topandas v. Mis. Gorakhram Gykalchand, A.I.R.. 1964 S.C. 1343, in deciding maintainability of proceedings what is to be looked at is the plaint in a civil suit or the application in case arising under sec. 33Q2) of the Industrial Disputes Act and not what that other side contends or urges in its reply or written statement. As the Supreme Court put it in Topmdas's case -

> "the defendant cannot force ths plaintiff to goto a forum where on his averments he cannot go."
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> Applying this principle to the scope of sec. 31C(2), once the workman's case as disclosed in his application to the Labour Court shows that the existence of tha relationship of employer and employee is not put in dispute by the workman himself and on the basis of an existing relationship of employer and employee and on the basis of existing right which may arise out of an adjudication or which may be provided for by custom or law or agreement, that application under sec. 33C(2). is maintainable. The fact that that empower by his plea raises dispute does not mean that the jurisdiction of that Labour Court to deal with the question is taken away.

[9] In U.P. Electric Supply Company v. R. K. Shikla (supra), the Bench of two Judges of the Supreme Court consisting of J. C. Shah J., (as he then was) and Mitter J., dealt with

the provisions of sec. 33Q2). The decision of the Supreme Court in Centra* Bank of Ltdia v. Rajagopaljn, (supra) was cited and one of the passages from that judgment of Gajendragadkar. J., which was referred to above was also extracted. In paragraph 15 of the judgment at page 242, Shah J., observed -

> "The Legislative intention disclosed by Secs. 33C(1) and 33C(2) is fairly clear. Under sec. 33C(1) where any money is due to a workman from an employer under a settlement or an award or under the provisions of Ch. V-A, the Workman himself, or any other person authorised by him in writing in that behalf, may make an application to the appropriate Government lo recover the money due to him. Where the workman entitled to receive from the employer any benefit which is capable of being computed in terms of money, applies in that behalf, the Labour Court, may under sec. 33C(2) decide the questions arising as to the amount of money due or as to the amount at which such benefit shill be computed. Sec. 33-C(2) is wider than sec. 33CU). Matters which do not fall within the terms of sec. 33C(1) may, if the workman is shown to be entitled to receive the benefits, fall within the terms of sec. 33C(2 . If the liability arises from an award, settlement or under the provisions of Ch. V-A, or by virtue of a statute or a scheme made thereunder, mere denial by the employer may not be sufficient to negative the claim under sec. 33C(2) before the Labour Court. Where however the right to retrenchment compensation which is the foundation of the claim is itself a matter which is exclusively within the competence of the Industrial Tribunal to be adjudicated upon on a reference, it would be straining the language of sec. 33Q.2) to hold that the question whether there has been retrenchment may b; decided by the Labour Court. The power of the Labour Court is to compute the compensation claimed to be payable to the workmen on the footing that there has been retrenchment of the workmen. Where retrenchment is concluded, and the only matter in dispute is that by virtue of sec. 25-FF no liability to pay compensation has arisen the Labour Court will b; competent to decide the question, la such a case the question is one of computation and not of determination of the conditions precedent to the accrual of liability. Where, however, the dispute is whether workmen have been retrenched and computation of the amount is subsidiary incidental, in our judgment, the Labour Court will have no authority to trespass upon the powers of the Tribunal with which it is statutorily invested."

[10] The Supreme Court itself has observed in R. B. Bans Hal Abirchand Mills Co. Pvt. Ltd. v. The Labour Court, Nagpur, A.I.R. 1972 S.C. 451 that the observations of Shah J., in U.P. Electric Supply Co. Ltd. v. R. K. Shukla (supra) cannot be considered binding on the Supreme Court as all the aspects were not placed before the Court then. The Bench of the Supreme Court that decided the R. B. B. A. Mills' case was a Bench of four Judges. After setting out extensively passages from the judgment of U. P. Electric Supply Co. Ltd. 's case and particularly paragraph 15 in Ratnakrishna Ramnath v. Presiding Officer, Nagpur, 1970-11 L.LJ. 306, the Bench of two Judges consisting of J. M. Shelat and G. K. Mitter JJ., observed -

> "The concluding position of the above observations cannot be considered dissociated from the setting in which they were made. As was pointed out in the case of the Central Bank (supra) the examination of the claim under sec. 33-C(2) may in some cases have to be preceded by an enquiry into the existence of the right. A mere denial of the fact of retrenchment would not be enough to take the matter out of the jurisdiction of the Labour Court."

> In R. B. B. A. Mills Co.'s case, (supra), the Supreme Court pointed out in paragraph 23 at page 458 that the Labour Court's jurisdiction could not be ousted by a mere plea denying the workman's claim to the computation of the benefit in terms of money; the Labour Court had to go into the question aid determine whether, on this facts, it had jurisdiction to make the competition. It could not however give itself jurisdiction by a wrong decision on the jurisdictional plea Ultimately, therefore, the question has to be approached in the light of what is the work man's case when he approaches the Court and from this point of view of the dispute raised by the employer in his reply to the claim of the workman.

[11] In Central Inland Water Transport Corporation Ltd. v. Workmen, A.I.R. 1974 S.C. 1604, a Bench of two Judges consisting of Palekar and Bhagwati JJ., dealt with the scope of sec. 33C(2). This decision in Central Inland Water Transport Corporation's case on the face of it purports to narrow down the scope of sec. 33C(2). Palekar J., speaking for the Supreme Court observed in paragraph 12 at page 1608-

> "It is now well-settled that a proceeding under sec. 332 is a proceeding, generally, in the nature of an execution proceeding whereas the Labour

Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudged, or, otherwise, duly provided for. In Chief Mining Engineer East India Coal Co. Ltd. v. Rameswar, (A.I.R. 1968 S.C. 218) it was reiterated that proceedings under sec. 33C(2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the benefit claimed by workmen is in such cases in the position of an executing Court. It was also reiterated that the right to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an Industrial workman and his employer. In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff's right to relief; (ii) the corresponding liability of the defendant, including whether the defendant is, at all, liable or not; and (iii) the extent of the defendant's liability, if any. The working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding. Determination No. (iii) referred to above, that is to say, the extent of the defendant's liability may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. Sines a proceeding under sec. 33C(2) is in the nature of an execution proceeding it should follow that an investigation of the nature of determinations (i) and (ii) above is, normally, outside its scope. It is true that in a proceeding under sec. 33C(2) as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But that is merely 'incidental'. To call determinations (i) and (ii) 'incidental' to an execution proceeding would be a perversion, because execution proceedings in which the extent of liability is worked out are just consequential upon the determinations (i) and (ii) and represent the last stage in a process leading to final relief. Therefore, when a claim is made before the Labour Court under sec. 33C(2). that Court must clearly understand the limitations under which it is to function. It cannot arrogate to

itself the functions-say of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as 'incidental' to its main business of computation. In such cases determinations (i) and (ii) are not 'incidental' to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal. It was, therefore, held in State Bank of Bikaner and Jaipur v. R. L Khandetwal, (1968) 2 Lab L.J. 589 (S C.) that a workman cannot put forward a claim in an application under sec. 33C(2) in respect of a matter which is not based on an existing right and which can be appropriately the subject matter of an Industrial Dispute which requires a reference under sec. 10 of the Act."

It may be pointed out that in paragraph 14 of the judgment Palekar J., dealt with the decision of the Supreme Court in Central Bank of India Lid. v. P. S. Rajagopalan (supra), and the decision in Central Inland Water Transport Corporation Ltd. v. Workmen, does not carry the matter any further beyond the stage to which the matter was taken by the Supreme Court in Central Bank of India Ltd. v. P. S. Rajagopalan. Thus the decision of Central Inland Water Transport Corporation's case is merely the application of the principles laid down by the Supreme Court in Central Bank of India Ltd. v. P. S. Rajagopalan to the facts of the case before it. It must also be pointed out that Bhagwati J., who was a party to the decision in Central Inland Water Transport Corporation's case himself delivered the judgment in Punjab Beverages v. Suresh Chand (supra) and the Bench that decided the Punjab Beverages' case was a Bench of three Judges. Under these circumstances, in view of the principle referred to above, we must follow the principle as explained by the Bench of three Judges in Punjab Beverages' case.

[12] In Dahyabhai Ranchhoddas v. M/s. Jayantilal Mohanlal, (1973) 14 G.L R. 1, the Division Bench of this High Court consisting of Bhagwati C.J., (as he then was) and D. A. Desai J , held while explaining the scope of sec. 33Q2)-

"Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money, and is

denied such benefit, he can approach the Labour Court under sec. 33C(2) of the Industrial Disputes Act for recovering both monetary or non-monetary benefit which can be computed in terms of money and which he is entitled to receive from his employer. The benefit sought to be recovered must necessarily be a pre-existing benefit of benefit flowing from a pre-existing right. The workman approaching the Labour Court under sec. 33C(2) for enforcement of right or benefit must be able to point to some preexisting right or benefit which he seeks to enforce. If he seeks some new rights or change in conditions of service, or some new benefit, neither acquired nor granted nor confined by the statute, he must pursue his remedy under sec. 10 of the Industrial Disputes Act.

If the money or the benefit is claimed by a workman on the basis that the right is denied, it is compelent for the Labour Court in proceeding under sec. 33C(2) to decide whether the right does or does not exist.

Right contemplated by sec. 33C(2) may have been acquired anywhere and may be in respect of any matter falling for the purpose of sec. 10 either under second schedule or third schedule If a right in respect of any of such matters has yet to be acquired, the workman has to proceed under sec. 10, but if it is once acquired, and its existence is disputed, the Labour Court would have jurisdiction to decide whether the light existed or not.

Where a workman claims benefit flowing from a pre-existing right and approaches the Labour Court for computation of the right in money and the employer disputes existence of the right, the Labour Court will have jurisdiction to determine the question whether the right existed and if existence of the right is established, then to proceed to compute the benefit flowing there from into money and on its decision, recovery proceeding can start."

We are in agreement with the scope of sec. 33C(2) culled out by the Division Bench in Dahyabhai v. M/s. Jayantilal Mohanlal (supra) from decided cases. The Division Bench also pointed out that the observations of the Bench of two Judges of the Supreme Court in U. P. Electric Supply Co. case (supra)

had not been approved by the Supreme Court itself in R. B. B. A. Mills Co. Ltd., v. Labour Court, Nagpur (supra). We are of the opinion that the conclusion of the Division Bench is entirely on the same lines as the subsequent decision of the Supreme Court in Punjab Beverages' case (supra).

[13] Thus, so far as the scope of sec. 33C(2) is concerned, all that has to be done is to follow the principles laid down by the Bench of five Judges of the Supreme Court in Central Bank of India Ltd. v. Raja-gopalan (supra) as explained by the latest decision in Punjab Beverages case (supra).

[14] We may point out that in one of the earlier decisions of this Court in Ambalal v. D. M. Vin, (1964) 5 G.L.R. 69, it was held that if any claim is made by the workmen that claim must be under the Industrial Law and having regard to item No. 10 in the Third Schedule and sub-sec. (2) of sec. 33C, the Labour Court has no jurisdiction to determine the same as its jurisdiction is confined only to the determination of the amount of benefit arising out of an existing right. It was further held that having regard to the fact that retrenchment compensation cannot be claimed under sec. 25F of the Industrial Disputes Act, and must necessarily be claimed de hors that section, the Labour Court had got no jurisdiction to deal with the matter under sec. 33C(2). The Labour Court would have also no jurisdiction to determine the amount of compensation as the right to retrenchment was not claimed under any existing law or award or settlement.

[15] With great respect to the learned Judges who decided the case of Ambalal v. D. M. Vin, (supra), we are unable to agree with their conclusions regarding the scope of sec. 33C(2). If the workman himself accepts the factor of retrenchment and in his application asks for the order of the Court that the amount of retrenchment compensation should be computed and paid to him and applies for recovery under sec. 33C(2), the Labour Court would have jurisdiction because in that event the Labour Court would not be deciding whether this workmen has been rightly or wrongly retrenched but proceeding upon the basis of retrenchment. The rights given to the workman under the statute would have to be computed and the amount properly determined in sec. 33C(2) proceedings. It is not the plea of the employer that would matter in deciding whether the Court has jurisdiction under sec. 33C(2). What the Court should determine is for what relief or on what basis the workman approaches the Court. If he approaches the Court on the footing that there is retrenchment and the retrenchment is accepted by the workman, then rest of the

matter can be decided under sec. 33C(2) and to that extent that decision in Ambalal v, D. M. Vin (supra) must, in the light of the subsequent decisions of the Supreme Court be deemed to have been overruled. The observations of the Supreme Court in U. P. Electric Supply Co. Ltd. v. R. K. Shukla (supra) have also not found favour with the Supreme Court in R.B B,A. Mills case (supra) and the decision in Centra India Water Transport Corporation Ltd. v. Workmen, (supra) also must be confined to the facts of the case and must be deemed to be an application of the principles laid down in Central Bank of India v. P. S. Rajagnpalan, (supra) to the facts of the case before the Supreme Court.

[16] In our opinion, the position in law is now explained by the Supreme Court in Punjab Beverages case (supra) and it is in the light of the decision of the three Judges of the Supreme Court in Punjab Beverages case that the scope of sec. 33C(2) and its ambit will have to be determined.

[17] We may also point out that a Division Bench of this High Court consisting of J. B. Mehta and A. D. Desai, JJ. in Special Civil Application No. 743 of 19: 7 decided on March 18, 1970 distinguished the decision of the Supreme Court in U. P. Electric Supply Co Ltd. case. The Division Bench relied upon the decision of the Supreme Court in Board of Directors of the South Arcot Electricity Distribution Co. Ltd. v. N K. Mohammad Khan etc., (1969) 1 Supreme Court Cases 192 and the following passage from the decision in South Arcot Electricity Distribution Co. case-

> 'These decisions make it clear that a workman cannot put forward a claim in respect of a matter which is not based on an existing right and which can be appropriately the subject matter of an industrial dispute only requiring reference under sec. 10 of the Act."
>
> In South Arcot Electricity Distribution Company's case it was pointed out by (he Supreme Court that in that particular case the claim for retrenchment compensation on the transfer of the electrical undertaking was based under sec. 25-FF of the Act as the said right accrued to the workmen under sec. 25-FF of the Act and was an existing right at the time when the applications were made. The Labour Court clearly had jurisdiction to decide whether such a right did or did not exist when dealing with the applications under that provision. The mere denial of that right by the company could not take away the jurisdiction of the Labour Court and, therefore, the order made by the

Labour Court was held to be competent by the Supreme Court. The Division Bench pointed out that the decision in South Arcot Electricity Distribution Company case was not overruled in any manner by the decision in U. P. Electric Supply Co. Ltd. case. It was pointed out that in the U. P. Electric Supply Co, Ltd. case the retrenchment itself was disputed because the employer had taken up the case that the workers voluntarily abandoned the employment under the company because they found it more profitable to take up employment under the Board. That is why according to the Division Bench, in U. P. Electric Supply Co. Ltd. case the Supreme Court held that the Labour Court was incompetent to decide this question whether there was retrenchment or voluntary abandonment of the employment as this issue was exclusively within the competence of the Industrial Tribunal,

[18] As regards the merits of the two Special Civil Application which have been referred to us, it may be pointed out that in Special Civil Application No. 1122 of 1973, the case of the applicant while making the application under sec. 33C(2) was that he was serving as a jobber in the Weaving Department of the respondent Company for about twenty years. As automatic looms were to be installed in the Weaving Department and simple looms were to be recovered, the operatives and jobbers were required to be retrenched or voluntary resignations were to be invited by the Mills Company and the persons who were affected thereby were to be given retrenchment compensation alongwith their other dues. On December 24, 1971 the applicant tendered his resignation in the printed form through Majoor Mahajan Sangh, Nadiad, with the condition that he may be given benefits of retrenchment compensation and all other dues and that this resignation with this condition was accepted on December 25, 1971 and as per the condition of the printed form he was paid only gratuity but was not paid retrenchment compensation of Rs. 6.000/- and Rs. 200/- towards leave with wages. By its written statement the employer contended that the application was false. It also contended that the applicant resigned on his own unconditionally; and that the question of retrenchment, therefore, did not arise. By way of a preliminary objection a contention was raised that the application was not maintainable under sec. 33C(2). The Presiding Officer of the Labour Court before whom the application was heard followed the decision in Ambalal v. D. M. Vin (supra) and held that sine the application was for retrenchment compensation and the workman nowhere stated that he had filed the present application for recovery of the amount due to him otherwise than by way of retrenchment, the application was not maintainable under sec. 33C(2).

[19] We have held above that for the purposes of sec. 33C(2), what matters is the case of the workman as set out in the application. In the instant case the workman was claiming his dues under an existing right, namely, that in view of the condition which he had written on the printed form, he was entitled to retrenchment compensation. He was not disputing the factor of retrenchment and in our view, since the decision of the Division Bench of this Court in Ambalal Shivlal v. D. M. Vin must be deemed to have been overruled, the decision of the Labour Court must be quashed and set aside. The matter will now go back to the Labour Court for deciding the application on merits bearing in mind the principles laid down by the Supreme Court in the cases referred to hereinabove and the principles which we have culled out from those decisions.

[20] In Special Civil Application No. 936 of 1975 the case of the workman was that he was working in the respondent's factory since many years and was a permanent clerk and that the factory was closed from June 1, 1971 and he claimed closure compensation aggregating to Rs. 1,800/- and the recovery certificate to enable him to recover the amount. In its written statement the respondent contended that the application was not legally tenable and various contentions were raised in the case. The Labour Court held on the preliminary objection that it had no jurisdiction to entertain the application on the ground was that the applicant had no existing right in so far as closure compension was concerned. There was no finding so far as the petitioner workman was concerned on the issues that were raised and the Labour Court observed.-

> "All these major issues cannot be decided by this Court, because it has got limited jurisdiction under sec. 33C(2) of the Act. These major issues can be decided by way of Reference to the Industrial Tribunal as it is beyond the jurisdiction of this Court to decide all these industrial major disputes."

> It is obvious that the question whether on the facts which the workman was urging in his application under sec. 33C (2), the application under sec. 33C (2) was maintainable or not has to be decided by the Labour Court. It is after examining the evidence on merits that the Labour Court could have decided whether there was a closure of the factory or not and whether the applicant left the job on his own accord as the employer contended. But merely because of the disputes raised by the respondent-employer, some issues were required to be gone into for the purpose of granting relief to the

workman, it could not be said that the application under sec. 33C (2) was not maintainable. As we have observed above, mere denial of the right of the workman by the employer would not take away the jurisdiction of the Labour Court which it otherwise had.

[21] Under these circumstance? the order of the Labour Court in this case also is quashed and set aside and the matter will now go back to the Labour Court for deciding the question on merits in the light of what has been stated hereinabove.

[22] Rule is, therefore, nude absolute in each of these two matters. In view of the unsettled position of law till recently, the fair order would be that each party should bear its own costs in each of those Special Civil Applications.

Petitions allowed.