Chief Mining Engineer East India Coal ... vs Rameswar And Ors on 8 August, 1967

Equivalent citations: 1968 AIR 218, 1968 SCR (1) 140, AIR 1968 SUPREME COURT 218, 1968 LAB. I. C. 197, 1968 (1) SCR 140, 1967 2 SCWR 805, 15 FACLR 457, 1968 (1) LABLJ 6, 33 FJR 90

Author: J.M. Shelat

Bench: J.M. Shelat, Vishishtha Bhargava, C.A. Vaidyialingam

PETITIONER:
CHIEF MINING ENGINEER EAST INDIA COAL CO. LTD.

Vs.

RESPONDENT:
RAMESWAR AND ORS.

DATE OF JUDGMENT:
08/08/1967

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
BHARGAVA, VISHISHTHA
VAIDYIALINGAM, C.A.

CITATION:
1968 AIR 218 1968 SCR (1) 140
CITATOR INFO :
RF 1970 SC 237 (5,13,14)
F 1971 SC1902 (13)
R 1972 SC 451 (17)
RF 1972 SC1579 (4)
R 1974 SC1604 (12)
RF 1975 SC 171 (22)
R 1975 SC1898 (6,7)
E&R 1978 SC 995 (4)

ACT:
Coal Mines Provident Fund and Bonus Scheme Act, 1948 (46 of 1948)--Bonus under the Scheme--Jurisdiction of Labour Court under s. 33C of Industrial Disputes Act--Limitation for applications--Eligibility for bonus.
Industrial Disputes Act, 1947 (14 of 1947) s. 33C Bonus under Coal Mines Provident Fund and Bonus Scheme

Act--Jurisdiction of Labour Court--Limitation for application.

HEADNOTE:

The respondents--workmen filed applications in 1962 claiming bonus under the Scheme framed by the Central Government under the Coal Mines Provident Fund and Bonus Schemes Act, 1948 and railway fares and leave wages from 1948 onwards. The Labour Court, Dhanbad allowed their claims under S. 33C(2) of the Industrial Disputes Act, 1947, which, in appeals to this Court, the appellant-Company challenged, contending, that (1) the Labour Court had no jurisdiction to try these applications under S. 33C(2); (ii) the applications were barred by Limitation prescribed by the bonus Scheme and/or due to laches. and (iii) under the said Scheme the workmen were not entitled to bonus as they were employed as domestic servants.

HELD:The appeals must fail.

(i)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. Since the scope of sub-see. 2 of s. 33C is wider than that of sub-s 1, and the sub-section is not confined to cases arising under an award settlement or under the provisions of Chapter VA there is no reason to hold that a benefit provided by statute or a Scheme made thereunder, without there being anything contrary under such statute or s. 33C(2), cannot fall within sub-section 2. Consequently. the benefit provided in the bonus scheme made under the Coal Mines Provident Fund and Bonus Schemes Act, 1948 which remained to be computed must fall under sub-section 2 and the Labour Court therefore had jurisdiction to entertain and try such a claim, it being a claim in respect of an existing right arising from the relationship of an industrial workman and his employer. [144B-D].

Punjab National Bank Ldt. v. Kharbanda [1962] Supp. 2 S.C.R. 977 Central Bank of India v. Rajagopalan [1964] 3 S.C.R. 140, and Bombay Gas Co., Ltd. v. Gopal Bhiva [1964] 3 S.C.R. 709 relied on,

(ii)There is no justification for inducting a period of limitation provided in the Limitation Act into the provisions of s. 33C(2) which do not lay down any limitation. It is a matter of some significance that though the legislature amended section 33C by Act 36 of 1964 and introduced limitation in that Section, it did so by means of a proviso only in respect of claims made under sub-sec. 1 but did not provide any such limitation for claims under sub-sec. 2. [14-4H-145B].

Bombay Gas Co. Ltd. v. Gopal Bhiva [1964] 3 S.C.R. 709 relied on.

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The period of three years of limitation provided for by clause (3) of S. 9A of ;the Bonus Scheme applies to applications for payment by the Coal Mines Provident Fund Commissioner from the deposit made in the Government treasury and has no application to claims under S. 33C(2) which makes no provision for limitation. [145D-E].

(iii)Two conditions are necessary to render an employee ineligible for Bonus under S. 1 of the Bonus Scheme: (1) that he is employed as a mali, a sweeper or a domestic servant, and (2) that he performs during the relevant period domestic or personal work. To render an employee ineligible for bonus under this exception both the capacity and the nature of work are relevant factors. It follows that even though an employee is employed as a mali, a sweeper or a domestic servant if he does non-domestic or non-personal work he will be entitled to bonus and would lose his right to A only during that period that he does domestic or personal work. [146B-C].

Bhowra Colliery v. Its Workmen, [1962] L.L.J. 378, relied on.

On the evidence, the respondents were employed in the colliery, they were not assigned the exclusive duty of supplying water at the residence of the junior officers but they supplied water at certain pit heads. So the exception did not apply.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 256--267 of 1966.

Appeals by special leave from the Award dated April 6, 1964 of the Central Government Labour Court, Dhanbad in Ap- plications L.C. Nos. 237 / 245, 228 / 247, 238 / 250, 230 / 252, 239 / 254, 229/255 of 1962.

H.R. Gokhale and D. N. Gupta, for the appellant (in all the appeals).

Janardan Sharma, for the respondents (in all the appeals). The Judgment of the Court was delivered by Shelat, J.-These appeals by the special leave arise out of applications filed by workmen of the appellant-company claiming bonus under the Scheme framed by the Central Government under the, Coal Mines Provident Fund and Bonus Schemes Act, 46 of 1948 and railway fares and leave wages under the award of the Industrial Tribunal (Colliery Disputes) which came into effect as from February 22, 1954. The Central Government Labour Court at Dhanbad allowed their claim under section 33C (2) of the Industrial Disputes Act, 1947.

Mr. Gokhale for the appellant-company challenged the correctness of the Labour Court's decision

and raised the following contentions : -

(1) that the Labour Court had no jurisdiction to try these applications under s. 33C (2):

(a)because s. 33C(2) contemplates recovery of money payable under an award, settlement or under the provisions of Chapter VA of the Industrial Disputes Act only and not under any other statute or scheme framed there under;

(b)that under s. 33C(2) the benefit capable of being computed in terms of money is a non-

monetary benefit and not a claim for money itself; and

(c)that the proceedings under section 33C(2) being in the nature of execution proceedings substantial questions between an employer and his employee cannot be adjudicated by the Labour Court under this section;

(2)that in any case these applications were barred by limitation prescribed by the said bonus Scheme and/or due to laches on the part of the respondents-, (3)that under the said Scheme the respondents are not entitled to bonus as they were employed as domestic servants and were during the relevant period performing domestic and personal work; and (4)that the direction to pay bonus for the period prior to the dates on which these respondents were employed was in- valid.

The contention as to jurisdiction of the Labour Court depends on the true construction of s. 33C(2) as it stood in 1962 when these applications were filed and before its amendment by Act 36 of 1964. Section 33C(2) has so far been the subject matter of decision by this Court in three cases, viz., Punjab National Bank Ltd. v. Kharbanda(1), Central Bank of India v. Rajagopalan(2) and Bombay Gas Co. Ltd. v. Gopal Bhiva(3).

The following propositions on the question as to the scope of S. 33C(2) are deducible from these three decisions:-

(1)The legislative history indicates that the legislature, after providing broadly for the investigation and settlement of disputes on the basis of collective bargaining, recognised the need of individual workmen of a speedy remedy to enforce their existing, individual rights and therefore inserted s.

33A in 1950 and S. 33C in 1956. These two sections illustrate cases in which individual workmen can enforce their rights without having to take recourse to s. 10(1) and without having to depend on their union to espouse their case.

(2)In view of this history two considerations are relevant while construing the scope of s. 33C. Where industrial disputes arise between workmen acting collec- tively and their employers such

disputes must be adjudicated upon in the manner prescribed by the Act, as for (1) [1962] Supp. 2 S.C.R. 977. (2) [1964] 3 S.C.R. 140.

(3) [1964] 3 S.C.R. 709.

instance under s. 10(1). But having regard to the legislative policy to provide a speedy remedy to Individual' workmen for enforcing their existing rights, it would not be reasonable to exclude their existing rights sought to be implemented by individual workmen. Therefore though in determining the scope of s. 33C care should be taken not to exclude cases which legitimately fall within its purview, cases which fall, for instance under s. 10(1), cannot be brought under s. 33C;

(3)Section 33C which is in terms similar to those in s. 20 ofthe Industrial Disputes (Appellate Tribunal) Act,, 1950 is a provision in the nature of an executing provision;

(4)Section 33C(1) applies to cases where money is due to a workman under an award or settlement or under Chapter VA of the Act already calculated and ascertained and therefore there is no dispute about its computation. But sub-section 2 applies both to non-monetary as well as monetary benefits. In the case of monetary benefit it applies where such benefit though due is not calculated and there is a dispute about its calculation;

(5)Section 33C(2) takes within its purview cases of workmen who claim 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. It is open to the Labour Court to interpret the award or settlement on which the workmen's right rests. (6) The fact that the words of limitation used in s. 20(2) of the Industrial Disputes (Appellate Tribunal Act. 1950 are omitted in s. 33C(2) shows that the scope, of s. 33C(2) is wider than that of s. 33C(1). Therefore, whereas sub-section 1 is confined to claims arising under an award or settlement or Chapter VA. claims which can be entertained under sub-section are not so confined to those under an award, settlement or Chapter VA. (7)Though the court did not indicate which cases other than those under subsection would fall under sub-section 2. it pointed out illustrative cases which would not fall under sub-section 2, viz., cases which Would ap- propriately be adjudicated under s. 10(1) or claims which have already been the subject- matter of settlement to which ss. 18 and 19 would apply.

(8)Since proceedings under s. 33C(2) are analogous to execution proceeding and the Labour Court called upon to compute in terms of money the benefit claimed by a workman is in such cases in the position of an executing court. the Labour Court like the executing court in execution proceedings governed by the Code of Civil Procedure, is competent under s. 33C(2) to interpret the award or settlement where the benefit is claimed under such award or settlement and it would be open to it to consider the plea of nullity where the award is made without jurisdiction.

It is clear 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. Since the scope of sub-sec. 2 is wider than that of subsec. 1 and the sub- section is not confined to cases arising under an award,

settlement or under the, provisions of Chapter VA. there is no reason to hold that a benefit provided by a statute or a Scheme made thereunder, without there being anything contrary tinder such statute or s. 33C(2), cannot fall within sub-section 2. Consequently, the benefit provided in the bonus scheme made under the Coal Mines Provident Fund and Bonus Schemes Act, 1948 which remains to be computed must fall under sub-section 2 and the Labour Court therefore had jurisdiction to entertain and try such a claim, it being a claim in respect of an existing right arising from the relationship of an industrial workman and his employer. The contention that the Labour Court had no jurisdiction because the claim arose under the said scheme or because the benefit was monetary or because it involved any substantial question between the Company and the workmen must, in view of the said decisions, fail.

These- applications were made in 1962 though they related to claims for the years commencing from 1948 and onwards. The contention therefore was that part of these claims, at any rate, must be held to be barred either by limitation or by reason of laches on the part of the workmen. The answer to this contention is clearly provided in the case of Bombay Gas Co.(1) where a distinction was drawn between considerations which would prevail in an industrial adjudication and those which must prevail in a case filed under a statutory provision such as S. 33C(2). This court pointed out there that whereas an industrial dispute is entertained on grounds of social justice and therefore a Tribunal would in such a case take into consideration factors such as delay or laches, such considerations are irrelevant to claims made under a statutory provision unless such provision lays down any period of limitation. The Court held that there is no justification in inductina period of limitation provided in the Limitation Act into the provisions of s. 33C(2) which do not lay down any limitation and that such a provision can only be made by legislature if it thought fit and not by the court on an analogy or any other such consideration. It is a matter of some significance that though the legislature (1)[1964] 3 S.C.R. 709.

amended section 33C by Act 36 of 1964 and introduced limitation in the section, it did so by means of a proviso only in respect of claims made under sub-sec. 1 but did not provide any limitation for claims under sub-section 2. In view of this fact and the decision in Bombay Gas Company's case(1) Mr. Gokhale conceded that he could not press the contention that the present claims were barred by limitation or laches.

Some reliance however was sought to be placed on cl. 3 of s. 9A of the Bonus Scheme. Section 9(A) contemplates that the employer has first to tender the bonus payable to the workman under the Scheme. If the bonus, in spite of the tender, remains unclaimed for six months after such tender, he is required to have it credited in the Reserve Account established under the Scheme. The section then provides by cl. 2 that the bonus amount shall be paid in the seventh month from the end of the quarter to which it relates by depositing it in such government treasury as may be prescribed and the original chalan of such deposit shall be sent within the time set out therein to the Coal Mines Provident Fund Commissioner. Clause (3) then provides that a workman who desires payment of arrears of bonus payable to him shall apply to the said Commissioner within three years from the last date of the quarter to which the bonus relates. The period of three years of limitation thus applies to applications for payment by the Commissioner from the deposit made in the treasury and has no application to claims under s. 33C(2) which as aforesaid makes no provision for limitation

The contention that the respondents-workmen, though admittedly the employees of the appellant company, were not entitled to bonus under the Scheme as they were doing domestic and personal work, viz., of supplying water at the residence of certain junior officers of the Company throughout the relevant period, is also not tenable. The relevant portion of s. 1 of the Bonus Scheme relied on by the Company reads as follows:

> "1. Class of employees eligible to qualify for bonus Except as hereinafter provided, every employee in a coal mine to which this Scheme applies shall be eligible to qualify for bonus.
>
> Exceptions-An employee in a coal mine shall not be entitled to a bonus under the Scheme for the period during which-
>
> (a).....
>
> (b)he is employed as a mali, sweeper or domestic servant on domestic or personal work....."

(1) [1964] 3 S.C.R. 709.

my(N)ISCI-12 Under this section every employee of the Company except as therein provided is eligible for bonus. The exception provides that a person though an employee in a colliery is not entitled to bonus inter alia for the period during which he is employed as a mali, sweeper or domestic servant on domestic and personal work. Two conditions are therefore necessary to render an employee ineligible for bonus : (1) that he is employed as a mali, a sweeper or a domestic servant and (2) that he performs during the relevant period domestic or personal work. To render an employee ineligible for bonus under this exception both the capacity and the nature of work are relevant factors. It follows that even though an employee is employed as a mali, a sweeper or a domestic servant if he does non-domestic or non-personal work he will be entitled to bonus and would lose his right to it only during that period that he does domestic or personal work. In Bhowra Collicry v. Its Workmen(1) this Court construed this very exception and held that if the concerned workmen were employed and worked as garden mazdoors and malis to look after the gardens attached to the bungalows occupied by the Colliery officers they would not be eligible for the bonus notwithstanding the fact that the bungalows were owned by the Colliery, the workmen were Colliery's employees and worked under the Company's orders and were liable to be transferred from one job to another. Thus the employment of a person as a mali, sweeper or a domestic servant and discharge by him of domestic or personal work as distinguished from non-domestic and non-personal work, i.e., work relating to the colliery, are necessary conditions before the exception can apply. In view of the admitted position that the respondents-work- men were employees of the Company the burden of proof that they fell within the exception is clearly on the Company. In its written statement the Company no doubt averred that these workmen were employed as domestic servants and carried out domestic and personal duties and were therefore not eligible for the bonus. But it is clear from the evidence of the two witnesses examined by the Company that the Company failed to establish either that the respondents were employed as domestic servants or that they were

exclusively en-aged on domestic or personal, work. On the other hand, from the evidence of Sibu, one of the respondent workmen, it appears that the respondents were employed in the colliery, that they were not assigned the exclusive duty of supplying water, at the residence of the junior officers but that they supplied water at certain pit heads. On this evidence the Labour Court has given a finding that they were engaged in supplying water at certain points in the colliery. In these circumstances the Labour Court was justified in coming to the conclusion that the exception did not apply. (1) [1962] L.L.J. 378.

The last contention which remains to be considered was that the Labour Court was not right in awarding the claim of the workmen in full, both as regards bonus and railway fares and leave wages. According to the Company, none of these workmen was in its employment in 1948, that they were appointed at different dates and that they would at best be entitled to bonus for the period during which they were so employed. This contention has, however, no force in view of the Company not having disputed the quantum of relief claimed by the workmen both as regards bonus as also the railway fares and leave wages.

The appeals are dismissed with costs.

Appeal dismissed.

Y. P.