Central Inland Water Transport ... vs The Workmen & Anr on 23 April, 1974

Equivalent citations: 1974 AIR 1604, 1975 SCR (1) 153, AIR 1974 SUPREME COURT 1604, 1974 4 SCC 696, 1974 LAB. I. C. 1018, 1975 CURLJ 68, 1975 (1) SCJ 92, 1975 (1) SCR 153, 29 FACLR 56, 46 FJR 1

Author: D.G. Palekar

Bench: D.G. Palekar, P.N. Bhagwati

PETITIONER:
CENTRAL INLAND WATER TRANSPORT CORPORATIONLTD.

Vs.

RESPONDENT:
THE WORKMEN & ANR.

DATE OF JUDGMENT23/04/1974

BENCH:
PALEKAR, D.G.
BENCH:
PALEKAR, D.G.
BHAGWATI, P.N.

CITATION:
1974 AIR 1604 1975 SCR (1) 153
1974 SCC (4) 696

ACT:
Industrial Disputes Act. 1947--Section 33(C)(2)--Powers of the Labour Court under Sec. 33(C)(2)--What disputes can be determined.

HEADNOTE:
The River Steam Navigation Co. Ltd., used to employ about 9000 workmen. The Company had been incurring heavy losses for several years and, therefore, retrenchment was undertaken on a large scale. Thereafter, a settlement was arrived at on 25-8-1965 between the Company and its workmen, inter alia, providing that there would be no retrenchment for a period of 5 years. Under a scheme of arrangement and compromise sanctioned by the High Court the appellant, Corporation took over the said Company. The Corporation

issued fresh letters of appointment in favour of about 5173 out of 9000 employees. The employees who were not taken over by the appellant Corporation moved the State Government and the State Government made a reference on 27th October, 1969 to the Second Labour Court.

The Corporation. thereupon, challenged this reference by a Writ Petition under Article 226 of the Constitution for setting it aside on the ground that the questions referred to the Labour Court did not fall within the jurisdiction of the Labour Court , under section 33(C)(2) of the Industrial Disputes Act. The learned single Judge, Ghose, J. struck down issue no. 4 as not entertainable by the Labour Court, but as regards the other 3 issues he was of the view that the Labour Court had jurisdiction. The Union did not file an appeal against the order by which issue no. 4 was struck down. But the Corporation went in appeal against the order of the learned Judge in so far as he had held that the Labour Court had jurisdiction to adjudicate upon issues 1, 2 and 3. The Division Bench by its order dated December 14, 1972 dismissed the appeal. it was contended before this Court that the Labour Court had no jurisdiction to adjudicate on the issues referred to it under section 33(C)(2) of the Industrial Disputes Act.

HELD : A proceeding under section 3 3 (C) (2) is a proceeding in the nature of an execution proceeding wherein 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. Since a proceeding under section 33(C)(2) is in the nature of an execution proceeding, it would appear that an investigation of the nature mentioned in the reference in question is outside its scope. The Labour Court cannot arrogate to itself The functions of an Industrial Tribunal which alone is entitled to make an adjudication on a question such as the one referred to the Labour Court. The workers in the present case virtually claimed reemployment or at least some benefits on the basis of their alleged right to be reemployed. The problems raised in the above reference in effect involve a major industrial dispute, investigation into which is quite outside the scope of section 33(C)(2). Only on a detailed examination it would be possible to determine whether the workmen bad any right to a benefit and if so whether the appellant was liable to satisfy the same. The other question which would be necessary to decide is whether the appellant is a successor of the defunct Company. Problems raised are appropriate for determination in an Industrial Dispute on a reference under section 10 of the Act and cannot be regarded as merely incidental to the computation under section 33(C) (2). [158F; 159C-E; 163A & E]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1779 and 1780 of 1973.

Appeal by special leave from, the judgment and order dated the 14th December, 1972 and Order dt. 20th July, 1973 of the Calcutta High Court in Appeal No. 252 of 1971 and S.C.A. No. 262/71 respectively.

Niren De, Attorney General, B. Sen, M. K. Bannerjee, P. C. Bhartari, J. B. Dadachanji, O. C. Mathur and Ravinder Narain for the appellants.

Sudhis K. Ray and Rathin Das, for the respondents. The Judgment of the Court was delivered by PALEKAR, J. This is an appeal by special leave by the Central Wand Water Transport Corporation Limited, her-in after called the Corporation, from a judgment and order of the Calcutta High Court in Appeal No. 252 of 1971 disposed of on December 14 1972. Respondent No. 1 is the Inland Steam Navigation Workers Union representing the Workmen, and respondent No. 2 is the State of West Bengal. A reference was made by the State of West Bengal to the Second Labour Court at Calcutta under s. 33 (C) (2) of the Industrial Disputes Act, 1947, and the point in issue is whether that court had jurisdiction to entertain the reference. A few facts are necessary to be stated. There was a Limited Company known as the River Steam Navigation Co. Ltd. (hereinafter called the Company) which used to operate a river service from West Bengal to Assam through what was formerly East Pakistan. It had employed for its business about 8,000 workmen, including clerical staff. Due to conflict with Pakistan in 1965 the Company came to grief and had to suspend a major part of its operations. Retrenchment was undertaken on a large scale because the Company had been incurring heavy losses for several years inspite of the Government of India acquiring a controlling interest in it to prevent its voluntary liquidation. In the course of conciliation proceedings the Management of the Company arrived at a settlement with the respondent Union on August 25, 1965 whereby it was agreed, inter alia, that the settlement was valid for 5 years till the end of 1969, that the retiring age of the workmen would be 57 years and that there would be no retrenchment for 5 years. The Company's fortunes did not improve, and, therefore, in 1966 owing to its indebtedness to various creditors, including the Union of India, the State Bank of India, the Chartered Bank etc. to the tune of several chores of rupees, a winding up petition was filed in the Calcutta High Court. The Company, thereupon, made an application under Sections 391 to 394 of the Companies Act for sanctioning a scheme of arrangement and compromise between the Company and the appellant Corporation which was incorrupt on February 22, 1967 as a wholly owned Central Government Company.

The scheme was sanctioned by a learned Judge of the Calcutta High Court by his order dated May 3, 1967. It is to be noted that when the proceeding was before the learned Judge, the respondent Union had appeared before the court with a view to safeguard the interests of the workers. Aggrieved by the order which sanctioned the scheme, the Union went in appeal before a Division Bench of the High Court. The Division Bench by its judgment and order dated July 14, 1967 upheld the order of the single Judge sanctioning the scheme.

It is not necessary to quote the scheme extensively. It is enough to point out that it provided, inter alia, that all the properties and assets but only some of the liabilities of the Company would vest in the appellant Corporation. It was further agreed that the Corporation would take over as many of the staff and labour of the Company as was possible under the circumstances, but as to how many would be employed by the Corporation was entirely left to the discretion of the Corporation. It was further agreed that those employees who were not taken over by the Corporation would. be paid compensation by the Company out of funds the Government of India agreed to supply. It was further agreed that upon the approval of the scheme, the Company would be closed and on payment of all creditors it would stand dis- solved without winding up. All these terms of the scheme were confirmed in appeal but with a view to safeguard the rights of workers, if any, the following observations were made:

> "I am of opinion, that the questions, first, whether there is a closure of the company within the meaning of the Industrial Disputes Act, secondly, whether the agreement dated 25th August, 1965, is capable of enforcement, thirdly, whether the workers or workmen are entitled to prefer and assert their claims on the agreement dated 25th August 1965 and fourthly, whether the Rivers Navigator Company Limited and the new transferee company are entitled to assert that there has been a closure and further that the agreement is not capable of enforcement, should all be left open for the rival contentions to be pursued in the proper forum and on proper materials and in the proper jurisdiction. I am of opinion that if any claim be made in the proper jurisdiction it will be a matter for enforcement of That claim in properly constituted proceedings. It is needless to say that unless there is adjudication there cannot be any enforcement of the claim and such adjudication has to be made in a proper forum."

The scheme, as already pointed out, was sanctioned by Order dated May 3, 1967 and, as envisaged in the scheme itself, the Company on that very day issued a notice of closure. Thereafter the Corporation issued fresh letters of appointment, and out of about 8,000 former employees of the Company, the Corporation employed about 5173. This left a larger body of employees of the former Company unemployed. On September 12, 1968 the Government of West Bengal made two orders of reference purporting to be under s. 33(C)(2) of the Industrial Disputes Act. By the first order of reference it asked the Labour Court to compute the benefits covered by the settlement dated August 25, 1965 between the Union and the Company and by the second order of reference, it asked for the computation of retrenchment benefits under section 25FF of the Industrial Disputes Act. The Corporation challenged those orders in a Writ Petition in the Calcutta High Court, principally, on the ground that the references had made several unjustified assumptions, which by the nature of the frame of the references had become non-justiciable. In a detailed judgment B. C. Mittra, J. held that the reference orders were misconceived and set them aside by was order dated July 15, 1969. The learned Judge, however, observed :

> "The respondent No. 3 (State) will be at liberty to make fresh order or orders of reference in the light of the observations made in this judgment and in compliance with the directions in the judgment of the Appellate Court and in accordance with law." There was no appeal from that order. Thereafter on October 27, 1969 the

Government of West Bengal made the present consolidated reference to the Second Labour Court in the following terms :

"Whereas the workmen mentioned in the attached Est No. 1, represented by the Inland Steam Navigation Workers' Union, 16/17 College Street, Calcutta-12, (hereinafter referred to as the said Union), have preferred claims that they are entitled, in terms of the settlement dated the 25th August, 1965 (hereinafter referred to as the said settlement), to receive from Messrs. Central Inland Water Transport Corporation Limited, 4, Fairlie Place, Calcutta-1, (hereinafter referred to as the said Company) benefits which are capable of being computed in terms of money; And whereas the workmen mentioned in the attached list No. 11 represented by the said Union have preferred claims that they are entitled to get from said Company retrenchment benefits under Section 25FF of the Industrial Disputes Act, (Act 14 of 1947), which are capable of being computed in terms of money : And whereas the workmen in lists Nos. 1 and II have requested the State Government to specifya Labour Court for determination of the amount to whichsuch benefits should be computed;

Now therefore in exercise of the power conferred by sub-section(2) of Section 33(C) of the Industrial Disputes Act, 1947 (Act 14 of 1947), the Governor is pleased to specify the Second Labour Court constituted by notification No. 1727-1 B/IB/3A-1/58 dated the 28th April, 1958 as the Labour Court to which the following issues are referred for adjudication.

Issues (1) Whether the undertaking or the business of M/S Rivers Steam Navigation Company Limited has been transferred to Messrs. Central Inland Water Transport Corporation Limited.

If so, whether the settlement dated the 25th August, 1965 is binding on Messrs. Central Inland Water Transport Corporation Limited ?

(2) Whether the workmen mentioned in list No. 1, bound by the Settlement, dated the 25th August, 1965 are, entitled to continue in employment under Messrs. Central Inland Water Transport Corporation Limited ? If so, what amount of money are they entitled to ? Is that money recoverable from Messrs. Central Inland Water Transport Corporation limited ?

(3) Whether the workmen mentioned in List No. 11 are entitled to get retrenchment compensation under Section 25F, read with Section 25 FF of the Industrial Disputes Act, 1947 ? If so, what amount of money are they entitled to ?

(4) Whether the undertaking or the business of Messrs. Rivers Steam Navigation Company Limited has been closed within the meaning and contemplation of Section 25 FFF of the Industrial Disputes Act, 1947 ? If so, what amount of money as compensation are If so workmen mentioned in Lists Nos. I and II en-

titled to?"

List No. 1 referred to above gives the names and addresses of 420 employees. list No. 11 contains the names of 92 employees. The employees raising the dispute are mentioned in two separate lists and in two separate issues because the employees in List No. 1 who were parties to the settlement dated August 25, 1965 were supposed to have rights other than those which were claimed by employees mentioned in List No. 11 who were not parties to the settlement. It will be seen from the order of reference that four issues were referred to the Labour- Court for adjudication. The first issue raises the question whether the undertaking of the Company had been transferred to the Corporation and, if so, whether the settlement- of August 25, 1965 between the Company and the Union was binding on the Corporation. By the second issue the question was raised whether the 420 employees who were parties to the settlement of August 25, 1965 were entitled to continue in the employment of the Corporation and, if so, to what amount they were entitled. The Labour Court was further asked to adjudicate whether the amount so computed was money recoverable from the Corporation. By the third issue the question was raised whether the 92 employees mentioned in Est No. 11 who were not parties to, the settlement referred to above were entitled to get compensation under Section 25 FF of the Industrial Disputes Act and, if so, what was the amount to which they were entitled ? By the fourth issue the Labour Court was invited to adjudicate whether the undertaking of the Company had been closed within the contemplation of section 25 FFF of the Act and if so, what amount of compensation the workmen mentioned in both the lists were entitled to ?

The Corporation, thereupon, challenged this reference also by a Writ Petition under Article 226 of the Constitution for setting it aside ,on the ground that the questions referred to the Labour Court did not fall within the jurisdiction of the Labour Court under section 33(C) (2) of the Industrial Disputes Act. The learned single Judge, Ghose, J struck down issue No. 4 as not entertainable by the Labour Court, but as regards the other 3 issues he was of the view that the Labour Court had jurisdiction. The Union did not file an appeal against the order by which issue No. 4 was struck down. But the Corporation went in appeal against the order of the learned Judge in so far as he had held that the Labour Court had jurisdiction to adjudicate upon issues 1, 2 and 3. The court of appeal by its order dated December 14, 1972 dismissed the appeal. The Corporation asked for a certificate to appeal to this court, but on its dismissal, this court gave special leave and that is how the present appeal arises.

The only question which arises for determination in this Court is whether the Labour Court has jurisdiction to adjudicate on the issues referred to it under section 3 3 (C) (2) of the Industrial Disputes Act. Sub-section(2), which is part of section 33C dealing with "the recovery of money due from an employer" reads as follows "(2) Where any work-man 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."

It is now well-settled that a proceeding under section 33(C)(2) is a proceeding, generally, in the nature of an execution proceeding wherein 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 (Thief Mining Engineer, East India Coal Co. Ltd. v. Rameshwar & ors.(1) it was reiterated that proceedings under section 33(C)(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. (1) [1968] 1 S.C.R. 140.

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 liabiliey, if any. The working out of such liability with a view to give relief is generally regarded as the function or 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. Since a proceeding under section 33(C)(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 section 3 3 (C) (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 per- version, 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 section 33(C)(2) that court must clearly understand the limitations under which it is to function. It cannot arrogate to itse 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 benfit 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. Khandelwal(1) that a workman

cannot put forward a claim in an application under section 33(C)(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 section 10 of the Act. The scope of section 33(C)(2) was illustrated by this Court in The Central Bank of India Ltd. v. P. S. Rajagapalan etc. (2). Under the Shastri Award, Bank clerks operating the adding machine were declared to be entitled to a special allowance of Rs. 10/- per month. Four clerks made a claim for computation before the Labour Court. The Bank denied the claim that the clerks came within the category referred to in the award and further contended that the Labour Court (1) [1968]L.L.J.589. (2) [1964] 3 S.C.R. 140.

under Section 33(C)(2) had no jurisdiction to determine whether the clerks came within that category or not. Rejecting the contention, this Court held that the enquiry as to whether the 4 clerks came within that category was purely "incidental' and necessary to enable the Labour Court to, give the relief asked for and, therefore, the Court had jurisdiction to enquire whether the clerks answered the sescription of the category mentioned in the Shastri Award, which not only declared the right but also the corresponding liability of the employer bank. This was purely a case of establishing the identity of the claimants as coming within a distinct category of clerks in default of which it would have been impossible to give relief to anybody falling in the category. When the Award mentioned the category it, as good as, named every one who was covered by the category and hence the enquiry, which was necessary, became limited only to the clerks' identity and did not extend either to a new investigation as to their rights or the Bank's liability to them. Both the latter had been declared and provided for in the Award and the Labour Court did not have to investigate the same. Essentially, therefore, the assay of the Labour Court was in the nature of a function of a court in execution proceedings and hence it was held that the Labour Court had jurisdiction to determine, by an incidental enquiry, whether the 4 clerks came in the category which was entitled to the special allowance.

It is, however, interesting to note that in the same case the court at page 156 gave illustrations as to what kinds of claim of a workman would fail outside the scope of section 33(C)(2). It was pointed out that a workman who is dismissed by his employer would not be entitled to seek relief under section 32(C)(2) by merely alleging that, his dismissal being wrongful, benefit should be computed on the basis that he had continued in service. It was observed "His dismissal may give rise to an industrial dispute which may be appropriately tried, but once it is shown that the employer has dismissed him, a claim that the dismissal 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 preexisting contract, cannot be made under S. 33(C)(2)". By merely making a claim in a loaded form the workmen cannot give the Labour Court jurisdiction under s. 3 3 (C) (2). The workman who has been dismissed would no longer be in the employment of the employer. It may be that an industrial tribunal may find on an investigation into the circumstances of the dismissal that the dismissal was un- justified, But when he comes before the Labour Court with his claim for computation of his wages under section 33(C)(2) he cannot ask the Labour Court to disregard his dismissal as wrongful and on that basis compute his wages. In such cases, a determination as to whether the dismissal was unjustified would be the principal matter for adjudication, and computation of wages just consequential upon such adjudication. It would be wrong to consider the principal adjudication as 'incidental' to the computation. Moreover, if we assume that the Labour Court had jurisdiction to make the

investigation into the circumstances of the dismissal, a very anomalous situation would arise. The Labour Court after holding that the dismissal was wrongful would have no jurisdiction to direct reinstatement under section 3 3 (C) (2). And yet if the jurisdiction to compute the benefit is conceded it will be like conceding it authority to pass orders awarding wages as many time comes before it without being reinstated. Therefore, the Labour Court exercising jurisdiction under section 33 (C) (2) has got to be circumspect before it undertakes an investigation, reminding itself that any investigation it undertakes is, in a real sense, incidental to its computation of a benefit under an existing right, which is its principal concern. Bearing in mind these limitations of a Labour Court functioning under section 33(C)(2) we have to approach the question before us. The old Company closed its business on May 3, 1967. The Corporation, in due course, appointed a large number of the Company's employees by fresh letters of appointments, but it could not absorb all of them. The reference was made on behalf of the employees mentioned in Lists I and 11. They were in all 512. Out of these, it appears, 24 were reemployed by the Corporation later can. The rest of them virtually claimed reemployment or at least some benefits on the basis of their alleged right to be re-employed. In actual fact, however, the Corporation did not employ these workmen after the Company's undertaking was transferred to it. The scheme of transfer did not compel the Corporation to employ the workmen. Nor is there any term in the transfer-agreement or scheme which passed over to the Corporation any responsibility in respect of the workmen. Section 25 FF-of the Industrial Disputes Act declare what are the rights of the workmen of an undertaking which is transferred. The right is to receive-compensation as if the workmen are retrenched under section 25 F and is available only against the owners of the undertaking, that is to say, the transferor of the undertaking. The liability of the transferor to gay compensation does not arise only when (i) there has been a change of employers by reason of the transfer and (ii) the 3 sub-clauses (a), (b) and (c) of the proviso of that section come into play. It is pointed out in South Arcot Electricity Company v. N. K. Khan(1) that each one of the 3 conditions in clauses (a), (b) and (c) is to be satisfied before it can be held that the right conferred by the principal clause does not accrue to the workmen. In the present case there is no actual change of employers by reason of the transfer, nor do the 3 subclauses apply. Therefore, prima facie, the claim of the workmen would be for compensation under section 25 FF, directed, not against the Corporation, but against the Company of which they were formerly the employees. As a matter of fact the scheme itself shows that the employees of the Company who were not taken over by the Corporation were to be paid by the Company all money due to them under the law. The scheme further shows that the Company (1) [1969] 2 S.C.R. 902 at 908.

was, to ,be put in possession of funds by the Government of India for satisfying the liabilities to the workers. The effect of section 25 FF. which is explained by this Court in Anakapalli Co-operative Agricultural & Industrial Society Limited v. Workmen(1) is, so far as it is relevant, as follows : (i) the first part of the section postulates that on a transfer of the ownership or management of an undertaking, the employment of workmen engaged by the said undertaking comes to an end, and compensation is made payable because of such termination (p. 745) ; (ii) in all cases to which s 25-FF applies, the only claim which the employees of the transferred concern can legitimately make is a claim for compensation against their employers. No claim can be made against the transferee of the said concern (p. 746); (iii) By the present s. 25-FF the Legislature has made it clear that if industrial undertakings ;are transferred, the employees of such transferred undertakings should be

entitled to compensation, unless, of course, the continuity. in their service or employment is not disturbed and that can happen if the transfer satisfies the three requirements of the proviso (p. 746) and (iv) since section 25-FF provides for payment of benefit on the basis that the services of the employees stand terminated, neither fair- play nor social justice would justify the claim of the employees that they ought to be reemployed by the transferee (p. 748). That being the position in law under section 25- FF, the former employees of the company who were not absorbed by the Corporation can hardly make out a claim against the transferee Corporation either for compensation, on- termination of their service following the transfer or for reemployment. The claim at any rate of the employees in List II as against the Corporation under section 25-FF was clearly misconceived.

Mr. Ray, appearing for the respondent Union, however, contended that whatever may be the position of the workers mentioned in List II, the case of the workers in List I stood on a different footing because these workers were parties to a settlement dated 25-8-1965 between the Company and its workers and under section 18(3)(C) the settlement was binding not only on the Company but also its successor or assign the present Corporation. Under that settlement, it was contended, the employees in List I were entitled to continue uninterrupted service, without retrenchment, till at least December 31' 1969 and this stipulation it was claimed, was binding on the Corporation which became the successor of the Company from the date of the transfer of the undertaking , that is to say, May 3,1967. The further contention was that the Corporation's refusal to continue the employees in service as the Corporation's employees from the date was wrongful and hence it must be held, in law, that the employees continued in the service of the transferee Corporation and on that basis the Labour Court could compute the benefit under section 33 (C) (2). (1) [1963] Suppl. 1 S.C.R. 730.

The several problems raised by the above contentions involve in effect a major industrial dispute, an investigation in to which is quite outside the scope of section 33(C)(2). Only on a detailed investigation would it be possible to determine whether the workmen had any right to a benefit and, if so, the, Corporation was liable to satisfy the same. The other question which would be necessary to decide is whether the Corporation was a successor of the defunct Company. As pointed out in Anakapalli Co-operative case, already referred to, the question whether a transferee of an undertaking is a successor or not involves consideration of several factors as set Out at pages 737 to 738 of the report. Such an investigation would clearly be quite outside the, speedy individual remedy contemplated by section 33 (C) (2). Assuming further that on such investigation, the court comes to the conclusion that the Corporation is a successor, that again will not settle the matter because, as pointed out in that case, in view of section 25-FF the transferee even as a 'successor would be liable neither to pay compensation to nor to reemploy the workmen whose employment stood automatically terminated on the transfer. Where the operation of the law viz.Section 25-FF the employment of workmen stands terminated, it may be difficult to sustain it on the basis of a term in a settlement' prohibiting retrenchment, though statutorily binding on the transferee as a successor. It is perfectly arguable that such an argument would not have been available even against the transferor of the undertaking in view of Section 25-FF. In any event, the question is not one which the Labour Court could be expected to deal with in a proceeding u/s 33 (C) (2) the principal business where-under is just computation of a benefit demonstrably existing. In short, the problems raised

are appropriate for determination in an Industrial Dispute on a reference u/s 10 of the Act and cannot be regarded as merely 'incidental' to the computation u/s. 33(C) (2).

If the above disputes were referred to an Industrial Tribunal u/s 10, the Tribunal would necessarily go into a detailed investigation 'of the alleged right of the employees to be continued in service by the, Corporation. After such investigation the Tribunal may have held they had no such right. Or it may have come to the 'conclusion that the Corporation had,wrongfully refused to absorb the employees, in which case the Tribunal could have given relief in several forms depending on the facts and circumstances of each case. It could direct reemployment by the. Corporation with or without continuity of service. It could order reemployment from any particular date found just and fair, or it could direct payment of wages fully or partially. Now, none of these things can be done by the Labour Court u/s 33 (C) (2). AR it can do is to compute the benefit if there was already an adjudication in favour of the workmen as against the Corporation or the said benefit was otherwise provided for as payable by the Corporation. A moment's reflection will show that it would be impossible for the Labour Court to compute any benefit unless the Court, after considering all the matters which an Industrial Tribunal has to consider, ultimately decides upon one or the other of the several alternative reliefs which the Industrial Tribunal alone has a right to determine. BY saying that the Labour Court-would determine the alternative reliefs as 'incidental' to computation, one, cannot conceal the fact that it is actually exercising the function of an Industrial Tribunal. The investigation is not incidental to com- putation, but the computation' itself is consequential upon the main finding as to the nature of relief the workmen are entitled to in an industrial dispute. The situation is the same as when a workman who is discharged wants relief,. as shown in the case of the Central Bank of India v. Rajagopalan-already referred to. The discharged workman can obtain relief by way of section 10 only and not by an application to the Labour Court u./s 33(C)(2) claiming computation of the benefit on the basis that the discharge being unlawful, his services must be deemed to be continuous and uninterrupted.

We, are, therefore, unable to agree with the High Court's view, that the Labour Court had jurisdiction to deal with the questions referred to it u/s 33(C)(2). The appeal must, therefore, be allowed. But there shall be no order as to costs.

Civil Appeal No. 1780 of 1973.

Palekar, J. This appeal is from the Order of the High Court dated July 20, 1973 refusing to grant a certificate to appeal to this Court under Article 133(1) of the Constitution. Since this Court had granted leave to appeal under Article 136 in special leave petition No. 2543/1973, and Civil Appeal No. 1779 (NL) of 1973 resulting therefrom, has already succeeded, it is not necessary to pass any orders on this appeal except to say that in view of the orders passed in Civil Appeal No. 1779 (NL) of 1973, no orders are necessary on this appeal.

Appeal allowed.