

## **Bishnu Ch. Ojha And Ors. vs Presiding Officer, Labour Court And ... on 25 August, 1997**

**Equivalent citations: (1998)ILLJ1195ORI, 1997(II)OLR460**

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**Bench: S.N. Phukan, P.K. Tripathy**

### **JUDGMENT**

S.N. Phukan, C.J.

1. The present writ petition has been filed by ten workmen being aggrieved by dismissal of their application under Section 33C(2) of the Industrial Disputes Act, 1947 (for short, "the Act") by the Presiding Officer, Labour Court, Bhubaneswar, in Industrial Dispute Case No. 8/1987 (Central). All the petitioners were contract labourers since January 1, 1975 under opposite parties 3 and 4, who were supplying labourers to the Paradip Port Trust (for short 'the Port Trust'), and they continued as such till they were employed as C.L.R. on and from November 1, 1980. Before the Labour Court, the petitioners had prayed for equal pay for equal work payable to N. M. R. /C. L. R. workmen under the Port Trust. The application under Section 33C(2) filed before the Labour Court is at An-nexure-6. The grounds, as mentioned in the Statement of the Case (Annexure-A), are quoted below :

"That, under Section 25(2) of Contract Labour (Regulation and Abolition) Rules, 1971, a contract labour is entitled to get the same wage as that of departmental worker getting for doing the same job. The applicants who were entrusted with the skilled job must get the wage earned by the skilled category directly appointed by the Port Trust in the same job. But, the Port Trust has been paying the applicants much less than what they are entitled to under the rules, in contravention of the rule.

That, it is pertinent to mention here that when the applicants were working as D.L.R. at that time there was a group of casual labour named as N.M.R. The N.M.R. were replaced by the C.L.R. The N.M.R. were getting the wages at par with the respective regular employees in the same work. As such, it is evident that the C.L.Rs. are being deprived of their legitimate claim for the reasons best known to the Authority.

That, it may not be out of place to mention here that neither the State Government nor the Central Government Pay Commission is applicable to the Port Trust employees. The Port Trust is also fighting in the Court of law that the State Government Acts like Municipality and Sales Tax etc. are not applicable in the

territory of the Port Trust boundary. The Port Trust is collecting its own road tax and other revenue. The Wage Revision Committee (W.R.C.) appointed by Government of India is authorised to recommend the minimum wages for the Port, Dock and other category of workers in the Port area. So, the minimum wages notified by Government is not the standard rate inside the Port area, as it would deteriorate the living condition of the workers at par with others.

That, the minimum wages in a locality depends upon the basic Industry. The Paradip Port Trust being the basic Industry, the minimum wages of the workers in and around Port area should be determined at par with the minimum wage recommended by W.R.C. and approved by the Government of India for Port and Dock workers, which is the minimum wage in and around the Port area and not the minimum wage notified by the Government. The notification announces that no employer can pay less than the notified wage but never says that the same is the minimum wage. On the other hand the W.R.C. had clearly recommended the minimum wage for the Port & Dock workers and the category to whom it would be extended. Accordingly, all the Major Ports are giving their casual workers by dividing the total emoluments earned by the concerned category of permanent employee by 20.

That, as per the provisions of Major Port Trust Act, after a resolution is passed by Board of Trustee and approved by the Government of India, it becomes a rule for Paradip Port Trust. The wages paid to C.L.R. have not been approved by the Government and the wage paid to C.L.R. has not been determined either under any rule or agreement. Hence, the wage paid to the C.L.R. is illegal and unjustified. On the other hand, the recommendation made by W.R.C. has been approved by Government and that is the minimum wages for the Port, Dock and other category of workers in the port area. Moreover, the Paradip Port Trust has accepted the concept of 'fair wages clause' while accepting the Contract Labour (R & A) Act, 1971 and has circulated it. According to that the wage of C.L.R. should have been fixed at par with port employees.

That, from the above it is deduced and evident that the applicants are rightfully entitled to get the wage as per the W.R.C. at par with other Major Ports of India. Moreover, the applicants have been working for more than thirteen years continuously under Port Trust and hence deemed to have been absorbed in the respective permanent posts and hence ripe enough to get the same wages at par with the permanent employees of the same grade in order to comply the Principle of 'same wages for same work'. Since the Port Trust has not decided the matter yet, hence applicants have been forced to claim the differ ential amount for which they are entitled to as per law."

2. The Labour Court held, inter alia, that in the absence of any award, the claim of the applicants is not capable of computation and their right to hold the post has not yet been adjudicated under Section 10(1) of the Act. It was further held that for the back period, the claim is not capable of

computation. The Labour Court recorded that "similarly I.D. Case No. 2/1990 is pending at present". Ultimately, it held that the existing right of the applicant is not clear for the period in question and this Court having the limited jurisdiction cannot go to the root of the matter to find out the eligibility of the applicants.

3. In the present writ petition, the petitioners have prayed that the award of the Labour Court be quashed and a direction be issued to the Manager of the Port Trust to give effect to the recommendations of the various Wage Revision Committees granting differential wages on the principle of "equal pay for equal work". A prayer has also been made to regularise the petitioners, who have been employed directly with effect from November 1, 1980 and to grant such other relief as this Court may deem proper.

4. In the counter, the main point urged is that the petition filed before the Labour Court was not at all maintainable inasmuch as the entitlement of the petitioners has not been adjudicated by any settlement, award or otherwise.

5. We have heard Shri Jagannath Das for the petitioners and Shri S.K. Padhi for the Port Trust. No appearance has been made on behalf of the contractors, i.e., opposite parties 3 and 4.

6. We extract below Sub-section (2) of Section 33C of the Act:

"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 within a period not exceeding three months."

7. Let us first examine the scope and ambit of Section 33C(2). A Constitution Bench of the Apex Court considered the scope and ambit of this Section in *Central Bank of India Ltd. v. P.B. Rajagopalan, etc.*, (1963-II-LLJ-89). In paragraph 18 of the judgment, the Apex Court held as follows :

"Besides, 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 Section 33C(2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under Section 33C(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."

Learned counsel for the petitioners has also placed reliance on paragraph 19 of the judgment, wherein it has been held:

"There is no doubt that the three categories of claims mentioned in Section 33C(1) fall under Section 33C(2) and in that sense, Section 33C(2) can itself be deemed to be a kind of execution proceeding; but it is possible that claims not based on settlement, awards or made under the provisions of Chapter V-A, may also be competent under Section 33C(2) and that may illustrate its wider scope."

8. In *Managing Director, the Orissa Agro Industries Corporation Ltd. v. Presiding Officer, Labour Court, Orissa and Ors.*, 1984 Lab. I.C.641, relied upon by the learned counsel for the petitioners, a Division Bench of this Court, following various decisions of the Apex Court as well as some other High Courts, held as follows:

"Thus, it is now settled law that mere denial of the right of an employee does not oust the jurisdiction of the Labour Court, which is entitled to make an enquiry into the right which is claimed by the employee. In our view, this proposition of law must also hold good in a case where the status of an employee is denied by the employer; mere denial of the status by the employer on the ground that the applicant is not its employee will not divest the Labour Court of its jurisdiction to decide the question in a proceeding under Section 33C(2) of the Act."

Above is not the position in the present case. So, the question has no application.

9. Another decision on which learned counsel for the petitioners has placed reliance is *Ganeswar Nayak and Ors. v. The Secretary, Urban Development Department, Government of Orissa, Bhubaneswar and Ors.* 1992 (73) CLT 250. In this decision, keeping in view Article 38 of the Constitution, it was, inter alia, held that a municipality cannot take advantage of its dominant position and compel any worker to work even as casual labourer on starving wages. It was also observed that in view of the Directive principles of State policy, as contained in Article 39(d) of the Constitution, "equal pay for equal work" has assumed the status of fundamental right in service jurisprudence. This decision is also not relevant as in the present petition we have to decide whether the application before the Labour Court is maintainable or not.

10. Now, we may refer to the decision of the Apex Court in *Central Inland Water Transport Corporation Ltd. v. The Workmen and Anr.*, AIR 1974 SC 1604, wherein it was held that a proceeding under Section 33C(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 benefits in terms of money.

11. In a recent decision of the Apex Court in *Municipal Corporation of Delhi v. Ganesh and Anr.*, etc. etc., (1995-I-LLJ-395), the common question for decision was regarding maintainability of claim in proceedings under Section 33C(2) of the Act. The respondents were all daily rated casual workers of the Municipal Corporation of Delhi, who claimed that they were doing the same kind of work as regular employees and, therefore, they were required to be paid by the Municipal Corporation (appellant) the same pay as regular employees on the principle of "equal pay for equal work". On this basis, they also claimed computation of arrears of their wages at the rate at which the wages were paid to regular employees in accordance with Section 33C(2) of the Act. The applications filed by the workmen before the Labour Court led to an award in their favour. Writ petitions filed in the Delhi High Court by the Municipal Corporation were dismissed, but appeals by special leave were allowed by the Apex Court. The Apex Court posed the question, whether in the circumstances, without a prior adjudication or recognition of the disputed claim of the workmen to be paid at the same rate as the regular employees, proceedings for computation of the arrears of wages claimed by them on that basis are maintainable under Section 33C(2) of the Act. Referring to its earlier decision in *Central Bank of India Ltd. (supra)*, the Apex Court observed that in that decision the power of the Labour Court under Section 33C(2) was indicated as being akin to that of an executing Court; the Labour Court is competent to interpret the award or settlement on which a workman bases his claim under Section 33C(2), like the power of an executing Court to interpret a decree for the purpose of execution, where the basis of the claim is referable to the award or settlement, but it does not extend to determination of the dispute of entitlement or the basis of the claim if there be no prior adjudication or recognition of the same by the employer. It was also held that the executing court, after the decree has been passed is, however competent to interpret the decree for the purpose of its implementation; this is the settled position of law. The Apex Court also referred to various other decisions and opined that the ratio of those decisions clearly indicates that where the basis of the claim on the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is therefore clearly outside the scope of a proceeding under Section 33C(2) of the Act, and the Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit. It was further held that when the entitlement has been earlier adjudicated or recognised by the employer and thereafter, for the purpose of implementation or enforcement thereof some ambiguity requires interpretation, that interpretation is treated as incidental to the Labour Court's power under Section 33C(2) of the Act like that of the Executing Court's power to interpret the decree for the purpose of its execution.

12. Law is very clear regarding application of Section 33C(2) of the Act inasmuch as the Labour Court while exercising powers under this Section is only an executing Court and it has no jurisdiction to decide the entitlement of the workman and then to proceed to compute the benefit so adjudicated. In the case in hand, there is no dispute that there is no prior settlement or adjudication of the entitlement of the workmen. Therefore, the application under Section 33C(2) of the Act is not maintainable.

13. Learned counsel for the petitioners has placed reliance on Rule 25 of the Contract Labour (Regulation and Abolition) Central Rules, 1971 and has submitted that in view of Sub-rule 2(v)(a) thereof, the present petitioners, being workmen employed by contractors, are entitled to get wages

etc. at the rate payable to the workmen directly employed by the principal employer. On the other hand, learned counsel for the opposite parties has contended that Rule 25 is a condition of licence to be granted under Subsection (1) of Section 12 of the principal Act, namely, Contract Labour (Regulation and Abolition) Act, 1970, and as there is a separate forum for implementation of the disputes arising under that Act, the Labour Court cannot decide such a dispute in an application under Section 33C(2) of the Act. Learned counsel has also urged that a similar reference under Section 10 of the Act is pending before the Labour Court. We do not want to express any opinion on this point. We only say that as the entitlement of the workmen has not been decided by any award or settlement, an application under Section 33C(2) of the Act is not maintainable.

14. We may make a reference to the Division Bench decision of this Court in Paradip Port Shramik Sangha v. Paradip Port Trust and Anr. (O.J.C.No.2886 of 1992, decided on December 3, 1992). This Court, in respect of the members of the petitioner Sangha, granted equal pay for equal work and it was granted from the date of the judgment. The judgment has been annexed as Annexure-A/1 to the additional affidavit dated August 12, 1987. In the said affidavit, it has been averred that a scheme, namely, Paradip Port Casual Labourers Regulation Scheme, 1994 has been formulated for the purpose of giving effect to the judgment of this Court. Learned counsel for the opposite parties has submitted that the Scheme has been given effect to and the petitioners are also getting benefit from the date of the judgment. We do not want to express any opinion as similar reference under Section 10 of the Act is pending before the Labour Court. We also make it clear that the Labour Court shall not be influenced by this judgment while disposing of the said reference.

15. For the reasons stated above, we hold that the application under Section 33C(2) of the Act, filed before the Labour Court is not maintainable. The writ petition is, therefore, dismissed.

P.K.Tripathy, J.

16. While entirely agreeing with the findings, reasons and the conclusions in the aforesaid leading judgment, it is felt expedient to mention few things relating to the scope of Section 33C(2) of the Industrial Disputes Act, 1947, (for short the 'Act').

17. From the narration of the facts, in the leading judgment it appears that claiming their right under the principle of "equal pay for equal work" and clothing their cases under Rule 25(2) of the Contract Labour (Regulation and Abolition) Rules, 1971, which has rightly been held to be not available, the petitioners claimed for computation of back wages from January 1, 1976 to October 31, 1980 under the provisions of Section 33C(2). As it appears that the petitioners wholly misconceived the scope and ambit of the provision of Section 33C(2) and could not visualise the distinction between an Industrial dispute as defined in Section 2(k) of the Act and referable under Section 10 of the Act and computation and recovery of money as provided under Section 33C(2) of the Act.

18. Not only in the case of Central Bank of India (supra) but also in subsequent decisions the Apex Court, as and when such occasion arose, has examined the scope and ambit of Section 10 vis-a-vis Section 33C(2) and it has been held that the scope of the aforesaid two provisions are distinguishable inasmuch as while under Section 10 in adjudicating a dispute the Industrial

Tribunal or Labour Court while answering the reference can adjudicate upon the rights and the matters incidental thereto, the scope of Section 33C(2) is limited to only compute the money or any benefit which is capable of being computed in terms of money and any questions relating to the amount of money due or amount at which such benefit should be computed. In other words, the scope of Section 33C(2) is that of an execution petition and the jurisdiction of the Labour Court is that of an executing Court.

19. Whether it is the Industrial Tribunal or a Labour Court, it is not a court of general or residuary jurisdiction but the Tribunal with specific jurisdiction enumerated by the terms of the orders of reference relating to a dispute raised under Section 10 and similarly relating to the claims made under the provision of Section 33C(2) or any other similar provisions of the Act. Thus, in a reference under Section 10 when the Tribunal is required to confine its adjudication to the point of dispute under reference and also matters incidental thereto, in a proceeding under Section 33C(2) jurisdiction of the Labour Court is confined to compute in terms of money any benefit due to the workmen or the amount at which the benefit claimed by them should be computed. The latter part of the aforesaid provision that "the benefit claimed by them should be computed" has perhaps created the confusion in the minds of the petitioners so as to invoke the jurisdiction of the Labour Court in this case under Section 33C(2) of the Act.

20. It be clearly understood that the term "the amount at which such benefit should be computed" does not expand the jurisdiction under Section 33C(2) so as to empower or authorise the Labour Court to adjudicate if the petitioners are entitled to equal pay on the principles of "equal pay for equal work". When their claim is not conceded, or admitted or agreed upon by the employer, the question of "equal pay for equal work", in the absence of any terms of settlement, terms of employment, agreement or award, cannot be computed by the Labour Court while discharging its jurisdiction under Section 33C(2) of the Act. In such a case, the simple thing to remember is that the phraseology "equal pay for equal work" has certain facets. In every case, that principle cannot be blindly adopted unless it is admitted or not disputed case of the parties, i.e., the employer and the workmen. Therefore, when the employer (opposite party) has not admitted the claim of the petitioners relating to "equal pay for equal work" during the period 1975-1980, and when that matter has not been covered by any award, settlement or agreement between the employer and the petitioners or similar group of employees, the Labour Court, in exercise of a limited jurisdiction under Section 33C(2) of the Act cannot first decide as to whether the petitioners are legally entitled to get a particular type of wage and thereafter to compute the money value. In other words, while exercising the jurisdiction under Section 33C(2), the Labour Court is not competent to first decide the dispute in the same case and then to compute the money value. Such a case clearly comes within the purview of Section 10 of the Act. In a case reported in (1976-I-LLJ-493), Workmen, F.T. & R. Co. v. F.T. & R. Co., the Supreme Court has been pleased to propound that:

"21. In a reference under Section 19(1) of the Act it is open to the Tribunal or the Court to award compensation which may not be equal to the full amount of basic wages and dearness allowance. But no such power exists in the Labour Court under Section 33C(2) of the Act. Only the money due has got to be quantified. If the lay-off could be held to be in accordance with the terms of the contract of service, no compensation at all could be allowed under Section 33C(2) of the Act, while,

in the reference some compensation could be allowed. Similarly, on the view expressed above that the respondent company had no power to lay-off any workmen, there is no escape from the position that the entire sum payable to the laid-off workmen except the workmen who have settled or compromised has got to be computed and quantified under Section 33C(2) of the Act for the period of lay-off."

21. The moot point in this case is as to whether the Labour Court, while functioning as an executing Court under Section 33C(2), can adjudicate the claim of the petitioners regarding "equal pay for equal work" and thereafter compute the value, when the basis of the claim has been disputed by the employer. Obviously, the answer is 'no'. Under the given circumstances, the petitioners are not entitled to the reliefs claimed and there is nothing to interfere with the impugned order of the Labour Court.