

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION : 30.3.90

P R E S E N T

HON'BLE SHRI N.V KRISHNAN, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

ORIGINAL APPLICATION No. 330/89

1. The General Manager,
Southern Railways,
Park Town, Madras-600 003.
2. The Divisional Railway Manager,
Southern Railway,
Trivandrum-695 014.
3. The Divisional Railway Manager,
Southern Railway,
Madurai-10.
4. The Station Master,
Southern Railway,
Changnacherry.
5. The Station Master,
Southern Railway,
Kottayam. .. Applicants

v.

1. S.Sadasivan Pillai
2. The Presiding Officer,
Central Government Labour Court,
Quilon. .. Respondents

M/s.T.P.M Ibrahim Khan &
P.K Aboobacker .. Counsel for the
applicants

Mr. P.Sivan Pillai, Advocate .. Counsel for R1

JUDGMENT

Hon'ble Shri N.Dharmadan, Judicial Member

Annexure A-1 award passed by the Labour Court,
Quilon in exercise of the powers under Section 33C(2)
of the Industrial Disputes Act, 1947 granting the
claim of the first respondent, is challenged by the
Railway in this application filed under Section 19
of the Administrative Tribunals Act, 1985.

2. The material facts relevant for the decision
are as follows. The first respondent who joined the

Railway service as a casual labourer in the traffic department on 26.11.1969 claimed to have acquired temporary status on completion of four months service and filed Annexure-B claim petition under Section 33C(2) of the Industrial Disputes Act, claiming a total amount of Rs.63,673.70 as overtime wages, arrears of wages, leave salary, dress allowance etc. His case is that since he has acquired temporary status, he is entitled to all the benefits admissible to a temporary Railway employee under Chapter XXIII and XXV of the Railway Establishment Manual. He filed similar petitions C.P No.33/1981 and 35/1981 before the second respondent on earlier occasions. But they were dismissed presumably on account of non-prosecution.

3. The Railway filed Annexure-C objection to the claim petition raising the contentions that the application is not maintainable; it is barred by res judicata and limitation and the Labour Court has no jurisdiction to deal with disputed claims and decide the issue under Section 33-C(2) of the Act. All the claims raised by the first respondent in the claim petition are disputed. A casual porter or a casual labourer has no separate identity of his own to be issued with a definite roster for claiming overtime allowance. As such no question of any payment of overtime wages arises in the case of the applicant on a definite roster. He cannot claim any benefit available to a regular employee in the Railway service. Thus the first respondent had not claimed any monetary benefit legally due to him as per rules governing the Railway servants.

b

They have also stated that the claim is not maintainable in law or facts. But the second respondent Labour Court, Quilon passed the award Annexure-A dealing with the claim on merits without considering in detail the technical contentions including the question of jurisdiction of the Labour Court to deal with the present claim under Section 33C(2) of the I.D.Act.

4. The contentions raised by the Railway objecting to the jurisdiction of the Labour Court and the maintainability of the petition Annexure-B has been dealt with in the following manner:-

"One contention of the opposite parties is that the petition filed under Section 33C(2) is not maintainable. It is not stated as to how the petition is not maintainable. As such the contention has only to be rejected".

5. It is very unsatisfactory that the Labour Court did not advert to the main issue of maintainability and dealt with the matter in greater detail in the light of the Supreme Court decision. It is well settled that the Labour Court cannot under Section 33C(2) of the Industrial Disputes Act decide issues which are disputed by the parties and which can be decided only after taking evidence on the matter. Of course the Labour Court can compute the monetary claims and pass awards based on undisputed existing rights. Mere denial of such existing rights will not oust the jurisdiction of the Labour Court. In spite of mere denial, the Labour Court can go into the matter and pass the award if rights are existing undisputedly.

6. But in this case the very right on the basis of which the claim is made by the first respondent has been strongly objected by the Railway and it requires investigation into the various details such as whether the

first respondent attained temporary status, if so whether he is eligible for all the benefits of a regular worker and whether he had been working on a definite roster for claiming overtime allowance, dress allowance etc. These are matters to be claimed by raising a proper industrial dispute and decided by the Labour Court through a proper reference under section 10 of the I.D Act and not under Section 33-C(2) of the Act. The Labour Court has committed a serious jurisdictional error in having passed the impugned award.

7. According to the Railways under the existing rules governing the Railways the benefits of a regular employee can be claimed after his regularisation in the service. The first respondent had not been regularised in the service of the Railways so as to enable him to claim the wages, overtime allowance, dress allowance and other benefits which are really due to a regular employee in the Railways. We have considered this issue in detail in O.A 217/87 to which one of us (Hon'ble Shri N.Dharmadan, Judicial Member) was a party and held as follows:-

" The provisions of Section 33-C have been included in the Industrial Disputes Act to give speedy remedy to the individual worker. By denying itself the jurisdiction of giving a speedy remedy to such workers by coming to a *prima facie* conclusion summarily, the Labour Court has defeated the underlying spirit behind this provision. As has been discussed elaborately earlier, it is true that the Labour Court on the analogy of an execution Court, cannot determine the rights and liabilities of the rival parties or confer entitlements to higher pay, higher posts or declare the legality or otherwise of an order of termination or reversion, but it is duty bound to explore the existence of the right of the petitioners even though the same is disputed by the employers, in order to determine the quantum of benefits to be computed. The Labour Court can interpret awards, settlement and Acts, rules, judgments in order to determine the existence of rights as incidental to the computation of the benefits claimed. It can determine

1/

whether the prescribed rights vest in the petitioners and if they fall within the category of beneficiaries. It can determine whether the claimant was in employment or not, whether the closure was due to circumstances beyond the control of the employer as contemplated in proviso to Section 25-FFF(I) of the I.D Act. In the circumstances we feel that in the instant case, the Labour Court should have determined after hearing both the parties and keeping in view the facts and law, whether the petitioners were employed in Project works or Construction Line and if so, whether there existed any subsisting or declared right in their favour of acquiring temporary status. Even if it is found that they were working as Project Casual Labourer, they would still be entitled to the benefits of temporary status, thanks to the celebrated judgments of the Supreme Court in L.Robert D'Souza v. XEN, Southern Rly (AIR 1982 SC 854) and Inderpal Yadav and others v. Union of India and others, ((1985) 2 SCC 648) at least with effect from 1.1.1981 if not earlier in accordance with those judgments".

xxx

xxx

xxx

"But one thing is clear that the power under this section cannot be invoked for deciding the question of status or categorisation of employee under the pretext of computing in terms of money and determine the allowance claimed by the workmen. However, an existing right can be worked out even if it is affecting the status. The following ingredients should be satisfied for determining the 'existing rights' in connection with the status so as to enable the Tribunal or Labour Court to exercise jurisdiction under Section 33-C(2):

- i) There must be some source of liability on the employer creating certain corresponding right in favour of an employee;
- ii) the claimant must be a workman and
- iii) the claim must be in respect of his employment during the period of claim.

These are, according to me, the working tests in order to work out the existing rights arising from the relationship of employer and employee. So if these three ingredients are satisfied, the Labour Court can deal with the claim of such workman based on an 'existing right'. In dealing with such claim, the Labour Court can under Section 33-C(2) decide whether the right claimed by the workman did exist or did not exist together with all incidental questions for the limited purpose of giving relief to the workman. The mere denial of such right by one of the parties will not oust

b

jurisdiction. So an application for recovery of money due from employer can only be based on 'existing right', mere denial of right is not sufficient to oust the jurisdiction of the Labour Court".

This decision has been followed by us recently in O.A.K-193/88 and held as follows:-

"The second respondent, the Labour Court did not deal with the specific contention raised by the Railway that the Labour Court has no jurisdiction to deal with the claim of the first respondent and entered a definite finding on that preliminary objection before considering the main issue and the rival contentions raised by the parties. This view is supported by the pronouncement of the Supreme Court in R.B. Bansilal Abirchand Mills Co. Ltd. v. The Labour Court, Nagpur and others, 1972(1) LLJ SC 231. The relevant portion reads as follows:

"... The Labour Court's jurisdiction could not be ousted by a mere plea denying the workmen's claim to the computation of the benefit in terms of money; the Labour Court had to go into the question and determine whether on the facts, it had jurisdiction to make the computation. It could not, however, give itslef jurisdiction by a wrong decision on the jurisdictional plea..."

8. In the light of the above settled principles we are of the view that the second respondent-Labour Court has gone wrong in granting the claim raised by the first respondent in this case by passing the impugned award without examining the matter in detail. According to us the award is unsustainable and it is liable to be quashed. We do so. But the disposal of this application would not preclude the first respondent from either raising an industrial dispute for claiming amounts legally due to him from the Railways through the Labour Court or taking such other legal steps as may deem fit and proper in accordance with law. There will be no order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER

30.3.'90


(N.V KRISHNAN)
ADMINISTRATIVE MEMBER