(11) It is obvious from the aforesaid that a clear distinction is to be drawn between the suits relating to property and those in which the subject matter of litigation is a declaration. Herein, basically possession was being protected and keeping in view the dicta above, the petitioner cannot be termed to be a necessary party.

(12) More close to the facts of the present case is the decision of this Court in the case of *Rampat* v. *Shri Mandir Thakurdwara at Suhra and others* (3). Herein a suit had been filed claiming a person to be in possession and injunction was claimed against the defendant. An application was filed by Shri Mandir Thakurdwara for it to be impleaded as a party. It was held that no relief was being claimed against Shri Mandir Thakurdwara and, therefore, it was not a necessary party. Likewise, in the present case no relief is being claimed against the petitioner. The petitioner, therefore, cannot be termed to be a necessary party. It cannot convert the said suit into one of other disputes which are extraneous to the main suit. There is no ground thus to interfere in the impugned order.

(13) For these reasons, the revision petition being devoid of merit must fail and is dismissed.

S.C.K.

Before V.S. Aggarwal, J.

M/S WHIRLPOOL OF INDIA, LTD. THROUGH SHRI P.K.S. YADAV ITS GENERAL ATTORNEY,—*Petitioner*

versus

PRESIDING OFFICER, LABOUR COURT, FARIDABAD AND OTHERS,—*Resopondents*

Civil Writ Pettition No. 11673 of 1997

13th July, 1999

Industrial Disputes Act, 1947—S. 33(2)—Age of retirment of employees of Kelvinator of India fixed at 58 under tripartite agrement subject to certain conditions—Company changed to Whirpool of India Ltd. under fresh certificate of incorporation—Voluntary retirement Schme of 95 announced —Compensation package made recokenable for those opting for golden hand shake on basis of retirment age 55 years—Claim made before Labuour Court u/s 33(2) C for compensation

(3) 1997 P.L.J. 654

taking age at 58—Plea of fraud raised and also of interpretation of settlement—Labour Court granting relief—In writ petition against order the claim held untenable as it was not based on pre existing right—Employees, however, left free to raise Industrial Dispute.

Held that, the workmen private respondents contended that they have been duped. A fraud has been played upon them. In fact, the age of retirement was 58 years. In the settlement, it was got mentioned that it is 55 years which was the original age of retirement when they have joined in the employment of the peittioner company, the said fact found favour with the Labour Court. The Labour Court obiously tell into inadvertent mistake. A settlement had arrived at. The workman took the benefit and certain amounts were paid to them. If there was any fraud, then it is not a pre-existing right. It recquires adjudication. It could not be treated therefore to be right regarding which by and large it was case of calculation. It is true as was urged on behalf of the private respondents, relying on the earlier decision of the Supreme Court referred to above that the Labour Court could inter pret the award but the question of fraud was to be determined then the Labour Court has firstly to adjudicate the right in this regard, by no stretch of imagination it could be held that it was a pre-existing right.

(Para 32)

Further held, that the pre-existing rights are on the basis of settlement that had been arrived at between the management and the workmen as well as their Union. If they have to take benefit of the other Scheme then it is not pre-existing right based on the settlement. They can certainly take advantage, if available by getting a reference made for proper adjudication under section 10 of the Act. But it cannot be taken to be that under section 33-C(2) of the Act, the other scheme of June, 1995 could be pressed into service which is not the settlement arrived at between the petitioner-company and the private respondents.

(Para 33)

Further held, that at best the labour could interpret the said settlement and if there was anything more due the benefit could be given to the workmen but the Labour Court could not inter pret or go into the controversy of fraud, if any, because on basis of fraud in execution the decree cannot be modified. Similarly when there was a basic controversy about the age of retirement, it was not pertaining to a pre-existing right. The award of the Labour Court in this regard, therefore, cannot be sustained.

(Para 37)

M.L. Sarin, Senior Advocate, with Harsh Rekha, Advocate, and A.S. Chadha, Advocate, S.S. Walia, Advocate *for the Petitioners*

P.S. Patwalia, Advocate and Anil Shukla, Advocate *for the private respondents.*

JUDGMENT

V.S. AGGARWAL, J.

(1) This judgment will govern two Civil Writ Petition Nos. 11672 and 11673 of 1997 as the facts and the question in controversy in both the writ petitions are identical. A large number of employees of the petitioner's compay had filed separate writ petitions. For the sake of convenience, the facts pertaining to Jeet Singh, respondent No. 2, in Civil Writ Petition No. 11673 of 1997 can conveniently be mentioned.

(2) Prior to 16th May, 1996, petitioner (M/s Whirlpool of India Limited) was known and registered as Kelvinator of India Limited. A fresh certificate of incorporation had been obtained.

(3) Earlier, the age of retirement of the employees of the petitioner-company, who were then employed with M/s Kelvinator of India Limited, was 55 years. There was a tripartite agreement dated 24th July, 1989 between the parties under section 12(3) of the Industrial Disputes Act, 1947 (for short "the Act"). *Vide* circular dated 13th December, 1989 issued by the management, it was confirmed and pertaining to the age of retirement it reads as under :—

> "As per prevailing practice, all employees (Upto Grade 12) on attaining the age of 55 years are retired from the company and they are given one year contract if they are medically fit and otherwise found suitable. But on the request of the Union it has been agreed by the management that henceforth the employees will be given extension of one year every time till they attain the age of 58 years if the employees are considered fit on perusal of their previous employment records, conduct and depending upon the medical fitness. However, they will be compulsorily retired after attaining the age of 58 years."

(4) In this process the age of retirement was increased to 58 years subject to certain conditions mentioned above. By means of a circular dated 26th May, 1995, a Voluntary Retirement Scheme had been announced as a part of its or ganisational restructuring for all permanent employees except trainees. The Scheme provided that compensation would be paid to the employees who chose to retire

thereunder. The relevant part of the said scheme, for the purpose of present writ petition, reads as under :—

"Compensation

Employees who opt for this scheme will be entitled to compensation amount equivalent to the lesser of :

1. 3 Months (Basic + Dearness Allowance) x
   No. of years of service.
2. 1 Month (Basic + Dearness Allowance) x
   No. of months until retirement age.

For this purpose, 1st of June, 1995 would be reckoned as the starting date for calculating the balance period upto retirement age and the retirement age would be as mentioned in the Appointment order."

(5) On 23rd June, 1995 the same was modified and minimum payment clause was withdrawn for the employees over 40 years of age or with 10 years of experience with the company. The said employees were to be paid as per clause at para 1, page 1 of the scheme.

(6) All the private respondents applied to take the benefit of the scheme. Jeet Singh also submitted an application to take the benefit of the Voluntary Retirement Scheme. His application dated 2nd June, 1995 reads as under :—

"I wish to apply for the VRS now being offered to KOI employees. I am submitting my request for relief of my services. Please arrange to relieve me and settle my accounts at the earliest.

Name: Jeet Singh

Department : Comp. Assly.

Token Number : 40345

Job Title : Charge Hand

Date of employment : 01-06-1972

I understand that my request will be considered based on the date of application plus needs of the organisation.

Thank you for consideration.

Signed : sd/- Date : 2-6-95

(7) A reply dated 28th June, 1995 was sent by the petitioner-company that, as per terms of the Voluntary Retirement Scheme, Jeet Singh is entitled to payment as per the enclosed payment voucher under VRS. His application was accepted and it could not be withdrawn. Below

the said letter accepting the offer of Jeet Singh is the endorsement of the said employee which reads as under :—

> "I have gone through the above thoroughly and understood the contents. The amounts mentioned in the enclosed payment voucher have been checked by me and found to be in order. The same is acceptable to me."
>
> Sd/- (Signature of employee)

(8) The said payment voucher was accepted by Jeet Singh.

(9) In addition to that, there was a formal agreement between the petitioner-company and said Jeet Singh. It was mentioned that the resignation of the employee shall take effect from 28th June, 1995. On the said date, the employee shall be relieved of all his responsibilities and duties and ceased to be in the employment of the petitioner-company. Rs. 2,75,235,-20 were paid in full and final settlement of all claims and dues. This amount included his earned wages, wages in lieu of leave, notice pay, exgratia payment and compensation besides gratuity etc., except bonus for the year 1994-95. A Memorandum of Settlement had also been signed. The relevant portion of the same reads as under :—

> "The Company agrees to pay the Workman a sum of Rs. 2,75,235.20 in full and final settlement of all claims/dues/ demands and Workman accepts the said amount in full and final settlement of all his claims/dues/demands, including his claim relating to employment. The above amount includes his earned wages, wages in lieu of leave, notice pay, exgratia including compensation if payable, gratuity, etc. till date, except bonus for the year 1994-95 only which be paid as per provisions of the Payment of Bonus Act of 1965.
>
> The Workman further agrees that the payment made by the Company is fair and reasonable and that he/she fully accepts the same of his own free will and volition and that he/she will not raise any dispute or make any claim before any authority in the future relating to employment or any other monetary benefits whatsoever. He/She furhter agrees that he/she has no claim/dispute before any authority and if at all there is any claim of any nature pending, the same shall be deemed to be settled/withdrawn by virtue of this settlement."
>
> In pursuance of the said Scheme, 930 out of 1616 eligible employees had sought voluntary retirement. 632 of them were granted their request and paid compensation and other benefits

payable under the Scheme. Settlement had been arrived at between the petitioner-company as well as the Employees' Union of the Kelvinator of India Ltd. (Annexure P-15).

After about a year of the said settlement, an application was filed with the Labour Court under section 33-C(2) of the Act by the respondents. It was pointed out that the petitioner-company,—*vide* circular dated 26th May, 1995 had offered to the workmen a voluntary retirement scheme. The retirement age was 58 years. The petitioner-company even assured that the retirement age would be 58 years in accordance with circular dated 13th December, 1989. To the utter surprise of the respondents, while accepting the offer, the petitioner-company calculated all the benefits as if the retirement age was 55 years. It has been done in violation of the circular dated 13th December, 1989. A trick/fraud had been played by the petitioner-company by inducing the respondents to sign the voluntary retirement scheme papers. In addition to that, it has been claimed that the respondents were entitled to the benefits accrued to them under the tripartite agreement dated 13th December, 1995 between the management and the Employees Union. This agreement became applicable to all the employees whose names were born on the rolls of the petitioner-company on 30th June, 1995. The benefit under this settlement was given to all the employees with effect from 1st July, 1995. As per clause 21 of the agreement, as the names of the respondents were born on the rolls of the petitioner-company on 30th June, 1995, therefore, they were entitled to the monetary benefits. In addition to that, it was further claimed that the respondent employees were entitled to the benefits of daughter's marriage scheme.

(10) The petitioner-company contested the said application. It was asserted that the application under section 33-C(2) of the Act was not maintainable because it is not based on any existing subsisting rights. Plea was raised further that the application is barred by the principle of estoppel and waiver. Further plea raised was that each of the respondents had thoroughly gone, through and understood the scheme. Each of them had accepted the amount that was given to them. An agreement was executed in terms of the settlement and the respondents cannot now raise a claim in terms of section 33-C(2) of the Act. It was further mentioned that some of the employees had even left the employment before 30th June, 1995. It was denied that any of the respondents is entitled to further compensation in terms of their claim

that their retirement age was 58 years or that they were in employment of the petitioner-company.

(11) Labour Court framed the issues. It was held,—*vide* the impugned award that the retirement age was 58 years. The settlement had a statutory force. The employer-petitioner had created a confusion and there has been fraud and misrepresentation. It was further concluded that some of the employees continue to be on the rolls of the petitioner-company after 30th June, 1995. The vouchers showed that they were in service of the petitioner-company after 30th June, 1995 and thus they were entitled to the benefits of the 2nd scheme. *Vide* the impugned award, therefore, the Labour Court awarded individual amounts to some of the respondents.

(12) Aggrieved by the said award dated 23rd April, 1997, the present writ petition has been filed.

(13) On behalf of the petitioner, it had been contended, which was the main argument, that the dispute contemplated did not fall under section 33-C(2) of the Act. It was asserted further during the course of arguments that each of the respondents had retired and accepted large amounts in full and final settlement of his/her claim. It was not within the jurisdiction of the Labour Court to try or determine whether these transactions were valid or invalid. Payment was made in terms of the settlement and their original age of retirement was 55 years. Even the circular dated 13th December, 1989 confer no right on the employee to continue after the age of 55 years because it is asserted that even thereunder he had to satisfy certain conditions of eligibility (medical fitness and suitability). In any case, it was pointed out that the settlement had been arrived at validily and further benefit could not have been given.

(14) On the contrary, learned counsel for the respondents vehemently urged that under section 33-C(2) of the Act the Labour Court was competent to interpret the settlement. There was no major determination of the controversy. The Labour Court had simply calculated the monetary benefits. He further urged that even enquiry could be conducted in this regard by the Labour Court. It was further argued that many of the respondents were on the rolls of the petitioner-company after 30th June, 1995. They were entitled to the benefit of the 2nd scheme and on its facts it was further contended that the retirement age, in any case, was 58 years.

(15) As mentioned above, the main controversy raised has been as to whether in the facts of the case the private respondents could

press into service section 33-C(2) of the Act or not ? Reliance strongly has been placed on the celebrated decision of the Supreme Court in the case of *The Central Bank of India Ltd.* vs. *P.S. Rajagoplan etc. (1).* The facts of the said case, indeed, does not require any mention. The Supreme Court considered the ambit and scope of the provisions of Section 33-C(2) of the Act. After giving the background as to how section 33-C(2) of the Act came into being in the Industrial Disputes Act, the Supreme Court held that the settlement even can be interpreted and construed. In paragraph 16 of the judgment, the Apex Court observed as under :—

> ".....The claim under Section 33C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by sub-sec. (2). As Maxwell has observed "where an Act confers a jurisdiction, it impliedly also grants the power of doing all acts or employing such means, as are essentially necessary to its execution." We must accordingly hold that S. 33C(2) takes within its purview cases of workmen who claimed that the benefit to which they are entitiled 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. Incidentally, it may be relevant to add that it would be somewhat odd that under sub-s. (3), the Labour Court should have been authorised to delegate the work of computing the money value of the benefit to the Commissioner if the determination of the said question was the only task assigned to the Lobour Court under sub-s(2). On the other hand, sub-s.(3) becomes intelligible if it is held that what can be assigned to the Commissioner includes only a part of the assignment of the Labour Court under sub-s.(2)."

(16) It was further explained in paragraph 18 of the said judgment that the Court can interpret the award and even hold enquiry in this regard. Supreme Court held as under :—

> "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

(1) AIR 1964 S.C. 743

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

(17) However, Supreme Court did deal with certain cases which can arrive and held further that it is like an execution of a decree. It is open to the Executing Court to interpret the decree for the purpose of the execution but it cannot go behind the decree nor can add or subtract from the provisions of the decree. It was further concluded that if the settlement exists and continues to be operative, no claim can be made under section 33-C(2) of the Act inconsistent with the settlement. The precise findings in this regard are as under :—

"If the settlement exists and continues to be operative, no claim can be made under S.33-(2) inconsistent with the said settlement. 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."

(18) The said decision of the Supreme Court has been guiding and has been followed time and again.

(19) Similarly, in the case of *Bombay Gas Co. Ltd.* vs. *Gopal Bhiva & Ors. (2).* the contention raised by the employees was that the award on which the claim was based was without jurisdiction. Once again the Supreme Court held that section 33-C(2) of the Act is in the nature of execution proceedings and if the decree put to execution was a nullity, the Court could refuse to execute the same. Supreme Court observed as under :—

".....The proceedings contemplated by S. 33C(2) are, in many cases, analogous to execution proceedings, and the Labour Court which is called upon to compute in terms of money the benefit claimed by an industrial employee is, in such cases, in the position of an execution proceedings governed by the Code

(2) 1964 (3) S.C.R. 709

of Civil Proccedure the Labour Court under S. 33C(2) would be competent to interpret the award on which the claim is based, and it would also be open to it to consider the plea that the award sought to be enforced is a nullity. There is no doubt that if a decree put in execution is shown to be a nullity, the executing court can refuse to execute it....."

(20) Another Bench of the Supreme Court in the case of *Kays Construction Co. (Private) Ltd.* vs. *The State of Uttar Pradesh and Others (3),* once again considered the scope of the applicability of section 33-C(2) of the Act. The Supreme Court was considering the Uttar Pradesh Industrial Disputes Act, 1947. The relevant provisions were *para-materia* with section 33-C(1) and (2) of the Act. The scope of section 33-C(1) and (2) of the Act was drawn and it was held that even an enquiry could be conducted. One is not confined to arithmetical calculation alone. The findings returned were as under :—

".....Under the first sub-section the State Government (or its delegate), if satisfied that any money is due, is enabled to issue a certificate to the Collector who then proceeds to recover the amount as an arrears of land revenue. The second part then speaks of a benefit computable in terms of money which benefit after it is so computed by a Tribunal is again recoverable in the same way as money due under the first part. This scheme runs through Section 6-H, Sub-ss. (1) and (2).

That there is some difference between the two sub-sections is obvious enough. It arises from the fact that the benefit contemplated in the second sub-section is not "money due" but some advantage or perquisite which can be reckoned in terms of money. The Divisional Bench has given apt examples of benefits which are computable in terms of money, but till so computed are not "money due". For instance, loss of the benefit of tree quarters is not loss of "money due" though such loss can be reckoned in terms of money by inquiry and equation. The contrast between "money due" on the one hand and a "benefit" which is not "money due" but which can become so after the money equivalent is determined on the other, marks out the areas of the operation of the two sub-sections. If the word "benefit" were taken to cover a case of mere arithmetical calculation of wages, the first sub-section would hardly have any play. Every case of calculation, however, simple, would have to go first before a Tribuanl. In our judgment, a case

(3) AIR 1965 S.C. 1488

such as the present, where the money due is back wages for the period of unemployment is covered by the first sub-section and not the second. No doubt, some calculation enters the determination of the amount for which the certificates will eventually issue but this calculation is not of the type metioned in the second sub-section and cannot be made to fit in the elaborate phrase "benefit which is capable of being computed in terms of money". The contrast in the two sub-sections between "money due" under the first sub-section and the necessity of reckoning the benefit in terms of money before the benfit becomes "money due" under the second sub-section shows that mere arithmetical calculations of the amount due are not required to be dealt with under the elaborate procedure of the second sub-section. The appellant no doubt conjured up a number of obstructions in the way of this simple calculation...."

(21) Reliance further has been placed on the decision of the Supreme Court rendered in the case of *Central Inland Water Transport Corporation Ltd.* vs. *The Workmen and another (4).* The well-know decision of the Supreme Court in the case of *Chief Mining Engineer East India Coal Co. Ltd.* vs. *Rameshwar (5),* was referred to and it was reiterated that the proceedings under section 33-C(2) of the Act are in the nature of execution proceedings. The Labour Court calculates the money due to the workmen. Thereupon, the Supreme Court went into to consider that in a claim made against the defendant involves an investigation directed to the determination. It includes the right of the plaintiff to a relief and corresponding liability of the defendant. It was held that a distinction was drawn as to what cases could be outside the purview of section 33-C(2) of the Act and in paragraph 13 of the judgment it was held as under :—

"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 detendant, 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

(4) AIR 1974 S.C. 1604
(5) AIR 1968 S.C. 218

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 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..."

(22) No different was the view expressed by the Supreme Court in the case of *The Mangement of Reserve Bank of India, New Delhi* vs. *Bhopal Singh Panchal (6)* Under Reserve Bank of India (Staff) Regulations, in case of an employee having arrested, his period of absence from duty is to be treated as not being beyond circumstances under his control. The person concerned has been acquitted. He claimed reinstatement and back wages. Section 33-C(2) of the Act had been pressed into service. The Supreme Court held that in the pecullar facts the benefit of Section 33-C(2) of the Act could not be granted and the conclusion arrived at is as under :—

"Further, the Labour Court while acting under Section 33-C (2) of the Act had no jurisdiction to decide the said question. Since the Labour Court in the present case took upon itself the task of deciding the said question, it clearly exceeded its jurisdiction. The order of the Labour Court is, therefore, liable to be set aside."

(23) The question again cropped up before the Apex Court in the case of *Municipal Corporation of Delhi* vs. *Ganesh Razak and another (7).* It was concluded that the powers of the Labour Court under section 33-C(2) of the Act extends to the interpretation of the award or settlement on which the right of the workman rests. It does not extent to the dispute of entitlement or basis of the claim if there is no prior determination or recognition. The Supreme Court concluded that the Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. The precise findings arrived at are as under :—

"The Labour Court has no jurisdiction to first decide the workmen's entitilement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and

(6) AIR 1994 S.C. 552
(7) (1995) 1 S.C. Cases 235

thereafter for the purpose of implementation or enforecment thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution."

(24) Similarly, in the case of *Union of India* vs. *Gurbachan Singh and another (8),* the workman had entered into service but did not place any documentary evidence like school leaving certificate to support his date of birth. His case was referred to the Medical Board. Medical Board opined that he was 25 years of age. He was to retire on 30th November, 1980 but was allowed to retire on 30th November, 1984. There was some controversy about the date of the retirement. An application under section 33-C(2) of the Act was filed. The Labour Court granted him the relief. The Supreme Court held that the jurisdiction of the Labour Court does not extend to the adjudication of a fresh claim. At best, the Labour Court could interpret the award and then work out the wages.

(25) Attention of the Court was also drawn to the decision of the Supreme Court in the case of *Tara and others* vs. *Director, Social Welfare and others (9),* Supreme Court held that the question of maintainability of the application under section 33-C(2) of the Act was required to be determined at the threshold. The status and the nature of the employment was disputed and regarding that there was no prior adjudication. Application under section 33-C (2) of the Act was held to be not maintainable.

(26) In this regard, few decisions of this Court on the subject can also be taken note of. In the case of *The General Manger, Northern Railway, New Delhi* vs. *The Presiding Officer, Central Government, Labour Court, Jullundur and another (10),* the controversy was as to if the employee was entitled to payment of subsistence allowance or full pay and allowances. This Court concluded that the Labour Court had to determine his right to such pay and allowances which in turn would necessarily call into question the validity of the order passed by the General Manager. There was no existing right and section 33-C(2) of the Act was held to be not applicable.

(27) A Devision Bench of this Court in the case of *Gurminder Singh and others* vs. *The Batala Cooperative Sugar Mills Limited. (11),* was

(8) 1997 (5) S.C. Cases 59
(9) (1998) 8 S.C. Cases 671
(10) 1983 P.L.R. 467
(11) 1996(1) Revenue Law Reporter 203

also concerned with the ame controversy and in paragraph 6 of the judgment held as under :—

> "There is absolutely no substance in the sole contention of the learned counsel, as noted above. It is not within the purview of the Labour Court to make an investigation with a view to determine the status of the workmen on the basis of evidence produced before it under Section 33-C(2) of the Act. We are in complete agreement with the view expressed by the learned Single Judge that it is only the pre-existing rights which can be agitated before the Labour Court under section 33-C(2) of the Act and wherever it might be a question of determination of right of the workmen, necessarily a reference has to be sought under section 10 of the Act. The contention of the learned counsel for the appellants that there was already a settlement in existence between the parties and, therefore, the only proper remedy was to file an application under Section 33-C(2) of the Act, has no merit as the settlement qua the category of workmen, such as appellant, was a specifically denied with reference to standing orders as also with reference to the Wage Board recommendations....."

(28) Similarly, in the case of *Municipal Committee, Gidderbaha* vs. *Labour Court, Bhatinda & Ors. (12),* the controversy between the parties had been adjudicated upon. The workman were made to work in spite of the award. It was held that the wages could be computed by the Labour Court under Section 33-C(2) of the Act. In paragraph 7 of the judgment, this Court held as under :—

> "So far as the 22 writ petitions filed by the Municipal Corporation, Ludhiana, are concerned, it is the admitted position that the dispute between the workmen and the employer had been referred by the State Government to the Industrial Tribunal in the year 1969. As already noticed, this dispute had been decided *vide* award dated 30th April, 1972. It has been categoricllly held that the Beldars "are entitled to holidays on Saturdays". Thus, the controversy between the parties had been adjudicated upon. The rights of the workmen had been determined. In this situation, it cannot be said that the workmen were not entitled to move the Labour Court for the computation of the amount due to them. The entitlement of the workmen to have holiday on Saturday had been determined. They were made to work in spite of the award. Thus, they are entitled to claim that wages for working over-

(12) 1998 (2) Current Law Journal 521

time be paid to them. These wages could be computed by the Labour Court there was no controversy with regard to the rate at which the wages had to be paid. Thus, it cannot be said that the workmen were not entitled to approach the Labour Court under Section 33-C(2) of the Industrial Disputes Act."

(29) Lastly, in the case of *Madan Lal Chugh* vs. *The Presiding Officer, Labour Court, Panipat (13),* another Bench of this Court held that when the claim is not based on a pre-existing right, it cannot be a subject matter of decision under section 33-C(2) of the Act.

(30) From the aforesaid, it is clear that a petition under section 33-C(2) of the Act is maintainable where an individual workman or the workmen claim amount of money due or amount at which the benefit should be commuted but such a claim should be based on pre-existing right. Pre-existing right should have vested in them either under settlement or under an award or under the provisions of chapter 5-A or 5-B of the Act. Mare denial of right will not take away the jurisdiction of the Labour Court under section 33-C(2) of the Act.

(31) When right is denied, the Labour Court has jurisdiction and can enquire into the existence of such a right. Such enquiry should be incidental to the main determination of such a right. Just as the Executing Court is competent to interpret the decree so also the Labour Court can construe the dispute or award under which the right is claimed. Therefore, before resorting to the provisions under section 33-C(2) of the Act, the claim has to fulfil the condition precedent. There has to be a pre-existing right or benefit which he seeks to enforce. If he seeks some new right or benefit not granted or conferred by the Court or by settlement, his remedy is under section 10 of the Act.

(32) With this backdrop, one can conveniently refer to the facts of the case. The workmen private respondents contended that they have been duped. A fraud has been played upon them. In fact, the age of retirement was 58 years. In the settlement, it was got metioned that it is 55 years which was the original age of retirement when they had joined in the employment of the petitioner-company. The said fact found favour with the Labour Court. The Labour Court obviously fell into inadvertent mistake. A settlement had been arrived at. The workmen took the benefit and certain amounts were paid to them. If there was any fraud, then it is not a pre-existing right. It requires adjudication. It could not be treated, therefore, to be a right regarding which be and large it was case of calculation. It is ture, as was urged on behalf of the private respondents relying on the earlier decisions of the Supreme

(13) 1998 (2) Revenue Law Reporter 201

Court referred to above that the Labour Court could interpret the award but if the question of fraud was to be determined then the Labour court has firstly to adjudicate the right in this regard, by no stretch of imagination it could be held that it was a pre-existing right.

(33) The attention of the Court was drawn to the fact that by a subsequent circular dated 23rd June, 1995, the retirement age, in any case, was raised to 58 years. Most of the workmen were on the rolls of the petitioner-company. In this regard, stress was greatly laid on certain facts. Once again, this Court was reluctant to go into the controversy. The reasons are obvious. The pre-existing rights are on the basis of settlement that had been arrived at between the management and the workman as well as their Union. If they have to take the benefit of the other scheme, then it is not pre-existing right based on the settlement. They can certainly take advantage, if available, by getting a reference made for proper adjudication under section 10 of the Act. But it cannot be taken to be that under section 33-C(2) of the Act, the other scheme of June, 1995 could be pressed into service which is not the settlement arrived at between the petitioner-company and the private respondents.

(34) There is another way of looking at the matter. As pointed out above and re-mentioned at the risk of repetition, the proceedings under section 33-C(2) of the Act are in the nature of execution proceedings. While executing a decree, the Executing Court can interpret the same to calculate the amount on the basis of pre-existing right. At times, enquiry in this regard could even be held but the Executing Court cannot go behind the settlement and pass the award which is entirely new to the settlement. This is precisely what has been done by the Labour Court.

(35) Supreme Court in the case of *Vasudev Dhanjibhai Modi* vs. *Rajabhai Abdul Rehman and others* (14), held that the Executing Court cannot go behind the decree even if it is erroneous in law or on facts. In paragraph 6 of the judgment, the Supreme Court held as under :—

> "A Court executing a decree cannot go behind the decree between the parties or their representatives ; it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Untill it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parites."

(36) Same view prevailed with the Supreme Court in the case of *Rameshwar Dass & Ors* vs. *State of U.P. & Anr.* (15). It was held therein

(14) AIR 1970 S.C. 1475
(15) JT 1996 (7) S.C. 657

that the Executing Court cannot travel beyond the order or decree. It has to execute in terms of Order 21 of the Code of Civil Procedure.

(37) What is the position herein ? A settlement was arrived at. At best, the Labour Court could interpret the said settlement and if there was anything more due, the benefit could be given to the workmen but the Labour Court could not interpret or go into the controversy of fraud, if any, because on basis of fraud in execution the decree cannot be modified. Similarly, when there was a basic controversy about the age of retirement, it was not pertaining to a pre-existing right. The award of the Labour Court in this regard, therefore, cannot be sustained.

(38) For these reasons, both the writ petitions are allowed and the impugned awards are set aside.

(39) Nothing said herein would restrain the private respondents from raising a proper dispute and getting it referred for adjudication.

(40) In all fairness to the parties counsel, it must be stated that certain other contentions on merit had been urged and argued. An attempt has been made not do touch the same but nothing said herein in any event shall be taken to be expression of opinion on the merits of the case if reference is made to the Labour Court.

R.N.R.

Before T.H.B. Chalapathi, J

PARTAP SINGH,—*Appellant*

versus

GURDIAL KAUR & ANOTHER,—*Respondents.*

R.S.A. No. 1632 of 1998

23rd July, 1998

Fatal Accidents Act, 1855—Limitation Act, 1963—Art. 82—Damages claimed for the intentional killing of the husband—Nature of such claim—Not a claim under the Fatal Accidents Act—Limitation.

Held that, the provisions of the Indian Fatal Accidents Act are not applicable to the present case as the plaintiff has not brought any action under the Fatal Accidents Act. It is a suit claiming damages for the intentional killing of the husband of the plaintiff by the defendants.