

termination of services of the petitioners amounted to retrenchment and they were thus not entitled to the relief sought. It being observed in this behalf that this amendment in the Act had retrospective effect.

(5) It now, however, stands settled by the judgment of the Division Bench of the High Court of Gujarat in *Bharat Heavy Electricals Ltd. Baroda v. R. V. Krishnarao* (1), that the amendment in the Act which brought in clause (bb) in Section 2(00) was prospective in nature and would consequently apply to only such terminations as take place after this provision was brought on to the statute book. Such thus being the established position in law, there can be no escape from the conclusion that the termination of the services of the petitioners amounted to retrenchment. They thereby came within the purview of the provisions of Section 25F of the Act.

(6) The impugned Award of the Labour Court cannot, therefore, be sustained and is accordingly hereby set aside and the matter is remitted to the Labour Court to determine the relief to be granted to the workmen, in the context of Section 25F of the Act, including back wages, keeping in view their gainful employment, if any, during the relevant period. Both the writ petitions are consequently hereby accepted, in these terms, with costs. Counsel fee Rs. 500. (one set only).

R.N.R.

Before S. S. Sodhi, J.

THE STATE OF PUNJAB,—Appellant.

versus

PARAMJIT KAUR AND ANOTHER,—Respondents.

Civil Writ Petition No. 241 of 1988

18th September, 1990

Industrial Disputes Act, 1947—S. 33-C(2)—Right to 'Equal pay for equal work' is not a pre-existing right—Question cannot be gone into in proceedings under S. 33-C(2).

(1) 1989 Lab I.C. 1914.

State of Punjab v. Paramjit Kaur and another (S. S. Sodhi, J.)

Held, that it is only an existing right which constitutes the foundation of a claim under S. 33C(2) of the Industrial Disputes Act, 1947. The right asserted of 'Equal pay for Equal Work' is, not one which can by any means be described as an existing right. It is a right which, at the moment, has merely been asserted, but not yet adjudicated upon. This being so, according to the test laid down by the Supreme Court in *Central Inland Water Transport Corporation Ltd. v. The Workmen* AIR 1974, S.C. 1604, there can thus be no escape from the conclusion that the Labour Court lacked the requisite jurisdiction to grant to the respondent-employees the relief claimed. The impugned order of the Labour Court is consequently hereby set aside. (Para 5)

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that :—

- (i) writ of certiorari or any direction may be issued to quash the order of the learned Labour Court Annexure P-2;
- (ii) Or any other writ, order or Direction may be issued which ~~this~~ Hon'ble High Court deems proper in view of the facts and circumstances of the present case.
- (iii) filing of certified copy of Annexures P-1 and P-2 may be dispensed with;
- (iv) issuance of advance notices to the respondents may be exempted;
- (v) That this Civil Writ may kindly be allowed with costs throughout and the operation of award be also stayed till the disposal of this writ petition.

Charu Tuli, AAG, Punjab, for the Petitioner.

Nemo, for the Respondents.

JUDGMENT

S. S. Sodhi, J.

(1) The controversy here is with regard to the scope and ambit of the jurisdiction under Section 33 C(2) of the Industrial Disputes

Act (hereinafter referred to as 'the Act'), in the context of the rule of "Equal pay for Equal work".

(2) The Directorate of Lotteries of the State of Punjab had employed a number of persons as clerks on daily wages. To begin with, they were paid at the rate of Rs. 15 per day, which was later enhanced to Rs. 17 per day and ultimately to Rs. 20 per day. These persons were appointed as clerks some time in the year 1982 and their services were terminated in 1986. They then filed applications under Section 33-C (2) of the Act praying that they be paid at the same rate as regular clerks of the Directorate. The Labour Court upheld this claim and this is now what has been challenged in this bunch of writ petitions.

(3) The point that arises at the very out-set is whether this claim of the employees to pay equal to that of the regular employees, is amenable to the jurisdiction of the Labour Court under Section 33-C(2) of the Act. The scope and ambit of this provision of law was considered by the Supreme Court in *Central Inland Water Transport Corporation Ltd. v. The Workmen* (1), where, it was observed :—

"It is now well settled that a proceeding under Section 32 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 to 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."

It was further observed that "in a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiffs 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 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,

(1) A.I.R. 1974 S.C. 1604.

the extent of the defendant's liability may sometime 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 33 C(2), as in 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 perversion because execution proceedings in which the extent of liability is worked out are just consequential upon the determinations (i), (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 itself 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 benefit 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."

(4) A similar view was expressed by the Supreme Court in an earlier case in *Chief Mining Engineer East India Coal Co. Ltd. v. Rameswar* (2), where it was reiterated that the right to the benefit which is sought to be computed in proceedings under Section 33 C(2) of the Act must be an existing right, that is, to say a right already adjudicated upon or provided for.

(5) It will be seen, therefore, that it is only an existing right which constitutes the foundation of a claim under Section 33 C(2) of

the Act. The right asserted of 'Equal pay for Equal work' is, in the present case, not one which can by any means be described as an existing right. It is a right which, at the moment, has merely been asserted, but not yet adjudicated upon. This being so, according to the test laid down by the Supreme Court in *Central Inland Water Transport Corpn. Ltd.* (Supra), there can thus be no escape from the conclusion that the Labour Court lacked the requisite jurisdiction to grant to the respondent-employees the relief claimed. The impugned order of the Labour Court is consequently hereby set aside and these petitions are accepted. There will, however, be no order as to costs.

R.N.R.

Before G. R. Majithia, J.

BACHAN SINGH,—*Petitioner.*

versus

MALKIAT RAI,—*Respondent.*

Civil Revision No. 547 of 1989

18th September, 1990.

Contempt of Courts Act (70 of 1971)—S. 11—East Punjab Urban Rent Restriction Act, 1949—Ss. 10, 19—Non-compliance of the orders of Rent Controller by landlord—Rent Controller—Whether empowered to convict landlord under Contempt Act.

Held, that there is no provision in the Rent Act to convict and sentence a person who violates the provisions of sub-section (1) of S. 10, for a period of three months and detain him in civil prison. Under S. 11 of the Contempt of Courts Act, 1971, a High Court has the jurisdiction to inquire into or try a contempt of itself or of any court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction, and whether the persons alleged to be guilty of contempt is within or outside such limits. The conviction under the Contempt Act can only be recorded by the High Court and by no other Court. Assuming that the Rent Controller is a Court within the meaning of Contempt Act, it could submit the papers to the High Court for trying the proceedings under the Contempt Act against the landlord/petitioner and if it was satisfied that the landlord/petitioner had committed the contempt as defined under the Contempt Act, it could convict him. No power vests in the Rent Controller to convict the