CIVIL MISCELLANEOUS

Before R. S. Narula and S. S. Sandhawalia, JJ.

INDER SINGH AND OTHERS,—*Petitioners*

versus

LABOUR COURT, JULLUNDUR AND ANOTHER,—*Respondents*

Civil Writ No. 920 of 1966

October 3, 1968

Industrial Disputes Act (XIV of 1947)—S. 33 C(2)—Minimum Wages Act (XI of 1948)—S. 5(2)—Notification by the government under—Disputed claim in pursuance thereof—Powers of the Labour Court to enquire into— Scope of—Stated—claim of employment for performing certain duties—Labour Court—Whether can go into such claim.

Payment of Wages Act (IV of 1936)—S. 22—Whether bars application under section 33C(2), Industrial Disputes Act.

Held, that the question whether an employee was performing the duties which he alleges to have been performing, is a matter so closely knitted up with a claim for a particular wage that it has to be described as incidental to the enquiry which a Labour Court can admittedly embark upon. If this were not so, an employer could always defeat an application under section 33C(2) of Industrial Disputes Act, 1947 by alleging that the employee had not performed the duties for which he was claiming the wage or had even not performed any duty at all during the relevant period. There is no warrant for putting such a narrow construction on the vast jurisdiction conferred by section 33 C(2) of the Act on a Labour Court. Whereas care must indeed be taken to see that under the guise of deciding incidental matters the jurisdiction vested in a Labour Court under the section is not unreasonably exceeded or extended, it would be equally unsafe and unreasonable to place any artificial limitation on the jurisdiction conferred on the Labour Court by the said provision. The case would not, however, be covered by section 33C(2) where an employee claims that he is entitled to promotion and asks for the higher salary of the higher post to which he claims to be entitled to be promoted. A claim under that provision would also not lie at the hands of a person retrenched from service and claiming that the retrenchment was wrongful and not in accordance with law. Where the contest before the labour Court is as to whether the work done by the worker falls within the description contained in one item of the Government notification issued under section 5(2) of Minimum Wages Act, 1948 or the other, it is a matter which can appropriately be decided in proceedings under section 33 C(2) of Industrial Disputes Act. (Paras 10, 12 and 15)

Held, that neither section 22 of the Payment of Wages Act, 1936 nor section 24 of the Minimum Wages Act, 1948 bars the jurisdiction of a Labour Court to entertain and adjudicate upon an application under section 33C(2) of the Industrial Disputes Act, 1947. The Labour Court is a judicial or at least a quasi-judicial Tribunal but not a Civil Court and the jurisdiction of the Labour Court not having been barred by the express provisions of the said sections, it is against the well-settled canons of interpretation of statutes to imply any such bar to the jurisdiction of the Labour Court which is not created by any statute.

(Para 24)

Case referred by the Hon'ble Mr. Justice J. N. Kaushal on 20th July, 1966 to a larger Bench for decision of an important question of law involved in the case. The case was finally decided by the Hon'ble Mr. Justice R. S. Narula and the Hon'ble Mr. Justice S. S. Sandhawalia on 3rd October, 1968.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari, *or any other appropriate writ, order or direction be issued quashing the order dated 10th January, 1966 and directing the respondent No. 1 to decide the applications of the petitioners under the said Section 33C(2) on merits.*

BALBIR SINGH BINDRA AND MRS. B. S. BINDRA, ADVOCATES, for the Petitioners.
BHAGIRATH DASS AND S. K. HIRAJEE, ADVOCATES, for Respondent No. 2.

JUDGMENT

The judgment of the court was delivered by—

NARULA, J.—The main question which calls for decision in this petition of Inder Singh and 43 other employees of Messrs Podar Textile Mills, Amritsar (respondent No. 2), under Articles 226 and 227 of the Constitution is whether a disputed claim in pursuance of a notification under the Minimum Wages Act (11 of 1948) (hereinafter referred to as the Wages Act), can or cannot be made under sub-section (2) of section 33C of the Industrial Disputes Act (14 of 1947) (hereinafter called the Act), before a Labour Court established under the Act.

(2) Respondent No. 2 is an industrial concern engaged in finishing textile goods. Minimum wages of certain categories of the employees in such concerns had originally been fixed by a notification dated August 4, 1964. That notification was subsequently superseded by notification, dated March 4, 1965, issued under section 5(2) of the Wages Act. Disputes arose between the petitioners and respondent No. 2 regarding the wages due to the petitioners for the period March 4, 1965 to June 30, 1965 The petitioners moved applications under section 33C(2) of the Act before Labour Court, Jullundur

(respondent No. 1) for the computation of the wages to which they were entitled for the said period. According to the case of respondent No. 2 (hereinafter called the employer), the petitioners had claimed wages of a higher category than the one to which they were entitled. In their application before the Labour Court, the petitioners gave details of the wages to which they claimed to be entitled, the rate at which they had actually been paid, and also the details of the difference between the two sets of awards. The applications of the petitioners were contested by the employer who raised various objections including the one relating to the jurisdiction of the Labour Court to try the applications in question. It appears to be appropriate to quote verbatim the relevant preliminary objection which gave rise to the dispute which now forms the subject-matter of this petition:—

> "That the instant application cannot be entertained under section 33C(2) of Industrial Disputes Act, 1947. Section 33C contemplates only such benefits which have accrued under a settlement or an award or under the provisions of Chapter V-A of the Act and a benefit not included or comprehended therein does not fall within the ambit of section 33C(2) of the Act."

It was further pleaded by the employer in its preliminary objections before the Labour Court that the proper forum for the recovery of the wages of the petitioners was the authority appointed under the Wages Act and that the other Courts were barred to entertain claims for the recovery of wages in question which can form the subject-matter of an application under section 20 of the Wages Act. The case of the employer as contained in paragraph 2 of the preliminary objections raised in its written statement filed before the Labour Court may also be appropriately set out in the words used by the respondent itself:—

> "That proper forum for the recovery of wages, if any, is the authority appointed under the Minimum Wages Act of 1948. Other Courts are barred to entertain claims for the recovery of wages which can be recovered by an application under section 20 of the Act II of 1948. If a claim arises regarding payment of less wages otherwise than fixed under the Minimum Wages Act, the remedy lies under the payment of Wages Act and the applicant was bound to move the said authority under the Act. The present application is an obvious circumvention of the statutory provisions of law and hence not maintainable."

(3) From the pleadings of the parties, the Labour Court framed two preliminary issues to the effect:—

(1) whether the applications are not maintainable under section 33C(2) of the Industrial Disputes Act, 1947; and

(2) Whether the applications are barred by the provisions of the Minimum Wages Act or Payment of Wages Act.

In the impugned award of the Labour Court, dated January 10, 1966, it was held by Shri Manohar Singh Bakhshi, Presiding Officer of that Court, following the judgment of a Division Bench of the Madras High Court in *Natarajan and another* v. *Lakshmi Mills Company, Ltd., Coimbatore, and others* (1), that when an applicant under section 33C(2) of the Act claims the difference in salary on the ground that he has been wrongly placed in a particular category or that he has been wrongfully designated as belonging to a particular category which is not appropriate to the nature of the work he has been doing, such a claim cannot fall within the scope of section 33C(2) of the Act. The Labour Court further held that an application under section 33C(2) of the Act can be filed only if the application is based on a pre-existing right which the applicant seeks to enforce and that the Government's notification, dated March 4, 1965, did not confer any right on the petitioners as it dealt collectively with respect to persons employed in textile industry in the Punjab, and it was nowhere mentioned in the notification itself that any of the petitioners fell under any special (particular) category therein. Inasmuch as the petitioners sought, according to the Presiding Officer of the Labour Court, to establish a right in their favour by getting a decision from the Court in the disputed proceedings, it was held that applications in question were not maintainable under section 33C(2) of the Act. Having thus answered the first preliminary objection in favour of the employer, the Labour Court further held that though neither section 24 of the Wages Act nor section 22 of the Payment of Wages Act (4 of 1936) (hereinafter referred to as the 1936 Act) in terms expressly barred the institution of the application under section 33C(2) of the Act as such an application could not be considered to be a suit and the petitioners could not be considered to be plaintiffs, the spirit and intention underlying those provisions obviously require that the applications of the instant nature should go either to the authority under the 1936 Act or to the authority under the Wages Act, which are the special forums exercising jurisdiction in matters relating to delayed wages or payment of less

(1) 1964-II L.L.J. 296.

than the minimum rate of wages, and that such an application cannot, therefore, be filed before a Labour Court under section 33C(2) of the Act except under special circumstances justifying such a course, which are according to the Labour Court lacking in the present case. Both the above-said findings of the Labour Court in favour of the employer have been impugned by the petitioners in this writ petition wherein it has been prayed that the impugned order of the Labour Court should be quashed and the Labour Court should be directed to dispose of the claim of the petitioners before it on merits in accordance with law. The writ petition has been contested by the employer who has also filed a return. The employer has mainly supported the impugned order of the Labour Court on the grounds contained in that order. When this case came up for hearing before a learned Single Judge of this Court (J. N. Kaushal, J., as he then was), it was directed on July 20, 1966, to be referred to and to be decided by a larger Bench as the matter involved herein was of considerable importance and there was no decided case of this Court which could form a precedent on the points in issue. It is in pursuance of the said order of Kaushal, J., that this case was referred to a Division Bench and ultimately came up before us for hearing.

(4) Sub-sections (1) and (2) of section 33C may be set out at this stage:—

> "(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:
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> Provided * * * * * *
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> Provided * * * * * *
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> (2) 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."

In order to appreciate the rival contentions of the parties on the first point, it is also necessary to notice the provisions of section 20 of the Wages Act:—

"(1) The appropriate Government may, by notification in the Official Gazette, appoint any Commissioner for Workmen's Compensation or any officer of the Central Government exercising functions as a Labour Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner or any other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the Authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages or in respect of the payment of remuneration for days of rest or for work done on such days under clause (b) or clause (c) of sub-section (1) of section 13 or wages at the overtime rate under section 14, to employees employed or paid in that area.

(2) Where an employee has any claim of the nature referred to in sub-section (1), the employee himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector, or any person acting with the permission of the Authority appointed under sub-section (1), may apply to such Authority for a direction under sub-section (3):

Provided * * * * * *

Provided * * * * * *

(3) When any application under sub-section (2) is entertained, the Authority shall hear the applicant and the employer, or give them an opportunity of being heard, and after such further inquiry, if any, as it may consider necessary, may, without prejudice to any other penalty to which the employer may be liable under this Act, direct—

(i) in the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the

employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess;

(ii) in any other case, the payment of the amount due to the employee, together with the payment of such comsation as the Authority may think fit, not exceeding ten rupees,

and the Authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of the application.

(4) * * * * *
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(5) * * * * *
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(6) Every direction of the Authority under this section shall be final.

(7) Every Authority appointed under sub-section (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such Authority shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898."

(5) Section 15 of the 1936 Act may also be seen at this stage in order to have complete picture of the relevant statutory provisions:—

"(1) The State Government may, by notification in the official Gazette appoint a Presiding Officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947, or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State or any Commissioner for Workman's Compensation or other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the

wages, or delay in payment of the wages of persons employed or paid in that area, including all matters incidental to such claims:

Provided that where the State Government considers it necessary so to do, it may appoint more than one authority for any specified area and may by general or special order provide for the distribution or allocation of work to be performed by them under this Act;

(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act or any other person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for a direction under sub-section (3):

Provided that every such application shall be presented within twelve months from date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be:

Provided further that any application may be admitted after the said period of twelve months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (2) is entertained the authority shall hear the applicant and the employer or other person responsible for the payment of wages under section 3 or give them an opportunity of being heard, and after such further inquiry (if any) as may be necessary, may without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person, of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding twenty-five rupees in the latter and even if the amount

deducted or the delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit not exceeding twenty-five rupees";

(4) * * * * *
* * * * *

(5) * * * * *
* * * * *"

An order or a direction given by the authority under the 1936 Act is made appealable under certain specified circumstances by section 17 of that Act before the District Court. It has been held by this Court that in cases covered by section 115 of the code of Civil Procedure, a further revision lies to this Court against the appellate order of the District Judge under the 1936 Act in certain eventualities.

(6) Shri Bhagirath Dass, the learned counsel for the employer, broadly confined his submission to the two preliminary issues decided by the Labour Court by contending that a claim which depends on determination of a disputed question of classification of an employee is not covered by section 33C(2) and that the correct state of law in this respect is as enunciated by the Madras High Court in *Natarajan's case* (supra) (1) and that in any case the claim of the petitioners before the Labour Court was barred by section 24 of the Wages Act and section 22 of the 1936 Act. For his second contention Mr. Bhagirath Dass not only relied on the spirit and intention underlying sections 24 and 22 of the Wages Act and the 1936 Act respectively, as had been done by the Labour Court, but also on the proposition that the machinery provided by the said Acts (the Wages Act and the 1936 Act) excludes the general remedy available to an aggrieved person under sub-section (2) of section 33C of the Industrial Disputes Act.

(7) The legislative history of section 33C(2) was very succinctly narrated by Gajendragadkar, J., in the *Central Bank of India Ltd.* v. *P. S. Rajagopalan, etc.* (2), and it may be quoted verbatim from that judgment:—

"The Act, as it was originally passed, made relevant provisions on the broad basis that industrial disputes should be adjudicated upon between trade Unions or representatives of labour on the one hand and the workmen's employers on the other. That is why section 10(1) which deals with

(2) A.I.R. 1964 S.C. 743.

the reference of disputes to Boards, Courts or Tribunals, has been interpreted by this Court to mean that the disputes which are referable under section 10(1) should be disputes which are raised by the trade Unions to which the workmen belong or by the representatives of workmen acting in such a representative character. It was, however, realised that in denying to the individual employees a speedy remedy to enforce their existing rights, the Act had failed to give due protection to them. If an individual employee does not seek to raise an industrial dispute in the sense that he does not want any change in the terms and conditions of service, but wants only to implement or enforce his existing rights, it should not be necessary for him to have to take recourse to the remedy prescribed by section 10 (1) of the Act; that was the criticism made against the omission of the Act to provide for speedy enforcement of individual workmen's existing rights. In order to meet this criticism, an amendment was made by the Legislature in 1959 by section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950 (No. 48 of 1950). Section 20 of this Act provided for recovery of money due from an employer under an award or decision. This provision filled up the lacuna which was discovered, because even after an award was made individual workmen were not given a speedy remedy to implement or execute the said award, and so, section 20 purported to supply that remedy. Section 20 (1) provided that if money was due under an award or decision of an industrial Tribunal, it may be recovered as arrears of land revenue or as a public demand by the appropriate Government on an application made to it by the person entitled to the said money. Section 20 (2) then dealt with the cases where any workman was entitled to receive from the employer any benefit under an award or decision of an industrial Tribunal which is capable of being computed in terms of money, and it provided that the amount at which the said benefit could be computed may be determined, subject to the rules framed in that behalf, by that industrial Tribunal and the amount so determined may be recovered as provided for in sub-section (1). In other words, the provisions of section 20 (2) roughly correspond to the provisions of section 33C (2) of the Act. There are, however, two points of distinction. Section 20(2) was confined to the benefits claimable by workmen under an award or

decision of an Industrial Tribunal; and the application to be made in that behalf had to be filed before the industrial Tribunal which made the said award or decision. These two limitations have not been introduced in section 33C(2). Section 20(3) corresponds to section 33C(3). It would thus be noticed that section 20 of this Act provides a speedy remedy to individual workmen to execute their rights under awards or decisions of industrial Tribunals. Incidentally, we may add that section 34 of this Act made a special provision for adjudication as to whether conditions of service had been changed during the pendency of industrial proceedings at the instance of an individual workmen and for that purpose inserted in the Act section 33A. Act 48 of 1950 by which section 20 was enacted came into force on May 20, 1950.

In 1953, the Legislature took a further step by providing for additional rights to the workmen by adding Chapter VA to the Act, and passed an Amending Act No. 43 of 1953. Chapter VA deals with the workmen's claims in cases of lay-off and retrenchment. Section 25(1) which was enacted in this Chapter provided for the machinery to recover moneys due from the employers under this Chapter. It laid down, *inter alia*, that any money due from an employer under the provisions of Chapter VA may be recovered in the same manner as an arrears of land revenue or as a public demand by the appropriate Government on an application made to it by the workman entitled to the said money. This was, of course, without prejudice to the workman's right to adopt any other mode of recovery. This provision shows that having created additional rights in the workmen in respect of lay-off and retrenchment the legislature took the precaution of prescribing a speedy remedy for recovering the said amounts from their employers. This Amending Act came into force on December 23, 1953.

About three years later, the legislature passed the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (No. 36 of 1956). This Act repealed the Industrial Disputes (Appellate Tribunal) Act No. 48 of 1950 section 25-I in Chapter VA and inserted section 33C(1), (2) and

(3) and section 36A in the Act. The result of these modifications is that the recovery provisions are now contained in section 33C and an additional provision is made by section 36A which deals with cases where doubt or difficulty may arise in the interpretation of any provision of an award or settlement. This Act came into force on August 28, 1956.

In order to make the narration of the legislative background of section 33C complete, we may refer to the fact that by the Amendment Act No. 18 of 1957, two more provisions were added to Chapter VA which are numbered as section 25FF and section 25FFF. This Act came into force on June 6, 1957."

The dispute before the Supreme Court in the set of appeals (Civil Appeals Nos. 823 to 826 of 1962) disposed of by the judgment of their Lordships in the case of the *Central Bank of India Ltd. etc.* (supra) (2), arose out of the applications made by four employees of the Bank under section 33C(2) of the Act claiming payment of Rs. 10 per month as special allowance for operating the adding machine as provided for under paragraph 164(b)(1) of the Sastry Award, on the ground that each one of the said employees had been operating the adding machine provided for use in the Clearing Department of the branch in question of the Bank. The claim was disputed by the Bank which had urged that the employees could claim only non-monetary benefits under the Award that were capable of computation, that the applications were not maintainable without a reference of the dispute made by the Central Bank, and that since the applications of the employees involved the question of the interpretation of the Sastry Award, they were outside the purview of section 33C(2). On the merits of the claim of the employees, the Bank's case was that the special allowance claimed by the employees was payable only to the computists and could not be claimed by the employees on the ground that they were operating the adding machines. The preliminary objections of the Bank were overruled by the Central Government Labour Court. On the merits, the Labour Court found that the employees were entitled to claim the special allowance. Their applications were, therefore, allowed. The Bank went up to the Supreme Court in appeal by special leave against the award of the Labour Court. It was contended on behalf of the Bank that the Labour Court had exceeded its jurisdiction in entertaining the

applications under section 33C(2), because the claims made in the applications of the employees were outside the scope of that provision. The Bank's case was that sub-section (2) of section 33C can be invoked only by workmen who are entitled to receive from the employer the benefit there specified, but that the right of the workmen to receive the benefit has to be admitted and could not be a matter of dispute between the parties in cases which fell under that provision. It was argued on behalf of the Bank that if there is a dispute about the workmen's right to claim the benefit, such a dispute cannot be adjudicated upon under sub-section (2) of section 33C, but by other appropriate proceedings permissible under the Act. On the other hand, the employees contended before the Supreme Court that sub-section (2) of section 33C is broad enough to take in all cases where workmen claim some benefit and want the said benefit to be computed in terms of money, and that if in resisting the said claim the employer makes several defences, all those defences have to be tried by the Labour Court under sub-section (2). The Supreme Court allowed the Bank's appeal on account of its findings on the merits of the controversy after appraising the evidence which had been produced by the parties before the Labour Court, and held that the sole basis on which the claim of the employees had been allowed by the Labour Court was unsound as the Labour Court had failed to notice the distinction between the computists on the one hand and adding machine operators, etc., on the other. The ratio of the judgment of their Lordships of the Supreme Court in the *case of Central Bank of India Ltd., etc.*, (2), on the question of law with which we are concerned in the present writ petition can conveniently be summarised thus:—

(i) in determining the scope of section 33C, care must be taken not to exclude cases which legitimately fall within its purview;

(ii) The scope of sub-section (2) is much wider than that of sub-section (1) of section 33C. Whereas a claim under sub-section (1) must be either referable to an existing and subsisting award or settlement or must be covered by the relevant provisions of Chapter VA (i.e., must relate to claim for compensation for retrenchment, closure, etc., a claim under sub-section (2) may either be of the kind of any of the three categories mentioned above or may not at all be based on any existing settlement or

award and may not be arising out of retrenchment or closure, etc.;

(iii) an application under sub-section (2) will be maintainable before a Labour Court if it is claimed therein that the benefit to which the employees are entitled should be computed in terms of money even though the right to the benefit on which their claim is based is disputed by the employer;

(iv) The determination of the question about computation of the benefit in terms of money can in appropriate cases be preceded by an inquiry into the existence of the right itself and such an inquiry must be held to be incidental to the main determination which it is the duty of the Labour Court to make under section 33C(2);

(v) in appropriate cases the Labour Court may in exercise of its jurisdiction under section 33C interpret the Award or settlement if any on which the employee may base his claim though the Labour Court cannot while interpreting the Award go behind it or add to or subtract from the provisions of the Award or settlement; and

(vi) an application will not be maintainable under section 33C(2) :—

(a) in a case which falls within section 10(1) of the Act, i.e., in a case involving a dispute which can legitimately form the subject-matter of a reference by the Government to a Labour Tribunal or Court under sub-section (1) of section 10;

(b) where an employee is dismissed or demoted and it is his case that the dismissal or demotion is wrongful, and, therefore, he is entitled to the wages which he would have been paid if he had not been dismissed or demoted;

(c) where a claim is made which is inconsistent with a settlement duly reached between the employer and his employee and it falls under section 18(2) or (3) of the Act, and is governed by section 19(2). It would not be open to the employee in such a case to claim any benefit although the said settlement had come to an end. No claim inconsistent with the

said settlement can be made under sub-section (2) of section 33C; and

(d) other appropriate cases of which it is not possible to give an exhaustive list.

(8) The first case to which Mr. Bindra referred, is the judgment of the Supreme Court in *Canara Bank Ltd. and another* v. *Anant Narayan Surkund and others* (3). The circumstances which gave rise to that appeal to the Supreme Court by special leave were these: The main case out of the set of appeals disposed of by that judgment of the Supreme Court arose out of an order of the Central Government Labour Court, Delhi, allowing the application of a clerk employed by the Canara Bank Ltd., at its Bandra branch under section 33C(2) of the Act, wherein he had claimed a special allowance of Rs. 15 per mensem admissible to cashiers in charge of cash at pay-offices in accordance with paragraph 164(b)(7) of the All-India Industrial Tribunal (Bank Disputes) award (popularly known as the Sastri award). The clerk had further claimed that he had worked as cashier in charge of cash at Worli and Bandra branches of the bank and had been entrusted with the sole charge of handling cash in those branches as there was nobody else to assist him. The claim had been made before the Labour Court because the bank had not paid him the special allowance of Rs. 15 per mensem in question. The bank had resisted the claim before the Labour Court on, *inter alia,* the ground that such an application was not entertainable under sub-section (2) of section 33C. The other defences of the bank are not relevant for our purposes. The Labour Court had repelled the banks contention relating to the jurisdiction of the Court under sub-section (2) of section 33C. After referring to its earlier judgment in the *case of Central Bank of India Ltd.* (supra) (2), the Supreme Court (per Wanchoo, J.) held that the application of the Bank clerk was maintainable under section 33C(2) and the contention of the bank in that behalf must fail. The rest of the judgment of the Supreme Court related to the merits of the controversy relating to the facts giving rise to the claim of the bank clerk with which we are not concerned. It will be clear from the abovesaid judgment of the Supreme Court in *Canara Bank's case* that, where the claim of an employee depends on determination of disputed facts as to the duties actually performed by the employee or as to the place where he performed

(3) 1963 II L.L.J. 343.

them, it can validly be adjudicated upon by a Labour Court under section 33C(2).

(9) The next judgment of the Supreme Court on which reliance was placed on behalf of the writ petitioners is the one given by their Lordships in *South Indian Bank Ltd.* v. *Chacko* (4). The Labour Court had held in that case that considering the entire evidence, oral as well as documentary, the applicant before it under section 33C(2) of the Act was a workman, and that though on paper certain rights and powers had been assigned to him and occasionally he acted in place of the Agent of the branch, such duties did not form part of his principal and main duties. The jurisdiction of the Labour Court to adjudicate upon a claim of that type was questioned by the South Indian Bank Ltd., before the Supreme Court. Their Lordships (per Das Gupta, J.) held that section 33C(2) in terms assigns determination of the amount of benefit which the workman is entitled to receive from the employer (and which benefit is capable of being computed in terms of money) to such Labour Court as may be specified in this behalf by the appropriate Government, and that, therefore, the Labour Court and not the Industrial Tribunal had jurisdiction to deal with the matter. The Labour Court had in that case rejected the contention of the bank to the effect that such an application as had been made by the employee was incompetent under section 33C(2). Das Gupta, J., (who prepared the judgment of the Supreme Court) held that the said objection of the bank stood concluded by the decision of their Lordships in the *Central Bank of India Ltd.* v. *P. S. Rajagopalan, etc* (2). The case covered by the judgment of the Supreme Court in the *case of South Indian Bank Ltd* (4), therefore, provides a further illustration of the kind of a claim which lies to a Labour Court under sub-section (2) of section 33C.

(10) It was then contended by Mr. Bindra that the Division Bench judgment of the Madras High Court in *Natarajan's case* (supra) (1), cannot be easily reconciled with the dicta of the Supreme Court in the abovesaid cases. and particularly with the ratio of the judgment in the *case of Central Bank of India Ltd* (2) and that the judgment in *Natarajan's* case (1) does not lay down the correct law. In *Natarajan's case* (1), an employee had claimed that he was a skilled worker and was entitled to be paid for that job and that he was not an unskilled worker entitled to a lower salary which the employer sought to pay him. Another employee

(4) 1964-I L.L.J. 19.

had claimed that he was not merely a clerk, but was also performing the duties of a cashier and was, therefore, entitled to extra emoluments. Both of them went up to the Labour Court under sub-section (2) of section 33C of the Act claiming the difference in salary on the ground that they had been wrongfully placed in a particular category or wrongfully designated as belonging to a particular category which was not appropriate to the work they had been doing. The employer took objection to the jurisdiction of the Labour Court on the ground that such a disputed claim could not be adjudicated under section 33C(2). Against the decision of the Labour Court overruling the said objection of the employer, the writ petition of the employer was allowed by Veeraswami, J.,— *vide* 1962-I LLJ 493, and further appeal against the judgment of the Single Judge was dismissed by a Division Bench of the Madras High Court. The Division Bench held that though whenever a workman claims a benefit and his claim is disputed by his employer, the Labour Court will have jurisdiction to decide all questions incidental to the claim, but the case is different where a workman claims that though he was designated by the employer as holding a particular post and had in fact been treated by the management as such, he should properly be considered as holding a different post and be paid salary appropriate to such different position. This latter category of cases was held by the Madras High Court to be beyond the jurisdiction of a Labour Court under section 33C(2). It was held that the employee could not complain about his actual classification or grade in a petition under that provision, and this is a matter in respect of which an industrial dispute could be raised if his cause is sponsored by a substantial number of workmen in the establishment. It is principally on this decision of the Madras Court that the impugned order has been based by respondent No. 1. Mr. Bindra submitted that the judgment of the Madras Court in *Natarajan's case* (1) does not lay down correct law. His argument was that the view of the Madras High Court as expressed in *Natarajan's case* (1) is too narrow to be consistent with the authoritative pronouncement of the Supreme Court in the *case of Central Bank of India Ltd.* (2), and that the Madras view is irreconciliable with the two subsequent judgments of the Supreme Court, i.e., the one in *Canara Bank's case* (3), and the other in the *case of South Indian Bank Ltd* (4). No exception whatever can be taken to the ratio of the Madras Court judgment on two points, viz., (i) that whenever a workman claims a benefit and his claim is disputed by the employer, the Labour Court has the jurisdiction to decide all questions incidental to such a claim; and

(ii) that if in fact the dispute sought to be adjudicated upon by the Labour Court under section 33C(2) is such in respect of which an industrial dispute could be properly raised under section 10(1) of the Act, the application under sub-section (2) of section 33C would not be maintainable. It is only in the application of those two well settled principles that the Madras High Court is said to have erred according to the submissions made by Mr. Bindra. The factual aspect of the dispute before the Madras Bench was described in the Division Bench judgment in the following words:—

> "The dispute, therefore, is not about the actual posts which the workers occupied, but what they deserved by way of their salary and other emoluments for the duties claimed to have been performed by them. A claim of that kind cannot obviously come under that section which speaks of benefits to which the workman is entitled. The benefits or salary which the workmen in the present case were entitled to according to their designation had undoubtedly been given to them. The claim is that the actual classification of their posts or the grade in which they have been placed is incorrect. That is a matter in respect of which an industrial dispute can be raised if there were a substantial number of workers to sponsor the same."

I do not think any exception can be taken to the judgment of the Division Bench of the Madras High Court in so far as it is based on the findings of fact reproduced above. But I am equally clear in my mind that the judgment of the Madras High Court has no application to the present dispute. Whereas in the Madras Court it had to be decided as to what emoluments the employees "deserved" for the duties claimed to have been performed by them, no such dispute is involved in the instant case where the prescribed scales of pay have been fixed by the notification under the Wages Act. The only factual dispute on which the application of one particular part or other part of the notification under the Wages Act would depend in the instant case is as to whether the employees were or were not performing the duties which they allege to have been performing. That in my opinion is a matter so closely knitted up with a claim for a particular wage that it has to be described as incidental to the enquiry which a Labour Court can admittedly embark upon. If this were not so, an employer could always defeat an application under section 33C(2) by alleging that the employee had not performed the duties for which he was claiming the wage or had even not performed any

duty at all during the relevant period. I am inclined to think that there is no warrant for putting such a narrow construction on the vast jurisdiction conferred by section 33C(2) on a Labour Court. Individual claim of an employee for a wage or for difference between the wage due and the emoluments paid on the ground that the employer denies that the employee had performed the particular duties, cannot in my opinion form the subject-matter of a reference under section 10(1) of the Act. Nor is it a claim of the kind which was sought to be excluded by their Lordships of the Supreme Court (in the case of Central Bank of India Ltd. and in their subsequent judgments) from the scope of section 33C(2).

(11) Mr. Bindra also relied on certain observations in the judgment of the Supreme Court in *Ambica Mills Company Ltd.* v. *S. B. Bhatt and another* (5), where the jurisdiction of the authority under the 1936 Act was questioned on the ground that such an authority had no jurisdiction to decide which of the contracts between the employer and the employee held the field, that is, which of the contracts was subsisting and which of them the employer was liable to pay wages to the applicant-employee. The Supreme Court held in that case that in dealing with claims arising out of deductions or delay made in the payment of wages, the authority under the 1936 Act inevitably would have to consider questions incidential to the said matters. Their Lordships observed:

> "In determining the scope of these incidental questions care must be taken to see that under the guise of deciding incidental matters the limited jurisdiction is not unreasonably or unduly extended. Care must also be taken to see that the scope of these incidental questions is not unduly limited so as to affect or impair the considering of questions as to what could be reasonably regarded as incidental questions."

(12) It was further held that it would be inexpedient to lay down any hard and fast or general rule which would afford and determine the test to demarcate the field of incidental facts which can be legitimately considered by the authority under the Wages Act and those which such an authority cannot consider. It appears to me that same is the position regarding the scope of jurisdiction of the Labour Court under section 33C(2). Whereas care must indeed be

(5) 1961-I L.L.J. 1.

taken to see that under the guise of deciding incidential matters the jurisdiction vested in a Labour Court under section 33C(2) is not unreasonably exceeded or extended, it would be equally unsafe and unreasonable to place any artificial limitation on the jurisdiction conferred on the Labour Court by the said provision.

(13) On the other hand, Mr. Bhargirath Dass sought to support the findings of the Labour Court on the first preliminary issue decided by it by referring to a recent judgment of the Supreme Court in *State Bank of Bikaner and Jaipur* v. *C. S. Verma* (6), and to a judgment of the Mysore High Court in *Mysore Sugar Company, Ltd. v. B. K. Manavendra and others* (7). In the case of *State Bank of Bikaner and Jaipur* (supra) (6), the case of the employer bank was that Verma was not a workman immediately after the Sastri award, and, therefore, the award did not apply to him and the change of the definition of workman could not be made applicable to him. The Supreme Court held that this was a wrong approach. The award and the decision regulated the emoluments of the services in the bank and created categories, and that anyone opting for the conditions of service under the award and the decision stood to gain if by any legislation his status was changed to his advantage. Their Lordships held that the jurisdiction of the Labour Court under section 33C(2) was not ousted because there was no dispute about Verma being a workman or not as this was settled by the statutory amended definition and the only dispute was whether being a workman he was entitled to the benefit of the award for what he had opted. In that situation it was held that Verma's application fell within the powers of the Labour Court under section 33C(2) and the Labour Court was right in holding that Verma was entitled to special allowance under the amended definition. Though in ultimate analysis the judgment of the Supreme Court in the case of *State Bank of Bikaner and Jaipur* (supra) (6) does not appear to be of any assistance to the employer in the case before us, Mr. Bhagirath Dass strongly relied on the underlined portion (underlined by me) (In italic in this report), in the following observation of the Supreme Court:—

> "The dispute here was not whether Verma was a workman because that followed from the change in the law. The dispute was whether being a workman he was entitled to the benefit of an award for which he had opted. *Had the*

(6) 1968—I L.L.J. 840.

(7) 1966—II L.L.J. 463.

matter rested with the applicability of the award to Verma because Verma claimed to be a workman without a clear support of law, the matter might have been different. Here Verma's status as a workman is beyond question because of the change of definition from 29th August, 1956."

(14) According to Mr. Bhagirath Dass the Supreme Court has in the underlined portion of the above-quoted passage held that if an employer were not to admit that the claimant was a workman, the Labour Court would have no jurisdiction to entertain his application under section 33C(2). I am unable to spell out any such dictum from the aboove quoted passage in the Supreme Court judgment. Even to the extent to which the observation goes, it does not appear to be a pronouncement on the proposition, but it is only stated that in the circumstances referred to in the underlined portion, the matter "might" have been different. Moreover, there is no dispute in the instant case about the petitioner having been the workmen of the employer. It is admitted that they were workmen and the only dispute was about the actual duties performed by them on the proof of which they would be entitled to get salary according to one scale or the other fixed by the Government under the Wages Act. I do not, therefore, think that the judgment of the Supreme Court in the *case of State Bank of Bikaner and Jaipur* (6) is of any assistance to the employer.

(15) The case would not, in my opinion, be covered by section 33C(2) where an employee claims that he is entitled to promotion and asks for the higher salary of the higher post to which he claims to be entitled to be promoted. A claim under that provision would also not lie at the hands of a person retrenched from service and claiming that the retrenchment was wrongful and not in accordance with law. In the instant case, the claim is based on an existing contract of service. The scales of pay are fixed by the Government under the relevant notification already referred to. The only factual issue between the contesting parties before the Labour Court was as to whether the work done by the petitioners fell within the descrpition contained in one item of the Government notification or the other. That in my opinion is a matter which could appropriately be decided in proceedings under section 33C(2).

(16) In *Mysore Sugar Company's case* (supra) (7), the relief claimed by the employees was that by virtue of their qualifications

and the nature of their duties, they were entitled to be fixed in a higher grade and paid the higher grade of salary. It was held that this was a matter which fell within the exclusive jurisdiction of the Industrial Tribunal, and, therefore, stood excluded from the jurisdiction of the Labour Court. The employees in that case were employed in the electrical section of Mysore Sugar Company's factory as shift electricians and as their assistants, they were claiming that for the job they were doing, they were entitled to higher grades of salary. No such higher grades had been fixed and no such right had accrued to them under any award or settlement. That case is, therefore, clearly distinguishable. In the present case, the grades of pay for the posts which the petitioners claim to be holding, have actually been fixed under the Wages Act by the Government. The only factual dispute to be decided is whether the respective petitioners are in fact doing the respective duties which they claim to be doing. If it is proved that they are doing the work which they claim to be doing, nothing else has to be decided and they would get the salary fixed for the persons falling in that class which has already been fixed by the Government. There is thus no industrial dispute in this case which could be made the subject-matter of the reference under section 10(1) of the Act. The Division Bench of the Mysore High Court quashed the order of the Labour Court allowing an application under section 33C(2) and directing that some of the employee-applicants should be fitted in the supervisory staff A grade, and that some of them the assistants, should be "treated at par with" them entitling them to draw pay in a little lesser scale and further directing payment of arrears on that basis. The higher scales had been claimed on the basis of recommendations contained in the report of a Wage Board which had not acquired any statutory force. While quashing the order of the Labour Court, it was observed by the Bench of the Mysore High Court that item 7 in Schedule III of the Act deals with "classification by grades", and that was a subject which fell within the exclusive jurisdiction of the Industrial Tribunal. It is noteworthy that in the case before us there is no claim for "classification by grades." The classification has already been done by the Government notification under the Wages Act. The only disputed question of fact which remains to be adjudicated upon is as to the class out of those categories in which the petitioners fall by virtue of the duties performed by them. It being admitted that the petitioners are the workmen of the employer, it being further admitted that they had been doing the work during the relevant period; and the

scales of pay to which the persons performing particular duties are entitled having been put beyond doubt by the Government notification, nothing remains to be referred to an Industrial Tribunal for adjudication as an industrial dispute under section 10(1). As already observed, the facts of the case before the Mysore High Court were different. The Mysore High Court unequivocally held that in the case before them, the relief claimed by the employees was not one which strictly and specifically sprang from the existing position which the employees had held at the date of the application. It was noticed that the submission of the employees in that case was that both "by virtue of their qualifications" and the nature of their duties, they were entitled to be fixed in a higher grade and were enitled to be awarded the higher grade of salary. It was this matter which was held to be clearly falling within the exclusive jurisdiction of the Industrial Tribunal.

(17) Mr. Bhagirath Dass then relied on the judgment of the Madras High Court *in Natranjan's case* (1). I have already dealt with that judgment and pointed out that the same is distinguishable. A Division Bench of that Court itself held as follows in *Lenox Photo Mount Manufacturing Company, Madurai* v. *Labour Court, Madurai, and another* (8).

> "Where the employee claims a salary at a particular rate per month and on that basis claims arrears of salary, such claim would be a "benefit" which could be computed in terms of money within the meaning of section 33C(2) of the Industrial Disputes Act, 1947. The word "computed" merely means calculation whether simple or otherwise. The word "benefit' would include also benefits, express or otherwise in terms of money but requiring computation. The word "computed" is not to be understood only as involving a complex process of arithmetic or calculation.
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> * * * * *
> * * * * *
>
> In such a case the right or claim to arrears of salary would necessarily depend on a decision whether the plea of discharge was well-founded and in order to decide the claim, it would be necessary to decide such plea as an incidental question."

(8) 1965—II L.L.J. 423.

(18) The facts of the instant case are somewhat like this. The employer has entered into a statutory contract (by operation of the Government notification) to pay Rs. 100 per mensem to persons performing 'X' duties and Rs. 80 per mensem to persons performing 'Y' duties. The petitioners are admitted workmen of the employer. The petitioners were paid Rs. 80 per mensem. They claim that they were performing 'X' duties and were, therefore, entitled to the difference of Rs. 20 per mensem for the period for which they had been paid less. Such a claim dooes not appear to be an industrial dispute, but merely calls for a factual adjudication arising out of a claim on the basis of an existing right and falls squarely within the jurisdiction of a Labour Court under section 33C(2). The crucial test in such cases appears to be the one laid down by the Supreme Court *in the case of Central Bank of India Ltd.* (2), i.e., does the claim of the employees made before a Labour Court under section 33C(2) arise out of an existing right which they had on the date of their application? For the reasons already given, my answer to that question in the present case is in favour of the employees.

(19) The last case to which reference was made by Mr. Bhagirath Dass is the judgment of a learned Single Judge of the Andhra Pradesh High Court in *Katta Lakshmayya* v. *Labour Court, Hyderabad, and another* (9). In that case an employee in the grade of a "Munshi" claimed that in fact he was discharging the duties pertaining to the post of "Munshi in charge" and hence he filed a petition under section 33C(2) claiming the arrears of the difference in salary. The petition was dismissed by the Labour Court on the ground that such a claim could not be entertained under section 33C(2), but could only form the subject-matter of an industrial dispute. The writ petition filed by the employee for quashing the order of the Labour Court was dismissed by the learned Single Judge of the Andhra Pradesh High Court with the observations that if a "Munshi" had claimed that he was also performing the duties of the "Munshi in charge" and should, therefore, be paid extra remuneration, he would have come within the purview of the ruling of the Supreme Court in the *case of Central Bank of India Ltd.* (supra) (2), and the Labour Court would have had jurisdiction to go into the claim and decide it on merits under section 33C(2). On the other hand, it was held that what the worker had claimed in the Andhra Pradesh case was virtually that he must be declared to have occupied a higher grade than what had been assigned to him by the management for a long number of years and that he should during the years be given

(9) 1966—I L.L.J. 813.

the higher salary which the higher grade carried. Such a claim, it was held, would not fall within the ambit of section 33C(2). The learned counsel for the petitioners has contended that the Andhra Pradesh case has not been correctly decided. In my opinion, it is unnecessary to go into that matter. The present case is more akin to the illustration given by the learned Judge of the Andhra Pradesh High Court relating to a case which would be within the jurisdiction of the Labour Court under section 33C(2). This is obvious from a reference to the pleadings in the present case. For appreciating this point we need refer to the application of any one of the petitioners because all the applications were on printed forms and were practically in the same terms except for minor difference relating to the description of the posts of which the respective petitioners claim to be performing the duties. I have selected for this purpose, the case of petitioner No. 1 himself, i.e., of Inder Singh. In the body of his application, it was stated that he was entitled to receive from the employer the benefits mentioned in the statement attached to the application, and it was, therefore, prayed that the Labour Court be pleased to determine the amount due to the petitioner. The application appears to be in the form prescribed under rule 61-A(2) of the rules framed under the Act. The Annexure to the application which contains the claim is quoted below verbatim:—

> "The Punjab Government revised the Minimum Wages in the Textile Industry,—*vide* its Notification No. SO-55-CA/XI/48/S-5/65, dated 4th March, 1965 (copy enclosed).
>
> According to this notification, I as a Tailor am entitled to get a Minimum Wage of Rs. 100 per month instead of Rs. 90 per month at which rate I have been actually paid by the management.
>
> The management has not paid me at the rate of Rs. 100 per month and has thus deprived me of the benefit under the above-mentioned notification.
>
> According to me I am entitled to Rs. 21/70 more at the rate of Rs. 10 per month up to 30th June, 1965.
>
> It is requested that the benefits due to me under the above-mentioned 4th March, 1965, notification may kindly be computed up to 30th June, 1965."

(20) In the written statement of the employer filed in reply to the above-mentioned claim of Inder Singh as many as four preliminary objections were raised out of which two relevant ones have already

been quoted. In reply to the claim on merits, it was stated as under:—

"That the allegations made in paragraphs Nos. 1 and 2 of the application are wrong and denied. The applicant was never a tailor as alleged, but only a 'Stitcher' engaged in stiching the ends of pieces of cloth only which have to pass through the machines continuously. No garments are sewn in the respondent's factory. Therefore, it is evident that there is no work of tailoring in the factory and hence no category of tailor is required. The applicant was paid correctly as a 'Stitcher'. He was getting Rs. 79 per month up to March 3, 1965, and his salary was inceased to Rs. 90 per month with effect from March 4, 1965, in accordance with the category of a 'Stitcher' provided in the Minimum Wages Notification, dated March 4, 1965. He was not at all entitled to Rs. 100 per mensem, as claimed in the application. His claim is, therefore, baseless."

A survey of the above-quoted pleadings between the parties shows that the claim of petitioner No. 1 was not for being graded as a Tailor or for fixation of salary for the kind of work he was doing. He asserted that he was already working as a Tailor and referred to the Government notification under which a minimum wage of Rs. 100 per mensem was fixed for the post of a Tailor in the industry in question and complained that he was being paid Rs. 90 instead of Rs. 100, and was, therefore, entitled to Rs. 21.70 on account of the difference for the period in dispute at the rate of Rs. 10 per mensem. The issues which the Labour Court would have had to decide in order to adjudicate upon the claim of Inder Singh would have been—

(1) whether Inder Singh petitioner was a Tailoor or a Stitcher;

(2) whether the Government notification had fixed the minimum wage of a Tailor at Rs. 100 per mensem or less than that; and

(3) whether the petitioner has been paid less than the minimum wage prescribed by the notification under the Wages Act for the post he is holding under the employer, and to what relief is the petitioner entitled.

(21) On the other hand if the claim of Inder Singh petitioner had been that though he was doing only stitching work of the kind referred to in the written statement of the employer, this work

should be deemed to be that of a Tailor, and on that basis the Stitchers in the employer's industry should be directed to be paid wages at the rate meant for the Tailors, and the claim for the difference would have been made on that basis, the Labour Court would have had no jurisdiction at all in the matter and the dispute in question could only be referred by the appropriate Government in an appropriate case for adjudication by a Labour Court under section 10(1). As the things stand, however, I am firmly of the opinion that the claim which Inder Singh and others made in the present case before the Labour Court in their pleadings referred to above was based on an alleged existing right, the existence or otherwise of which could be adjudicated upon by the Labour Court, and that the Labour Court had, therefore, the jurisdiction to adjudicate upon those claims; which jurisdiction the Labour Court has erroneously declined to exercise. We, therefore, hold that the decision of the Labour Court on the first preliminary issue is based on an error of law apparent on the face of the record and the said decision is, therefore, set aside, and it is held that the Labour Court did have the jurisdiction to adjudicate upon the claims of the petitioners and the pleas of the employer on merits under section 33C(2) of the Act.

(22) We are also unable to agree with the findings of the Labour Court on the second preliminary issue. It has been noticed by the Labour Court itself that neither section 22 of the 1936 Act nor section 24 of the Wages Act, bars the jurisdiction of the Labour Court under section 33C(2) to try a claim of this type in so many words. Section 22 of the 1936 Act is in the following terms:—

> "No Court shall entertain any suit for the recovery of wage or of any deduction from wages in so far as the sum so claimed—
>
> (a) forms the subject of an application under section 15 which has been presented by the plaintiff and which is pending before the authority appointed under that section or of an appeal under section 17; or
>
> (b) has formed the subject of a direction under section 15 in favour of the plaintiff; or
>
> (c) has been adjudged, in any proceeding under section 15, not to be owed to the plaintiff; or
>
> (d) could have been recovered by an application under section 15."

Section 24 of the Wages Act states:—

"No Court shall entertain any suit for the recovery of wages in so far as the sum so claimed—

(a) forms the subject of an application under section 20 which has been presented by or on behalf of the plaintiff; or

(b) has formed the subject of a direction under section 15 in favour of the plaintiff; or

(c) has been adjudged in any proceeding under that section not to be due to the plaintiff; or

(d) could have been recovered by an application under that section."

In *Town Municipal Council, Athani* v. *Labour Court, Hubli, and others* (10), it was held by a Division Bench of the Mysore High Court that claims of employees for wages for overtime work and for work on weekly off days amount to claims for moneys which they are entitled to receive from the employer, and fall within the ambit of section 33C(2). Their Lordships further held that there was nothing in scection 33C(2) to exclude claims that can or could have been enforced under section 20 of the Minimum Wages Act, and, therefore, setion 24 of the Minimum Wages Act does not bar a claim under section 33C(2). Section 24 of the Minimum Wages Act, it was held, bars only the jurisdiction of Civil Courts to entertain suits in respect of such claims and does not even purport to bar the jurisdiction of the Labour Court under section 33C(2) as a Labour Court cannot be considered to be a Court of general jurisdiction. It was held that even then there may be overlapping of jurisdiction of the Labour Court where under the Minimum Wages Act each of the special tribunals constituted under the two Acts has jurisdiction in respect of matters specified in the enactments constituting them. Similarly it was held by Mehar Singh, J., (as my Lord, the Chief Justice then was) in *Uttam Chand* v. *Kartar Singh* (11), that a claim under the 1936 Act was not barred merely because the same claim could also be decided by a Labour Court under section 33C(2) of the Industrial Disputes Act, as the latter provision does not exclude the jurisdiction of the authority under section 15 of the 1936 Act. That was a converse case and it was clearly held in it that it was not correct to say that the only remedy of the aggrieved party was to proceed under section 33C(2). It was, therefore, impliedly held that the claim could be made under section 15 of the 1936 Act as well as under

(10) 1968—I L.L.J. 779.

(11) 1967—I L.L.J. 232.

section 33C(2) of the Act. A Division Bench of this Court (Dua and Pandit, JJ.) held in *Municipal Committee, Tarn Taran* v. *State of Punjab and others* (12), that though an employee could file an application under section 20 of the Wages Act, it was not correct to say that the dispute could not form the subject-matter of a reference to an Industrial Tribunal. In effect the Division Bench held that section 24 of the Wages Act does not exclude the jurisdiction under section 10(1) of the Industrial Disputes Act. In *Ambica Mills, Ltd., No. 2, Ahmedabad* v. *Second Labour Court, Ahmedabad* (13), a Division Bench of the Gujrat High Court held that section 22 of the 1936 Act did not bar an application for relief which could be claimed under the 1936 Act by an application being made to a Labour Court under section 33C(2).

(23) Mr. Bindra also relied on the general proposition enunciated in *Bombay Gas Company Ltd.*, v. *Gopal Bhiva and others* (14), by the Supreme Court to the effect that the plea of a bar to the entertainability of a claim cannot be implied. In that case it was held that the plea of limitation which would have barred a claim under the 1936 Act or the Wages Act could not be raised if the same claim was made to a Labour Court under section 33C(2) as no limitation was prescribed at that time for an application under that provision.

(24) The law laid down in the abovementioned cases clearly indicates that neither section 22 of the 1936 Act nor section 24 of the wages Act bars the jurisdiction of a Labour Court to entertain and adjudicate upon an application under section 33C (2) of the Act. The Labour Court is a judicial or at least a quasi-judicial Tribunal but not a Civil Court and the jurisdiction of the Labour Court not having been barred by the express provision of either section 22 of the 1936 Act or section 24 of the wages Act, it is against the well-settled canons of interpretation of statutes to imply any such bar to the jurisdiction of the Labour Court which is not created by any statute. Mr. Bhagirath Dass referred to the Division Bench judgment of the Madhya Pradesh High Court in *Laxman* v. *Dayalal Meghji & Co. Badashahi Bidi works, Raipur, and another* (15). wherein it was held that the Labour Court was right in holding that it had no jurisdiction to entertain an employee's application under section 33C (2) for recovery of the difference in wages actually paid and the wages paid under

(12) 1967—I L.L.J. 568.
(13) 1967—II L.L.J. 800.
(14) 1963—II L.L.J. 608.
(15) 1968—I L.L.J. 139.

the Madhya Pradesh Minimum wages Fixation Act, 1962. With the greatest respect to the learned Judges of the Madhya Pradesh High Court, I am inclined to think that the observations of the Bench in *Laxmen's case* (supra) (15) go contrary to the decision of the Supreme Court in *Ambica Mills case* (supra) (13) and to the trend of judicial precedent on the point in question. In deciding the case of Laxman in the way the Madhya Pradesh High Court did, they followed their own earlier Division Bench judgment which was contrary to the view of the Punjab High Court. The only other case to which Mr. Bhagirath Dass referred on this point is the judgment of the Bombay High Court in *Savatram Ramprasad Mills Co. Ltd. Akola* v. *Baliram Ukandaji and others* (16). It may be noticed that the observations of the Bombay High Court in the aforesaid case were not approved by the Supreme Court in the *Central Bank of India case* (supra) (2). The Labour Court appears to have gone entirely wrong in holding that though there was no statutory bar to the jurisdiction vested in the Labour Court by section 33C (2) of the Act, some kind of implied bar on general principles could be created in the way of the petitioners. Error of law in the decision of the Labour Court on the second preliminary issue is, therefore, equally obvious, and the said decision is also set aside.

(25) For the foregoing reasons, this writ petition is allowed, the judgment and order of the Labour Court on the two preliminary issues is set aside and quashed, and the Labour Court is directed to proceed with the trial and decision of the claims of the petitioners on merits in accordance with law. The petitioners would be entitled to receive payment of the costs incurred by them in the proceedings in this Court from the employer, i.e., from respondent No. 2.

K.S.K.

APPELLATE CRIMINAL

Before Gurdev Singh and A. D. Koshal, JJ.

AMAR SINGH,—*Appellant*

versus

THE STATE,—*Respondent*

Criminal Appeal No. 824 of 1966.

October 24, 1968.

Penal Code (XLV of 1860)—S. 300—Thirdly—Injury "sufficient in ordinary course of nature to cause death"—Determination of—Factors to be considered—Stated—Non-availability of medical-aid or negligence of the injured in following instructions of the Doctor—Whether relevant considerations.

(16) A.I.R. 1963 Bom. 189.