limitation or expansion of the meaning of that item by such association. It was further held that the word "perfumes" in that entry referred to items of toilet preparations and, therefore, synthetic essential oil was not a perfume within the meaning of that entry.

(11) *Dhoop* and *Aggarbatti* are primarily used for religious ceremonies and are not used for personal hygiene or pleasure. It has been so held in *Amir Chand Om Parkash's case* (supra). The word "perfumery" used in entry No. 16 before its substitution in 1979 in Schedule 'A' to the Act, therefore, cannot be interpreted to include *Dhoop* and *Aggarbatti*. It is not disputed that in case *Dhoop* and *Aggarbatti* are not covered by entry No. 16, they shall be liable to tax at the rate of 6 per cent and not 10 per cent in 1973-74.

(12) In view of discussion above, the writ petition is allowed and the impugned order of the Joint Excise and Taxation Commissioner, dated May 22, 1979, (P.3) and that of the Sales Tax Tribunal, dated August 14, 1980, (P.4) are set aside. No order as to costs.

N. S. S.

Before M. M. Punchhi, J.

THE AMBALA BUS SYNDICATE,—*Petitioner.*

versus

PRESIDING OFFICER, LABOUR COURT AND OTHERS,—*Respondents.*

Civil Writ Petition No. 3013 *of* 1978.

May 1, 1984.

Industrial Disputes Act (XIV of 1947)—Section 33C(2)—Employer not wanting to retain a workman in service because of complaints received against him—Workman agreeing to do some other duty at a reduced salary so as to remain under check—Management giving him alternative job and reducing his salary—Workman claiming the difference between his original salary and the reduced salary—Such claim—Whether maintainable under section 33C(2).

Held, that the language of the order is rather meaningful. The post given to the workman was an 'alternative duty' only to avoid

the workman having direct contact with the public and other employees and to keep him under check causing neither his dismissal nor even a demotion. His salary was reduced just because the workman agreed to have a reduced salary with the result that the action of withholding of salary perfectly justified the Labour Court to entertain a petition of the workman under section 33C(2) of the Industrial Disputes Act 1947 and adjudicate thereupon. The petition as such was maintainable before it.

(Para 6).

Writ Petition under Articles 226/227 of the Constitution of India praying that the records be called for and the petitioner may be granted the following reliefs:—

(a) *to quash the order dated April 28, 1978, Annexure 'P-4';*

(b) *restrain Respondents No. 2 and 3 from enforcing award Annexure 'P-4' against the petitioner and restrain them from realising the amount payable under the award or to any other relief which the petitioner is entitled under the circumstances of this case; and*

(c) *costs of the petition be allowed to the petitioner.*

G. R. Majithia, Sr. Advocate and Mr. Salil Sagar, Advocate with him, *for the Petitioner.*

Surjit Singh, Advocate, *for the Respondent.*

JUDGMENT

M. M. Punchhi, J.

(1) Surjit Singh, the respondent-workman, was employed with the petitioner, which is a transport company. It appears that there were two complaints dated 3rd March, 1969 and 15th March, 1969 against him. The workman was informed by the management that in view of the complaints, it would not be possible to retain him in employment. It appears that the workman-respondent did not deny the facts stated in the complaints but was rather apologetic. He suggested to the management that his services be not terminated but he be given some other duty whereby he might avoid direct contact with the public and other employees. He even agreed to work in the office as a Way Bill Checker or work on some other post. He further even agreed to get a reduction in his salary for the alternate duty. Thereupon, the management on 24th March, 1969,—*vide* order, Annexure P. 2, ordered that he should no longer

work as an Inspector and be given the duty of a Way Bill Checker in the office so that he remains under constant check. He could also work as Adda Incharge, if and when necessary. His salary was accordingly reduced to Rs. 250 per mensem with effect from 1st April, 1969.

(2) On 20th August, 1977, the respondent-workman made an application under section 33-C (2) of the Industrial Disputes Act, 1947 before the Labour Court at Patiala praying for the determination of the amount due to him firstly for the salary reduced for the intervening period and secondly for non-payment of salary from 1st March, 1976 to 16th August, 1976. He computed the claim at Rs. 12,247. In defence, the petitioner-management claimed that there was no existing right of the workman and as such the petition was not maintainable. Further it was pleaded that the wages of the workman had been reduced from Rs. 400 per mensem to Rs. 250 per mensem with effect from 1st April, 1969 by way of disciplinary action, taken against him for misconduct, and so long as the said order stood, the Labour Court had no jurisdiction to proceed with the application. With regard to the period 1st March, 1976 to 16th August, 1976, it was asserted that on 1st March, 1976, the workman was asked to interchange his job with that of a Conductor and since he refused to work, his services were terminated. But later after demand notice and conciliation proceedings, he was taken back by way of settlement. And since he had not worked during that period, he was not entitled to any wages.

(3) The Labour Court,—*vide* Award Annexure P. 4, disallowed the claim of the workman to wages with effect from 1st March, 1976 till 16th August, 1976. But with regard to the difference on account of reduction of salary, it positively held that the workman was entitled to a salary of Rs. 400 per mensem throughout and whatever had remained the difference (since there was confusion of the moneys paid in the interval), it left it to be calculated by the management. The aggrieved management has approached this Court under Articles 226 and 227 of the Constitution.

(4) The main attack of the learned counsel for the petitioner is that order, Annexure P. 2, passed by the management way back on 24th March, 1969, which was served on the workman the same day, stood implemented by the workman on his accepting the post of a Way Bill Checker in place of the one meant for an Inspector and had

also voluntarily agreed to the reduction of the salary. In the presence thereof, it was maintained, that there was no existing right which could be enforced under section 33-C (2) of the said Act. It was suggested that his appropriate remedy was to get that order set aside and then lay a claim, if successful. It was also asserted that order, Annexure P. 2, was nothing but an order of dismissal of the workman from the post of an Inspector and of a re-employment as a Way Bill Checker on his salary reduced to Rs. 250 per mensem in consequence thereof. On the other hand, the learned counsel for the workman maintained that the said order cannot be spelled to be an order of dismissal, or even an order of demotion, from the post of an Inspector to that of a Way Bill Checker but was rather a case of putting the employee to an alternate duty. He further maintained that the reduction of salary from Rs. 400 to Rs. 250 per mensem was an illegal act by the management by withholding a part of the salary and since the right of the workman existed to receive the whole salary, petition under section 33-C(2) of the aforesaid Act was maintainable. The Labour Court, however, took the view that order, Annexure P. 2, could not be interpreted as one of termination and fresh employment and in its view only rank and salary was reduced.

(5) The learned counsel for the petitioner relying on *The Central Bank of India Ltd.* v. *P. S. Rajagopalan etc.*, (1), *M/s. Punjab Beverages Pvt. Ltd., Chandigarh* v. *Suresh Chand and another, etc.*, (2) and *The Management of New Cinema, Main Guard Square, Madurai* v. *The Presiding Officer, Labour Court, Madurai and another*, (3) contended that a proceeding under section 33-C (2) is a proceeding in the nature of an execution proceeding in which the Labour Court calculates the amount of money due to a workman from an employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money then it proceeds to compute the benefit in terms of money. He further maintained that the right to the money which is sought to be calculated, or to the benefit which is sought to be computed, must be an existing one, that has already been adjudicated upon, or provided for, and must arise in the course and in relation to the relationship between the industrial workman and his employer. He maintained that the dismissal or demotion of the workman may give rise to an industrial dispute which may be appropriately tried, but since it has been shown in the

(1) A.I.R. 1964 S.C. 743.
(2) A.I.R. 1978 S.C. 995.
(3) 1970(2) Labour Law Journal 452.

instant case that the workman had been dismissed and re-employed and in the alternative demoted, the real claim of the workman that his dismissal or demotion was unlawful and, therefore, he continues to be the workman of the employer and is entitled to the difference in the salary, cannot be made under section 33-C(2).

(6) I have given my careful thought to the argument, but to my mind, it has too many suppositions and assumptions in it and thus cannot prevail. The language of the order, Annexure P. 2, is rather meaningful. The post of the Way Bill Checker given to the workman-respondent was as 'alternative duty'. The case was never pleaded before the Labour Court in the manner that the post of Inspector carried higher salary of Rs. 400 and that of the Way Bill Checker a lower one at Rs. 250 per mensem, or that bringing down an Inspector to work as a Way Bill Checker would tantamount to his demotion. It seems that the effort was only to avoid the workman having direct contact with the public and other employees. That is why he was given an alternate seat causing neither his dismissal nor even a demotion. Patently it appears that his salary was reduced just because the workman agreed, possibly under duress, to have a reduced salary. In this situation, the finding of the Labour Court that the rank of the workman was reduced is without any basis for no such graded ranking was ever placed before it. It is a remark to be ignored being just *en passant*. If once it is held that this was neither a case of dismissal nor of demotion, the authorities afore-cited by the learned counsel for the petitioner are of no avail. The end result is that the action of withholding of salary perfectly justified the Labour Court to entertain a petition of the workman under section 33-C(2) and adjudicate thereupon. The petition as such was maintainable before it. The wages had initially been fixed by the management at Rs. 400 per mensem and those could not be reduced or withheld in the circumstances. In any case, the view taken by the Labour Court does not reflect an effort of the kind which may in all events require interference under Articles 226 and 227 of the Constitution, for I see that no manifest injustice has been caused to the petitioner.

(7) Resultantly, there is no merit in this petition which fails and is hereby dismissed but without any order as to costs.

N.K.S.