ance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice."

In the present case, one looks in vain for the existence of any order indicative of the satisfaction of the trial Court, as admittedly no such order had been passed by the Court concerned.

(7) For the reasons aforementioned, this petition is allowed and the proceedings against the petitioners pending in the Court of the Judicial Magistrate First Class, Kharar, are quashed.

N. K. S.

Before S. P. Goyal and I. S. Tiwana, JJ.

MARKET COMMITTEE,—*Petitioner.*

versus

PRESIDING OFFICER, LABOUR COURT AND ANOTHER,—

Respondents.

Civil Writ Petition No. 203 of 1980.

January 7, 1981.

Industrial Disputes Act (XIV of 1947)—Sections 10 and 33-C(2)—Claim filed by a workman before the Labour Court under section 33-C (2) for recovering wages due—Relationship of master and servant denied by the employer—Labour Court—Whether has jurisdiction to decide such a dispute—Relative scope of sections 10 and 33-C(2)—Stated.

Held, that if the money or benefit is claimed by a workman on the basis that the right already exists and the existence of that right is denied, it is competent for the Labour Court in proceedings under section 33-C (2) of the Industrial Disputes Act, 1947 to decide whether the right does or does not exist. Similarly, it is competent for the said

court to interpret an award of settlement on which the workmen's right rests although the claim is disputed and likewise, if a dispute is raised about a workman's right to receive a benefit that question can be determined by the Lower Court. Thus, the substantial question as to the status of the applicant, whether he is entitled to the benefit can also be decided by the Labour Court under section 33-C (2) of the Act. In other words, in such a situation the Lower Court must entertain and decide the question whether there was a relationship of employer and employee between the parties before computing the claim of an applicant *qua* arrears of salary. However, the cases which call for the determination of the legality or validity of discharge, dismissal, retrenchment or termination of services of an individual workman would have to be determined on a reference under section 10 of the Act.

(Para 5)

Sher Singh Verma vs. *Rup Chandra and another*, 1967 (2) LLJ 682. OVERRULED.

Petition under Article 226 of the Constitution of India praying that this Hon'ble Court be pleased to :—

(*a*) send for the record of the case and after perusing the same;

(*b*) *issue a writ of certiorari quashing the award annexure P/4.*

(*c*) *issue any other appropriate Writ, Order or Direction that may be found suitable in the circumstances of this case.*

(*d*) *exempt the filing of the certified copies of Annexure P/1 to P/4 and dispense with the issuance of prior notices for stay.*

(*e*) *stay the operation of the impugned award.*

G. C. Garg, Advocate, *for the Petitioner.*

P. S. Kang, Advocate, *for the Respondent.*

JUDGMENT

I. S. Tiwana, J.

(1) The short but significant question that has been raised in this petition under Article 226 of the Constitution of India, is as to

whether a Labour Court in exercise of its jurisdiction under section 33C(2) of the Industrial Disputes Act (hereinafter referred to as the Act) can decide the disputed question of relationship of employer and workman between the parties ? The stand of the petitioner is that the said Court cannot, and in support of this stand, it has relied upon a Single Bench judgment of this Court reported as *Sher Singh Verma* v. *Rup Chandra and another*, (1). It was primarily to consider the correctness of this judgment that the petition was admitted to hearing by a Division Bench. The facts giving rise to the controversy are as follows :

(2) The respondent, Smt. Attar Kaur, filed a claim application under section 33C(2) of the Act for a sum of Rs. 1553.80 on account of her wages at the rate of Rs. 396.90 per month for the period from August 24, 1977 to December 20, 1977 during which period, she claimed to have actually worked as a Moharrir with the petitioner Market Committee. To decide this claim on a contest being raised by the petitioner, the Labour Court considered the following two issues :—

1. Whether the applicant was in the employment of the respondent ? and

2. What amount, if any, the applicant is entitled to ?

and while upholding the claim of the respondent, passed the impugned award, Annexure P. 4, on August 6, 1979. For holding the respondent to be in the employment of the petitioner during the period noted above, the Labour Court primarily relied upon the documentary evidence, Exhibit A. 1, relating to the attendance and the working of the respondent as a Moharrir which record was alleged to have been duly checked by Mr. Narinder Sharma, an Assistant Secretary of the petitioner. It is worthwhile to note here that the petitioner did not lead any evidence whatsoever in support of its stand or in rebuttal to the above noted evidence of the respondent. It is also appropriate to mention here that prior to August 24, 1977, the respondent had put in a similar claim before the Labour Court against the petitioner for the period from June

(1) 1967 (2) L.L.J. 682.

19, 1977 to August 23, 1977, during the course of those proceedings which resulted in an award dated February 20, 1978, Annexure P. 5, the petitioner had conceded the claim of the respondent. It is in the light of these promises that the sole contention raised by the learned counsel for the petitioner with regard to the jurisdiction of the Labour Court to determine the relationship of the employer and the workman between the parties, deserves to be examined. He seeks firm support from *Sher Singh Verma's case* (supra) wherein it has been held thus :—

> "The labour court under section 33C(2) is primarily given power to execute or implement his existing individual right and it may, therefore, be necessary in some cases to determine such right. Such determination, however, must be confined to matters incidental to the main issue, namely, the computation of benefits to which a workman is entitled. The question whether the claimant is a workman at all or not would not be incidental to the determination of the main question."

While recording this conclusion and holding that in such contingency the only remedy available to an employee is to raise an industrial dispute and to seek a reference under section 10 of the Act, the learned Judge after considering the judgment of the Supreme Court in *Central Bank of India, Ltd.* v. *P. S. R. Jagppalan,* (2), observed further, "I must confess that the point is not free from difficulty".

(3) To counter this stand of the petitioner's counsel, the learned counsel for the respondent while placing primary reliance on a Division Bench judgment of the Delhi High Court in *Yad Ram* v. *Labour Court, Delhi and another,* (3) where in the view taken by the learned Single Judge of this Court in the earlier case was not accepted to be the correct view-contends that in such a case the mere denial by the employer (petitioner) about the existence of the relationship of the workman and the employer will not oust the jurisdiction of the Labour Court and more so when no dispute with

(2) 1963 II L.L.J. 89.

(3) 1974-II L.L.J. 306.

regard to the discharge, dismissal, retrenchment or otherwise termination of the services of an individual workman is raised before the Labour Court. According to the learned counsel in the case in hand, the determination of the question of relationship of employer and workmen between the parties during the period from August 24, 1977 to December 20, 1977, was only incidental to the main question of computation of the benefit or the amount payable to the respondent.

(4) It is interesting to note here that in recording the above noted divergent conclusions by the learned Judges of the two High Courts, that is, the Delhi High Court and this Court, primary reliance has been placed on the judgment of the Supreme Court in *Central Bank of India's* case (supra). Thus it is apparent that to resolve the controversy it is the ratio of this judgment of the Supreme Court that needs to be noticed and followed. It is beyond dispute that prior to this judgment providing guide lines with respect to the jurisdiction of the Court under section 33C(2) of the Act, there was a considerable conflict of judicial opinion on the point in issue. The Supreme Court, while examining and interpreting the provisions of section 33C(2) of the Act and at the same time refraining from stating exhaustively or even indicating broadly as to what other categories of claims can fall under this provision, pointed out two types of cases as illustrative cases which would not fall under sub-section (2), that is, (i) cases which would appropriately be adjudicated on reference under section 10(1) of the Act, e.g., cases involving wrongful dismissal or demotion of the employee and (ii) claims which have already been subject-matter of settlement to which the provisions of section 18 and 19 of the Act would apply. Speaking for the Court, Gajendragadkar, J., who delivered the judgment, enunciated the law in the following words:—

> "The legislative history to which we have just referred clearly indicates that having provided broadly for the investigation and settlement of industrial disputes on the basis of collective bargaining, the legislature recognised that individual workmen should be given a speedy remedy to enforce their existing individual rights, and so, inserted S. 33-A in the Act in 1950 and added S. 33-C in 1956.

These two provisions illustrate the cases in which individual workmen can enforce their rights without having to take recourse to S. 10(1) of the Act, or without having to depend upon their union to espouse their cause. Therefore, in construing S. 33-C we have to bear in mind two relevant considerations. The construction should not be so broad as to bring within the scope of S. 33-C cases which would fall under S. 10(1). Where industrial disputes arise between employees acting collectively and their employers, they must be adjudicated upon in the manner prescribed by the Act, as for instance, by reference under S. 10(1). These disputes cannot be brought within the purview of S. 33-C. Similarly, having regard to the fact that the policy of the legislature in enacting S. 33-C is to provide a speedy remedy to the individual workmen to enforce or execute their existing rights, it would not be reasonable to exclude from the scope of this section cases of existing rights which are sought to be implemented by individual workman. In other words, though in determining the scope of S. 33-C we must take care not to exclude cases which legitimately fall within its purview, we must also bear in mind that cases which fall under S. 10(1) of the Act, for instance, cannot be brought within the scope of S. 33-C. We would, however, like to indicate some of the claims which would not fall under S. 33-C(2), because they formed the subject-matter of the appeals which have been grouped together for our decision along with the appeals with which we are dealing at present. If an employee is dismissed or demoted and it is his case that the dismissal or demotion is wrongful, it would not be open to him to make a claim for the recovery of his salary or wages under S. 33-C(2). His demotion or dismissal may give rise to an industrial dispute which may be appropriately tried, but once it is shown that the employer has dismissed or demoted him, a claim that the dismissal or demotion is unlawful and, therefore, the employee continues to be the workman of the employer and is entitled to the benefits due to him under a pre-existing contract, cannot be made under S. 33-C (2)."

These principles were reaffirmed by the Supreme Court in *Bombay Gas Co. Ltd.* v. *Gopal Bhiva* (4).

(5) Thus the principles discernable from the decision of the Supreme Court noted above are :—

(i) If the money or benefit is claimed by a workman on the basis that the right already exists and the existence of that right is denied, it is competent for the Labour Court in proceedings under section 33-C(2) to decide whether the right does or does not exist ;

(ii) Similarly, it is competent to the said Court to interpret an award or settlement on which the workmen's right rests although the claim is disputed ; and likewise ;

(iii) if a dispute is raised about a workman's right to receive a benefit, that question can be determined by the Labour Court.

Thus to our mind, the substantial question as to the status of the applicant, whether he is entitled to the benefit, can also be decided by the Labour Court under section 33-C(2) of the Act. In other words, in such a situation the Labour Court must entertain and decide the question whether there was a relationship of employer and employee between the parties before computing the claim of an applicant *qua* arrears of salary. However, the cases which call for the determination of the legality or validity of discharge, dismissal, retrenchment or termination of services of an individual workman would have to be determined on a reference under section 10 of the Act.

(6) In the light of the discussion above and while generally agreeing with the reasoning and the view taken by the Division Bench of the Delhi High Court in *Yad Ram's* case (supra), we are of the considered opinion that the decision of this Court in *Sher Singh Verma's* case (supra) does not lay down the correct law. In view of that we do not find any lack of jurisdiction with the Labour

(4) (1963) II LL.J 608.

Court to pass the impugned award, Annexure P. 4. As a necessary consequence of this conclusion, the writ petition fails and is dismissed but with no order as to costs.

H. S. B.

Before S. S. Sandhawalia, C.J. and S. P. Goyal, J.

SURAT SINGH,—*Petitioner.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Revision No. 1101 of 1980.

January 13, 1981.

Code of Criminal Procedure (II of 1974)—Sections 173 and 209—Police report submitted to the Magistrate under section 173 in a case triable exclusively by court of Sessions—One of the accused not sent up for trial and his name mentioned in column No. 2—Magistrate—Whether can differ with the police report and commit such accused for trial.

Held, that a Magistrate has the fullest jurisdiction to differ with the conclusions of the police in its report under section 173 of the Code of Criminal Procedure 1973 and direct that the accused person mentioned in column No. 2 thereof should be summoned and committed to the court of Sessions for trial.

(Para 14)

Surinder Kumar and others vs. *State of Punjab*, Ch. L.R. 459, OVERRULED.

Petition under Section 401 Cr. P.C. for revision of the order of Shri Dalip Singh, Judicial Magistrate, 1st Class, Dasuya, dated 27th August, 1980, directing the authority to produce convicts before Sessions Judge, Hoshiarpur on 9th September 1980, for further directions and also direct the Ahlmad of this Court to send complete file in all respects to the Sessions Court.

J. N. Kaushal, Sr. Advocate with H. S. Bedi, Advocate, *for the Petitioner.*

D. N. Rampal, Advocate *for the State.*

Man Mohan Singh, Advocate with J. B. Singh Gill, *for the complainant.*