Before S. S. Sandhawalia C.J. and M. R. Sharma, J.

AMAR KAUR,—*Petitioner*

versus

STATE OF PUNJAB and others,—*Respondents.*

Civil Writ Petition No. 364 of 1972.

December 10, 1981.

Industrial Disputes Act (XIV of 1947)—Section 33(c) (2)—Proceedings under section 22(c) (2)—Relationship of employer and employee denied—Labour Court—Whether must first decide on such relationship.

Held, that the Labour Court must first entertain and decide the question of relationship of the employer and the employee (where the same is denied), in proceedings under section 33(c) (2) of the Industrial Disputes Act, 1947. (Para 9).

Writ Petition under Articles 226/227 praying that this Hon'ble Court may be pleased to call for the records of the case and issue:—

(a) *a Writ in the nature of* Certiorari *quashing the order dated 6th May, 1971 of Respondent No. 2.*

(b) *A writ in the nature of Mandamus directing Respondent No. 2 to determine the issue of whether the petitioner was a worker with Respondent No. 3 according to law. and/or.*

(c) *Any other appropriate writ order or direction which the Hon'ble Court may in the circumstances of the present case deem fit.*

Amar Dutt & M. S. Bedi, Advocates

Tarlochan Dass, Advocate No. 3.

JUDGEMENT

S. S. Sandhawalia, C.J.

(1) Whether the Labour Court must first entertain and decide the question that the relationship of employer and employee existed between the parties (where the same is controverted), in proceedings under section 33-C(2) of the Industrial Disputes Act, 1947—is the

meaningful question which has necessitated this reference to the Larger Bench.

(2) The facts are not in dispute and fall indeed within a narrow compass. The petitioner along with others had preferred applications under section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter called 'The Act') before the Labour Court, Ludhiana, seeking various reliefs like notice pay, retrenchment compensation and wages on account of leave etc. from their employers Messrs: P. K. Oswal Hosiery Mills, Ludhiana. The respondent-Management, straightaway denied the relationship of employer and employee between the parties and took up the firm stand that the applications were not maintainable and were liable to be rejected on this score alone. Several other objections were also taken regarding the maintainability of the application. On the aforesaid material question, the Labour Court framed the following issues:—

> "Whether the application under section 33-C(2) of the Industrial Disputes Act, 1947 can proceed when the relationship of master and servant is denied by the respondent."

The Labour Court noticed some conflict of precedent on the point but took the view that it was bound by the Single Bench decision of this Court reported as *Sher Singh Verma and Rup Chandra and another* (1) and held accordingly that because the relationship of the employer and the employee was denied, he could not go into the same under section 33-C(2) of the Act and the matter can only be decided in a proper reference under section 10 of the Industrial Disputes Act, 1947. Consequently, the petitioner's application along with others was dismissed.

3. This writ petition first came before my learned brother Sharma, J. sitting singly. Before him also, the learned counsel for the parties relied on rival judicial view points and because of the somewhat intricate legal issue involved, the matter was referred for decision by a Larger Bench.

4. I am inclined to take the view that so far as this Court is concerned, the Gordian knot of controversy has now been cleanly

(1) 1967(2) L.L.J. 582.

cut in recent decision of this Court to which reference follows. This apart, I am equally of the view that the matter also stands concluded in favour of the petitioner by way of analogous observations of the final Court, which are equally attracted to the situation.

5. The question before us, along with others, arose before their Lordships in *The Central Bank of India Limited* v. *P. S. Rajagopalan*, (2). On behalf of the employer, the identical stand which is sought to be taken by the respondent before us, was pressed. Categorically rejecting the same, it was observed as follows:—

> "We are not impressed by this argument. In our opinion, on a fair and reasonable construction of sub-section (2) it is clear that if a workman's right to receive the benefit is disputed, that may have to be determined by the Labour Court. Before proceeding to compute the benefit in terms of money, the Labour Court inevitably has to deal with the question as to whether the workman has a right to receive that benefit. If the said right is not disputed, nothing more needs to be done and the Labour Court can proceed to compute the value of the benefit in terms of money, but if the said right is disputed, the Labour Court must deal with that question and decide whether the workman has the right to receive the benefit as alleged by him and it is only if the Labour Court answers this point in favour of the workman that the next question of making the necessary computation can arise. It seems to us that the opening clause of sub-section (2) does not admit of the construction for which the appellant contends unless we add some words in that clause. The Clause "where any workman is entitled to receive from the employer any benefit" does not mean "Where such workman is admittedly or admitted to be, entitled to receive such benefit". The appellant's construction would necessarily introduce the addition of the words "admittedly, or admitted to be" in that clause, and that clearly is not permissible. Besides, it seems to us that if the appellant's construction is accepted, it would necessarily mean that it would be at the option of the employer to allow the workman to avail

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

himself of the remedy provided by sub-section (2), because he has merely to raise an objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour Court to entertain the workman's application. The claim under section 33-C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be identical to the main determination which has been assigned to the Labour Court by sub-section (2). As Maxwell has observed:

"Where an Act confers a jurisdiction, it impliedly also grants the powers of doing all such acts, or employing such means, as are essentially necessary to its execution". We must accordingly hold that section 33-C (2) takes within its purview cases of workmen who claimed that the benefit to which they 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 their employers."

The aforesaid observations appear to me as governing the point on all fours. However, Mr Jawala Dass, for the respondent-employers sought to raise some doubts about the same on the basis of subsequent observations made in *Central Inland Water Transport Corporation Limited* v. *The Workmen and another* (3). However, a close analysis of the latter judgment would show that, in essence, there is no conflict of opinion whatsoever betwixt the two. Indeed, the latter judgment expressly noticed the *Central Bank of India Limited's case* (supra) in paragraphs 14, 15 and 21 of the report. Far from expressing even a hint of dissent therefrom the learned judges applied the earlier view after quoting therefrom. I am, therefore, wholly unable to accept the stand of the learned counsel for the respondent that there is any divergence of opinion betwixt the *Central Bank of India Limited's case* (supra) and the *Central Inland Water Transport Corpn. Ltd's case* (supra).

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

6. As a matter of abundant caution, however, it has to be pointed out that even placing the case of respondent-employers at the highest and assuming entirely for argument sake that there is any conflict on this point, then this High Court is bound by the larger Constitution Bench of five Judges in the *Central Bank of India Limited case* (supra) in preference to the later view.

7. What next calls for notice is that the sheet-anchor of the respondent-employer's case in *Sher Singh Verma* v. *Rup Chandra & another* (1 supra) was the subject-matter of specific challenge before a recent Division Bench of this Court in *The Market Committee, Amritsar* v. *The Presiding Officer, Labour Court, Amritsar & Ors* (4). Relying on the *Central Bank of India Limited's case* (supra), and a Division Bench of the Delhi High Court in *Yad Ram (died) and Ors* v. *Bir Singh and others* (5) the aforesaid judgment was overruled. It is true that in the *Market Committee, Amritsar's case* (supra), the alleged reliance on *Central Inland Water Transport Corpn. Ltd's case* (supra), was not noticed. However, I have already opined earlier, there is neither any conflict nor can the later view be preferred over the earlier larger Bench in the *Central Bank of India Limited's case* (supra).

8. In view of the fact that the question before us appears to be concluded in favour of the petitioner by precedent, it is unnecessary to examine the matter on principle or on the language of the statute.

9. To conclude, the answer to the meaningful quesion posed at the out-set must be rendered in the affirmative and it is held that the Labour Court must first entertain and decide the question of the relationship of the employer and the employee (where the same is denied), in proceedings under section 33-C(2) of the Industrial Disputes Act, 1947.

10. In accordance with the aforesaid view the Award of the Labour Court is hereby quashed and the matter is remanded back for a decision afresh on merits in accordance with the law as enunciated above.

(4) 1981 Lab. I.C. 473.
(5) 1974 Lab. I.C. 910.

11. The writ petition is allowed in the aforesaid terms. However, in view of the intricacy of the question involved and some apparent conflict of precedent, the parties are left to bear their own costs.

M. R. Sharma, J—I agree.