

as under :—

“.. there is an absolute bar against the Court taking decision of the case (under section 182, I.P.C.) except in the manner provided by the section (i.e., section 195, Cr. P.C.)”

(5) For the reasons given above, I accept this petition and quash the report under section 173, Code of Criminal Procedure, filed by the investigating officer and also the proceedings taken on the basis of the same by the learned Magistrate, including summoning of the accused and framing of the charge-sheet, etc., and discharge the petitioners. The bail bonds furnished by them, if any, are cancelled.

FULL BENCH

Before S. S. Sandhwalia C.J., A. S. Bains and J. M. Tandon, JJ.

GENERAL MANAGER, NORTHERN RAILWAYS—*Petitioner*

versus

THE PRESIDING OFFICER and others—*Respondents*.

Civil Writ No. 4369 of 1973.

January 22, 1979.

Industrial Disputes Act (XIV of 1947)—Sections 2(s) and 33-C (1), (2) and (5)—Claim of a deceased workman—Application by an heir under section 33-C (2)—Such application—Whether maintainable.

Held, (per majority S. S. Sandhwalia C.J. and J. M. Tandon, J., A. S. Bains, J., contra.) that the proceedings under section 33-C (1) of the Industrial Disputes Act, 1947 are in the nature of execution proceedings and those under sub-section (2) involve adjudication. The scope of sub-section (2) is wider than that of sub-section (1) and the latter does not control the former. A workman alone could apply under sub-section (1) for a certificate before the amendment in 1964 and the assignee or heirs of a workman could not avail of

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this facility. They became so entitled under the substituted section 33-C(1) as a result of their being authorised specifically but no such authorisation in their favour has been made under section 33-C(2). It cannot, therefore, be said that the persons authorised under sub-section (1) could also move the Labour Court under section 33-C(2). A combined reading of sub-sections (2) and (5) of section 33-C, indeed, leaves no doubt that it is the workman alone who can move Labour Court under the former provision. Thus, a person not being a workman cannot claim dues of a deceased workman as his heir or nominee through a Labour Court under section 33-C(2) of the Act.

(Paras 11, 13 and 20)

Sitabai v. Auto Engineers and others, 1972 Lab. I. C. 733.

M/s. Jharia Fire Bricks and Pottery Works (Pvt.) v. Sri Bhriago Nath Sharma and another, 1977 Lab. I. C. 1385. DISSENTED FROM.

Held (per A. S. Bains, J. contra) that the main distinctive feature in both sub-sections (1) and (2) of section 33-C lies in the fact whether the money or benefit claimed by the applicant had been computed. If it had already been computed the application lies to the appropriate Government in terms of sub-section (1) but if it requires adjudication of the right or computation of money or benefits capable of being computed in terms of money, the application lies in terms of section 33-C(2) of the Act before the Labour Court. The Legislature in its wisdom made a provision in sub-section (1) of section 33-C that the workman, his assignees or heirs can make an application. If the Legislature intended to the contrary, it could provide in sub-section (2) that only a workman can apply but the provision is silent about it. It is, therefore, implied in sub-section (2) that a workman or his assignees or heirs, as in the case of sub-section (1), can also apply under this sub-section if the adjudication and quantification had to be done. (Para 33).

Case referred by Hon'ble Mr. Justice D. S. Tewatia on 16th August, 1974 to a larger Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Manmohan Singh Gujral and Hon'ble Mr. Justice D. S. Tewatia again referred the case to a Full Bench on 6th December, 1974. The Full Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalía, Hon'ble Mr. Justice A. S. Bains and Hon'ble Mr. Justice J. M. Tandon finally decided the case on 22nd January, 1979.

Petition under Articles 226 and 227 of the Constitution of India praying that :

(i) Records of the case be called for ;

- (ii) *A writ of certiorari, mandamus or any other writ, order or direction be issued quashing the impugned order Annexure 'C'.*
- (iii) *Any other Writ, Order or direction which this Hon'ble Court may deem fit in the circumstances of the case be issued quashing the impugned order Annexure 'C'.*
- (iv) *Costs of the writ Petition be awarded to the petitioner.*

It is further prayed that during the pendency of the Writ Petition, implementation of the impugned order Annexure 'C' be stayed.

P. S. Jain, Advocate, K. L. Khanna, Advocate and V. M. Jain, Advocate, for the Petitioner.

Amar Dutt, Advocate, for the respondents.

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(1) I have had the privilege of going through the judgment recorded by my learned brother Bains, J. With great respect for him, I am unable to subscribe to the view expressed therein. The reasons for arriving at a different conclusion are detailed below.

(2) The undisputed facts of the case which have given rise to the present reference are that Madan Lal, deceased was a railway employee and he died on August 19, 1971. A sum of Rs. 10,022 was due to him from the railways as provident fund and Rs. 2,436 as gratuity. Upinder Dutt respondent claiming to be the adopted son of the deceased applied to the Labour Court under section 33-C(2) of the Act for a direction to the railway administration for payment of the provident fund and gratuity due to the deceased, to him as his legal heir. The railway administration admitted that Rs. 10,022 as provident fund and Rs. 2,436 as gratuity was due to the deceased but raised objections about the maintainability of the petition, and *locus standi* of the petitioner. During the pendency of the petition, the railways gave up all objections and agreed to make the payment to the person held entitled by the Labour Court. The Labour Court directed the railways to pay the provident fund and gratuity amount to Upinder Dutt,—*vide* order dated September 21, 1973. The railways did not make the payment and instead challenged the order of the

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Labour Court in Civil Writ No. 4369 of 1973 and urged that it could not entertain the claim of Upinder Dutt as an heir of Madan Lal deceased workman under section 33-C (2) of the Act. In view of the conflicting views of different High Courts on this legal point, the learned Single Judge referred the matter to a Division Bench and for the similar reason the latter desired it to be decided by a Full Bench for the added reason of the point involved being complex. This is how this matter has come up before us.

(3) Section 33-C of the Act was enacted by Act No. 36 of 1956 and was substituted by Act No. 36 of 1964. Section 33-C as it stood before its substitution in 1964 read:—

“33-C. *Recovery of money due from an employee* :—

- (1) Where any money is due to a workman from an employer under a settlement or an award or under the provision of Chapter V-A, the workman 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.
- (2) Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under this Act, be determined by such Labour Court as may be specified in this behalf by the appropriate Government and the amount so determined may be recovered as provided for in sub-section (1).
- (3) For the purposes of computing the money value of a benefit the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering

the report of the Commissioner and other circumstances of the case.”

The substituted section 33-C now reads:—

“33-C. *Recovery of money due from an employer*

- (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, 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 heir 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 :

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer :

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

- (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.
- (3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint

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a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court, and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

- (4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).
- (5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Explanation.—In this section “Labour Court” includes any Court constituted under any law relating to investigation and settlement of industrial disputes in force in any State.”

(5) Under section 33-C(1) before its substitution in 1964 it was the workman alone who could approach the appropriate Government for a certificate for the recovery of the amount due to him from his employer upon issuance of which the amount could be recovered as arrears of land revenue. This right under section 33-C(1) has been further extended to any person so authorised by the workman in writing and in case of his death to his assignee or heirs. Under section 33-C(1) before substitution the workman could apply for a certificate without any bar of limitation but presently under section 33-C(1), the person authorised therein can apply within one year from the date on which the money became due to the workmen from the employer which period can of course be extended by the appropriate Government under the second proviso for sufficient cause.

(6) Section 33-C(2) of the Act is silent about the assignee or heirs of the deceased workman. A plain reading of section 33-C(2), in the background of sub-section (5) thereof, suggests that the right thereunder can be exercised by the workman alone and not by his assignee or heirs.

(7) The learned counsel for Upinder Dutt respondent has argued that the assignee and heirs of a workman could apply to the appropriate Government for a certificate under section 33-C(1) before its substitution in 1964 in spite of the fact that they were not named therein and the substituted section 33-C has only clarified the true position. Similarly, the assignee and heirs of a workman could avail of the remedy under section 33-C(2) before 1964 and they will continue to be so entitled thereafter in spite of not having been specifically so authorised thereunder. Secondly, the claims under sub-section (1) as also under sub-section (2) of section 33-C are in the nature of execution proceedings. The adjudication in the matter of computation under sub-section (2) is only incidental. It being the case, the assignee or heirs of a workman can maintain petition under sub-section (2) of section 33-C. Thirdly, the section 33-C is a social legislation and in case the assignee and heirs of the workman are held not entitled to maintain a petition under sub-section (2) thereof, it will cause great hardship which would undo the object sought to be achieved. And lastly there is no mention in sub-section (2) about the person entitled to approach the Labour Court. A reading of sub-sections (1) and (2) which are analogous to each other being in the nature of execution proceedings, suggests that those who can apply to the appropriate Government for a certificate under sub-section (1) can also move the Labour Court under sub-section (2).

(8) The definition of a workman is given in section 2(s) of the Act and it reads:—

“ ‘workman’ means any person (including an apprentice), employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied and for purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of, that dispute or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person.”

(9) The definition of ‘workman’ does not include his assignee or heirs. Under section 33-C(1) before substitution the only person

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competent to approach the appropriate Government for a certificate was a workman. It being the case it is difficult to conceive that the assignee or legal heirs of a deceased workman could approach the Government for a certificate before 1964. It is under substituted section 33-C(1) that the assignee or heirs of a workman have been made competent to obtain a certificate from the appropriate Government. The first contention of the learned counsel for Upinder Dutt respondent that the assignee or the heirs of a workman could seek remedy under section 33-C(2) before substitution and the position remains unaltered under substituted section 33-C has no merit.

(10) In *The Central Bank of India Ltd. v. P. S. Rajagopalan etc.*, (1), the implications of section 33-C(2) before substitution were under consideration and it was held that three categories of claims "under a settlement or an award or under the provisions of Chapter V-A" fell under section 33-C(2) and in that sense section 33-C(2) could itself come to be a kind of execution proceeding. It was further held that it was possible that claims not based on settlements, awards or made under the provisions of Chapter V-A may also be competent under section 33-C(2) and in that sense it had wider scope than section 33-C(1). This provision again came up for consideration before the Supreme Court in *Central Inland Water Transport Corporation Ltd. v. The Workmen and another*, (2) and it was held thus:—

"In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff's right to relief; (ii) the corresponding liability of the defendant, including, whether the defendant is, at all liable or not; and (iii) the extent of the defendant's liability, if any. The working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding. Determination No. (iii) referred to above, that is to say, the extent of the defendant's liability may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations

(1) AIR 1964 S.C. 743.

(2) AIR 1974 S.C. 1604.

under heads (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. Since a proceeding under section 33-C(2) is in the nature of an execution proceeding it should follow that an investigation of the nature of determinations (i) and (ii) above is, normally, outside its scope. It is true that in a proceeding under section 33-C(2), as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But that is merely 'incidental'. To call determinations (i) and (ii) 'incidental' to an execution proceeding would be a perversion, because execution proceedings in which the extent of liability is worked out are just consequential upon the determinations (i) and (ii) and represent the last stage in a process leading to final relief. Therefore, when a claim is made before the Labour Court under section 33-C(2) that Court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions say of an Industrial Tribunal which alone is entitled to make adjudication in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as 'incidental' to its main business of computation. In such cases determination (i) and (ii) are not 'incidental' to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal."

(11) The observations of the Supreme Court in the two authorities referred to above hardly advance the case of Upinder Dutt respondent. The theme of the argument of the learned counsel is that as the provision contained in section 33C(2) is in the nature of execution proceedings it can be availed of also by an assignee or heirs of a workman. The argument is without substance. Section 33-C(1) is a kind of execution proceedings involving no adjudication. A workman alone could apply under it for a certificate before its constitution in 1964. The assignee or heirs of a workman could not avail of this facility. They became so entitled under the substituted section 33-C(1) as a result of their being authorised specifically. No such authorisation in their favour has been made under section

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33-C (2) which even otherwise involves adjudication. It is, therefore, difficult to hold that the assignee or heirs of a workman *per se* can move the Labour Court under section 33-C (2).

(12) The learned counsel for Upinder Dutt respondent argued that the inability to avail of the remedy under section 33-C (2) by the assignee or heirs of a workman would cause hardship inasmuch as they may have to file a civil suit or obtain a succession certificate involving expenditure. I find no merit in this contention as well. The adjudication under section 33-C (2), if available to the assignee or heirs of a workman, would necessarily involve complicated questions of inheritance. No appeal is provided against the order of a Labour Court under section 33-C (2). To leave such issues to be finally decided by the Labour Court would cause greater hardship. It is in this background that the right to avail of the remedy has been extended to heirs etc. under section 33-C (1) which is purely in the nature of execution proceedings and not under section 33-C (2).

(13) It has been argued that section 33-C (2) is silent about the person who can approach the Labour Court for relief thereunder. The persons authorised to avail of the remedy under section 33-C (1) can as well move the Labour Court under section 33-C (2). This contention is again without merit. The proceedings under section 33-C (1) are in the nature of executing proceedings and those under section 33-C (2) involve adjudication. The scope of sub-section (2) is wider than that of (1). There is nothing to warrant a finding that the persons authorised under sub-section (1) can also move the Labour Court under section 33-C (2). The combined reading of sub-sections (2) and (5) of section 33-C hardly leaves any doubt that it is the workman alone who can move the Labour Court under the former.

(14) In *Madura Mills Co. v. Guruvamal and another* (3), a learned Single Judge of the Madras High Court held that where a statutory right is created in favour of a person and the statute also creates a special machinery for enforcing the specially created right, the right so created cannot be enforced by the ordinary civil Court.

(3) (1966-67) 31 F.J.R. 78.

Section 33-C (2) of the Act provides for a special machinery for recovery of retrenchment compensation which may fall due under Chapter V-A of the Act. Therefore, a suit for the recovery of retrenchment compensation cannot be filed in a civil Court. Assuming that the view expressed in this authority holds the field, its implication may be that whatever matters are to be adjudicated upon under section 33-C (2) the jurisdiction of the civil Court to that extent is barred. Assuming further that the heirs of a workman are entitled to move the Labour Court under section 33-C (2) it would be competent to decide the issues of inheritance between the heirs *inter se*. The decision of the Labour Court in a dispute between the heirs *inter se* shall be final. It could not be the intention of the Legislature to leave the complicated issues of inheritance between the heirs *inter se* to the Labour Court nor has it been exhibited in section 33-C.

(15) In *U.P. Electric Supply Co., Ltd. v. Meena Chatterji and others*, (4), the learned Single Judge of Allahabad High Court opined that the intention of the Legislature appears to be to entitle the heirs and assigns also only where an already computed benefit has to be recovered, but not when the amount due has to be adjudicated. Therefore, the heirs of a workman could apply under sub-section (1) of section 33-C of the Act but not under sub-section (2) thereof.

(16) In *Yad Ram and others v. Bir Singh and others*, (5), a Division Bench of Delhi High Court held that an application under section 33-C (2) of the Act can be made only by the workman himself and if the workman dies during the pendency of such application, his heirs cannot continue it in the Labour Court because that Court cannot recognise anybody other than a workman as the applicant before it. It was further held that this does not mean that the right to sue for money or equivalent of money of the benefit due to a workman does not survive. It survives to the heirs, successors and legal representatives and they can take appropriate proceedings by way of a suit in a civil Court. They cannot, however, either continue after his death an application made by the workman under section 33-C (2) or make such an application themselves in the event of his death.

(4) (1969) 36 Indian Factories Journal 308.

(5) 1974 Lab. I.C. 970.

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(17) A similar view has been taken by a Division Bench of Orissa High Court in *Haramani Naik and others v. Management, Samaj and others*, (6).

(18) In *Sitabai v. Auto Engineers and others*, (7), a Division Bench of Bombay High Court has, however, taken a different view. According to the learned Judges of that Court, the cause of action vested in a workman under section 33-C (2) normally survives to his heirs under the general principle that all causes of action except those which are personal must survive to his heirs. A finding to the contrary would create unthought of difficulties. A widow of a workman, therefore, shall have a right for computation of gratuity amount which has become payable to the deceased husband. The forms prescribed under the rules are permissive and are for convenience. The decision of the Bombay High Court is based on the permissiveness of the forms and not on the difference in the phraseology of subsections (1) and (2) of section 33-C. As pointed out by the Delhi High Court in *Yad Ram's case* (supra) which took notice of *Sitabai's case* (supra) that after the death of a workman the right to sue for money or equivalent of money of the benefit due to a workman does survive to his heirs, successors and legal representatives but they can take appropriate proceedings by way of a suit in a civil Court. The survival of cause of action to the heirs of a deceased workman does not *per se* entitle them to apply to the Labour Court under section 33-C (2) of the Act. The remedy under section 33-C (2) can be availed of by a workman alone. With utmost respect for the learned Judges, it is difficult to agree with the view of the Bombay High Court. In our opinion, the remedy under section 33-C (2) can be availed of by a workman alone.

(19) In *Messrs Jharia Fire Bricks and Pottery Works (Pvt.) Ltd. v. Sri Bhrigo Nath Sharma and another*, (8), a Division Bench of Patna High Court followed the Bombay view and disagreed with that of Delhi High Court. The Patna High Court has held that section 33-C(1) provides for a sort of executing Court. The adjudication of rights has to be done in terms of section 33-C(2) of the Act.

(6) 1978 Lab. I.C. 1630.

(7) 1972 Lab. I.C. 733.

(8) 1977 Lab. I.C. 1385.

Although section 33-C of the Act was amended in 1964, the main burden of law has been carried through. It conferred added benefit to workman and created wider ambit for the Labour Court. It also clarified that heirs and assignees also had a right to claim benefits to which they were entitled in their capacity as heirs and assignees. The law as it stood prior to 1964 clearly indicated that the basic distinction lay in the fact whether rights and money value had been adjudicated or not. Who was the applicant was not the distinguishing feature. So must it be now. If the adjudication and quantification had to be done, the application has to be in terms of sub-section (2) and where adjudication and quantification had been completed, the application had to be in terms of sub-section (1) of section 33-C of the Act. The essential feature has not been given a go by after the amendment. The base of the judgment in *Messrs Jharia Fire Works and Pottery Works case* (supra) in substance is that a workman could apply under section 33(C)(1) as also under section 33-C(2) before amendment of 1964 and the same parity would continue to hold good after the substitution of section 33-C in 1964, with the result that the added persons made competent under section 33-C(1) would also be entitled to move the labour Court under section 33-C(2). If the view expressed by Patna High Court were to hold good it would necessarily follow that section 33-C(1) controls section 33-C(2). It cannot be so. Sub-sections (1) and (2) of section 33-C are distinct from each other. The scope of sub-section (2) is different from and wider than that of sub-section (1). No adjudication is involved in sub-section (1) whereas sub-section (2) does involve adjudication. The persons authorised under sub-section (1), therefore, would not per se become entitled to move the Labour Court under sub-section (2). With great respect for the learned Judges, it is again difficult to concur with the view expressed by Patna High Court.

(20) In view of discussion above, I hold that a person not being a workman cannot claim dues of a deceased workman as his heir or nominee through a Labour Court under section 33-C(2) of the Act.

(21) The learned counsel for the parties agree that the sole point involved in C.W.P 4369 of 1973 is about the entitlement of Upinder Dutt respondent to maintain his petition before the Labour Court under section 33-C(2). In view of the finding thereon the writ is accepted and the impugned order of the Labour Court dated September 21, 1973 quashed. The parties are left to bear their own costs.

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(22) This case was referred by the order of a Division Bench dated December 6, 1974. The question that arises for determination in this reference is as to whether any person not being workman himself can claim dues of a deceased workman as his heir or nominee through Labour Court under section 33-C(2) of the Industrial Disputes Act, 1947 (Act No. 14 of 1947) (hereinafter referred to as the Act).

(23) Facts giving rise to this reference are as under.

One Madan Lal, son of Jagdish Rai was working as a breakman at Ludhiana on Northern Railway. He died on August 19, 1972, while working as a breakman. A sum of Rs. 12,458 was lying with the Railways to the credit of the deceased workman on account of Provident Fund and Gratuity. Respondent No. 2 Upinder Dutt made a claim to this amount as an heir of Madan Lal deceased. Northern Railways refused to make the payment to respondent No. 2 on the ground that as the claim exceeded Rs. 5,000/-, the amount could not be given unless the claimant obtained a succession certificate from a competent Court. Consequently respondent No. 2 made an application under section 33-C(2) of the Act before respondent No. 1 on October 13, 1972 for adjudication. It was alleged in the application that he was the adopted son of the deceased workman and hence was entitled to the payment. Respondent No. 2, that is, Upinder Dutt succeeded before the Labour Court and the Labour Court held that Upinder Dutt (respondent No. 2) as the adopted son was entitled to the amount standing to the credit of the deceased workman and directed respondent No. 3 to release the aforesaid amount. Dissatisfied by this order, the General Manager, Northern Railways, filed the present petition. The matter first came before a learned Single Judge who referred it to the Division Bench. Division Bench referred the matter to a Full Bench and that is how we are seized of the matter.

(24) Mr. P. S. Jain, learned counsel for the petitioner, canvassed before us that the respondent No. 2 on his own showing is an adopted son and nominee of the deceased workman, and he being himself not a workman, is not competent under law to make application under section 33-C(2) of the Act and his precise argument is that an application under section 33C(2) could only be made by a workman himself against his employer and not by his nominee or his heir and

that the Labour Court had no jurisdiction to adjudicate the matter on an application filed by a person other than the workman himself.

(25) For this contention Mr. Jain relied upon the provisions of section 33-C(1) and (2) of the Act and Rule 62 of the Industrial Disputes (Central) Rules, 1957. The above sub-section 2(s) of the Act defines "workman". He also relied upon *U. P. Electric Supply Co., Ltd. vs. Meena Chatterji and others*, 1969 (4 supra) *Yad Ram v. Bir Singh* (5 supra) *Haramani Naik and others v. Management, Samaj and another*, (6 supra) Return has been filed on behalf of claimant-respondent No. 2. Mr. Amar Dutt counsel for the claimant contended that application under section 33-C(2) of the Act is competent by an assignee or heir of the workman. Claimant being the adopted son is entitled to the amount which is in dispute. For this contention his stand is that sections 33-C(1) and 33-C(2) are not mutually exclusive. These provisions are analogous, and the proceedings under these provisions are in the nature of execution and a speedy remedy is provided so that the workman and their heirs may not be thrown to protracted litigation in the Civil Courts. He further says that section 33-C(2) is silent as to who can make application. This is only provided under section 33-C(1) and both these provisions are to be read together. He has in support of his contention further relied upon *Sitabai v. M/s. Auto Engineers*, (7 supra) *M/s. Jharia Fire Bricks and Pottery Work (Pvt.) Ltd. v. Shri Bhriago Nath Sharma and another*, (8 supra) *Central Inland Water Transport Corporation Ltd. The Workmen and another*, (2 supra) *The Central Bank of India Ltd. v. P. S. Rajagopalan etc.* (1 supra) and *Bachittar Singh v. Central Labour Court* (9).

(26) To appreciate the rival contentions, it is necessary to set out the provisions of section 33-C(1) and (2) of the Act which read as follows:—

"33-C(1) Recovery of money due from an employer-Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, 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

(9) A.I.R. 1969 Pb. & Haryana 187.

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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:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(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."

(27) From the reading of these provisions, it is plain that both the provisions relate to the recovery of money from the employer. While under section 33-C(1) where money is due to workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, and there is no dispute regarding the computation of money, the workman himself or any person authorised by him in writing or in the case of the death of the workman, the assignee or heirs of the workman may apply to the appropriate Government for the recovery of the amount due 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. Limitation of one year is provided for making such an application and the appropriate Government is further authorised to condone delay even after the expiry of period of one year if sufficient cause is shown by the applicant. Under section 33-C(2) it is not specified as to who can make an application. It is evident from this provision that if a workman is entitled to receive from

the employer any money or benefit which is capable of being computed then the Labour Court will entertain such application and shall compute the amount to which the workman is entitled. To my mind, both the provisions relate to the recovery of the amount from the employer and are in the nature of execution proceedings. The main difference seems to be that under section 33-C(1) where the amount is already computed under the settlement or any other provisions of Chapter V-A or Chapter V-B then the application will lie to the appropriate Government and if the amount is not computed and the workman is entitled to the amount then an application will be made under section 33-C(2) and since an element of adjudication is involved, the Labour Court is then empowered to entertain such an application. As observed earlier, section 33-C(2) is silent as to who can make the application while in section 33-C(1) it is provided as to who can make the application. After giving careful consideration, I am, of the opinion that under sub-section (2) of section 33-C also either the workman himself or heirs or assignee in the case of his death can make an application which is implicit in the provision. Moreover both the provisions are to be read together. These cannot be read in isolation with each other. These provisions overlap also. As for instance, an application is made under section 33-C(1) for a specified amount due under an award or settlement and the employer disputes the amount then it is not the appropriate Government which can decide the matter. Again the matter is to be decided by the Labour Court under sub-section (2) of section 33-C. Mr. Jain has referred to from K-3 under rule 62 and has pointedly drawn our attention that in this form heirs cannot apply for the determination of the amount due which is capable of being computed in terms of money. I do not find much merit in this contention. The rules cannot override the provision of the Act. Moreover it is settled rule of interpretation that the main provisions of the Act are not subject to the rules. The main provisions of the Act are to be interpreted independently. No doubt these rules can be an aid for interpretation but the provisions of the Act cannot be interpreted on the basis of the rules. Mr Jain further relied upon the definition of workman as given in section 2 and he says that it does not include the heir or assignee. This definition of workman cannot be of much help to the petitioner as under sub-section (2) of section 33-C it is not provided that even the workman can make application thereunder. It is interpreted by various authorities that the workman includes the ex-workman also. In *National Buildings Construction Ltd. v. Pritam Singh Gill and others*, (10) it is held by their

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Lordships that workman includes ex-workman. Reliance is also placed on the amendment in section 33-C of the Act. Earlier this section was not in the statute. It was added in the year 1956 and further amended in 1964. Originally in section 33-C(1) there was no reference to the heir or assignee but after the amendment the heirs and assignees are included in this provision. Earlier also there was no mention of either a workman or his heir or assignee in section 33-C(2), and in the amended provisions also there is no mention as to who can make an application. Section 33-C of the Act before the amendment in 1964 read as follows:—

- “33C. Recovery of money due from an employer—(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A, the workman may, without prejudice or 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.
- (2) Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under this Act, be determined by such Labour Court as may be specified in this behalf by the appropriate Government and the amount so determined may be recovered as provided for in sub-section (1).”

(28) From this it is plain that before the amendment even in section 33-C(1) there was no reference to the heirs or assignees. Heirs and assignees were included after the amendment in section 33-C(1), but so far as section 33-C(2) is concerned, there is no indication as to who can make the application. Earlier also this provision was silent and after the amendment again there is no mention as to who can make the application. The words which were deleted after the amendment are as under :

“and the amount so determined may be recovered as provided for in sub-section (1).”

Hence I do not see how the petitioner can advance his case on the basis of the amendment in the year 1964. Reliance has been placed by Mr. Jain upon *U. P. Electric Supply Co. Ltd. v. Meena Chatterji and others* (11), *Vad Ram v. Bir Singh*, (5 supra), *Haramani Naik and others v. Management, Samaj and another*, (6 supra). It is true that in these authorities it is held that the workman can make application under section 33-C(2) and not his heir or assignee. With utmost respect to their Lordships of Delhi, Allahabad and Orissa High Courts I am not inclined to follow their view. If this view is followed, it will create hardship to the heirs or assignees of the workman who is dead. This cannot be the intention of the Legislature. Section 33-C was added in the year 1956 to protect the workman from litigation in the Civil Courts. It is a sort of speedy and efficacious remedy. It is pertinent to mention that it is a social and labour legislation enacted for the benefit of the labour. The cause of action survives even after the death of workman, rather in case of the assignees or heirs more liberal view is to be taken. After the death of the workman his heirs suffer due to the death of the bread-earner and the benefits to which the workman himself is entitled are available to his heirs and assignees. It was contended that it is intricate question of law and when there is a contest between heirs and assignees then the Labour Court will not be the appropriate authority to adjudicate upon the matter as to who is the real heir or assignee of the dead workman. I do not find that any such hardship can arise in many cases. Such contest may arise only very rarely, otherwise usually there is no such contest. If there is a contest between the heirs and it is to be determined as to who is the real claimant then there is also no difficulty for the Labour Court to adjudicate on the matter. Labour Courts are constituted by the appropriate Government under section 7 of the Act and under section 7(3) only the following persons can be appointed as the Presiding Officers of the Labour Court :

“A person shall not be qualified for appointment as the Presiding Officer of a Labour Court, unless—

(a) he is, or has been, a Judge of a High Court ; or

(11) 1960 (Vol. 36) F.I.R. 308 (Allahabad.).

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- (b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge ; or
- (c) he has held the office of the chairman or any other member of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950 (48 of 1950), or of any Tribunal, for a period of not less than two years ; or
- (d) he has held any judicial office, in India for not less than seven years ; or
- “(e) he has been the Presiding Officer of a Labour Court constituted under any Provincial Act for not less than five years.”

It is plain from this provision that only persons with judicial experience of long standing can be appointed as Presiding Officers of the Labour Court and there can be no difficulty for such Labour Courts (which are manned by persons with judicial experience) to decide as to who is the real heir. It is implicit in the provisions that a workman, his heirs and assignees can make application under section 33-C(2) otherwise if the contrary view is taken then in terms of section 33-C(2), even the workman cannot apply as the provision is silent as to who can make application. It is conceded on behalf of the petitioner that workman can apply but not his heirs and assignees. If the workman can apply then his heirs and assignees are also entitled to apply because whatever the workman is entitled to receive from the employer, his heirs and assignees too are entitled in the event of his death. Any other interpretation will lead to absurd results and hardship to the heirs of the workman. Under section 33-C(1) also there can be dispute among rival heirs and in that case the Government is to decide and under section 33-C(2) it is the Labour Court which is to decide. If the Government is empowered to decide, the question as to who is heir or assignee, then the Labour Court stands at better footing to decide about this question as the Labour Court is manned by persons having judicial experience. The view I am taking is supported by authorities in *Sitabai v. M/s. Outo Engineers and other*, (7 supra) and *M/s. Jharis Fire Bricks and Pottery Work (Pvt.) Ltd. v. Sri Brigo Nath Sharma and another*, (8 supra). In *Sitabai's* case

(supra) it was held by their Lordships of the Bombay High Court as under :—

“Thus a widow has a right to apply for computation of gratuity amount which has become payable to the deceased husband.”

In this case the workman had died and he was entitled to gratuity. His widow applied for the payment of the gratuity under section 33-C(2) of the Act. Her claim was rejected by the Labour Court and allowed by the High Court. Their Lordships of the Bombay High Court also noticed the *U. P. Electric Supply Co., Ltd. v. Meena Chatterji and others*, (4 supra) wherein a contrary view was taken. Similar view was taken in *M/s. Jharia Fire Bricks and Pottery Work's case* (supra) wherein their Lordships of the Patna High Court observed as under :—

“An appraisal of sub-sections (1) and (2) of the Act prior to the amendment leaves no manner of doubt that the distinct features of the two sub-sections veered round the question whether money or the benefits had been quantified or not. It is well settled that sub-section (1) of section 33-C of the Act provides for a sort of executing Court. The adjudication of rights has to be done in terms of sub-section (2) of Section 33-C of the Act. Although Section 33-C of the Act was amended in 1964, the main burden of the law has been carried through. It conferred added benefit to workman and created wider ambit for the Labour Court. It also clarified that heirs and assigns also had a right to claim the benefits to which they were entitled in their capacity as heirs or assignees. While sub-section (1) of Section 33-C of the Act opens with the words “where any money is due to workman”. Sub-section (2) opens with the expression “where any workman is entitled.” In my view, the expressions “due” and “entitled” are significant. Whereas the word “due” signifies a claim quantified and computed, the expression “entitled” comprehends the right to realise which includes the extent of the rights and the benefits. In my view, therefore, the distinctive feature in sub-sections (1) and (2) of Section 33-C of the Act lies in the fact

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whether the money or the benefit claimed by the applicant had been computed or not. If it has been computed already, the application must lie to the appropriate Government in terms of sub-section (1) of Section 33-C of the Act for realisation of the sum due. But if it requires adjudication of the right or computation of money or benefits capable of being computed in terms of money, the application must lie in terms of S. 33-C(2) of the Act before a Labour Court. In the instant case, the right of the respondent was indisputable; the quantum alone remained to be determined."

(29) It is held by their Lordships of the Supreme Court in *Central Inland Water Transport Corporation Ltd. v. The Workmen and another*, (2 *supra*), that a proceeding under section 33C(2) is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudged, or otherwise, duly provided for.

(30) In *National Buildings Construction Corporation Ltd. v. Pritam Singh Gill and others* (10 *supra*) it was observed as under:—

"Section 33(2) must be so construed as to take within its fold a workman, who was employed during the period in respect of which he claims relief, even though he is no longer employed at the time of the application. In other words the term 'workman' as used in S. 33C(2) includes all persons whose claim, requiring computation under this sub-section, is in respect of an existing right arising from his relationship as an industrial workman, with his employer."

(31) In *The Central Bank of India Ltd. v. P. S. Rajagopalan etc.*, (1 *supra*) it was observed as under:

"For the purpose of making the necessary determination under S. 33C(2) it would, in appropriate cases, be open

to the Labour Court to interpret the award or settlement on which the workman's right rests. When the Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing Court to interpret the decree for the purpose of execution. It is of course, true that the executing Court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court, but like the executing Court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim under S. 33C(2)."

(32) In *Bachittar Singh v. Central Labour Court*, (9 supra), it was observed as under :

"Section 33C (2) does not, in terms, say that only a workman is entitled to make an application under that provision. In order to sustain a claim under section 33C(2), all that needs to be enquired into is, whether at the time to which the benefit claimed relates, the applicant was a workman and the respondent his employer. The use of the word 'due' in section 33C(2) of the Act lends further support to this interpretation. The mere fact that sometime after the benefit had fallen due the services of the workman were terminated, will not put an end to what is 'due'."

(33) From the close scrutiny of these authorities the position that emerges is that the provision of section 33C(1) is in the nature of executing proceeding. An application is made under this section where the money is quantified under an award or settlement etc., and if the money is not quantified and it is to be adjudicated then the adjudication is to be done in terms of sub-section (2) of section 33C. The scope of section 33C(2) is wider than 33-C(1). Sub-section (1) of section 33C of the Act opens with the words "Where any money is due to a workman". Sub-section (2) opens with the words "Where any workman is entitled". The expressions 'due' and 'entitled' are significant. While expression 'due' signifies the claim quantified and computed, the expression 'entitled' comprehends the right

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to realise which includes the extent of the right and the benefits. Therefore, the main distinctive feature in both these sub-sections lies in the fact whether the money or the benefit claimed by the applicant had been computed. If it has already been computed, the application lies to the appropriate Government in terms of sub-section (1) of Section 33-C of the Act but if it requires adjudication of the right or computation of money or benefits capable of being computed in terms of money, the application lies in terms of section 33-C (2) of the Act before the Labour Court. The Legislature in its wisdom made provision in sub-section (1) of section 33-C that the workman, his assignees or heirs can make application. If the Legislature intended to the contrary, it could provide for in sub-section (2) that only workman can apply but as observed earlier, it is silent about it. It is, therefore, implied in sub-section (2) that workman and his assignees or heirs, as in the case of sub-section (1) can also apply under this sub-section, if the adjudication and quantification had to be done. Much emphasis is laid on the deletion of the words in sub-section (2) after the amendment which read as under:—

“and the amount so determined may be recovered as provided for in sub-section (1).”

(34) As observed earlier, it does not in any way advance the case of the petitioner. After the deletion of those words, sub-section (4) was added which is as follows:—

“33C(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).”

(35) It is plain from the reading of this sub-section that the decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1). It is provided in sub-section (1) that the money will be recovered as an arrear of land revenue. Hence the deletion of these words in sub-section (2) does not make the case of the claimant worse rather it puts it on better footing. These words are added in

a separate sub-section (4) and in more clear terms and the recovery is to be made in the manner provided for in sub-section (1). All these sub-sections in section 33C overlap each other. All are to be read together and cannot be interpreted in isolation with each other. A combined reading of these sub-sections will lead to the inescapable conclusion that the only interpretation which can be possible is that in the case of death of a workman, his assignee or heir can also make the application under sub-section (2).

(36) The jurisdiction of civil Court is precluded from taking cognizance of the disputes arising between workman and the management as a special machinery is provided under the Act. In *Madura Mills Co. Ltd. v. Guru Uarmal and another* (3 supra) a learned Single Judge of the Madras High Court held that when a statutory right is created in favour of a person and the statute also creates a special machinery for enforcing the specially created right, the right so created cannot be enforced by the ordinary civil Court.

(37) No other point is urged.

(38) For the reasons recorded above, I am of the view that the question has to be answered in affirmative and an heir or assignee of the workman in the event of his death can also prefer claim under section 33C(2) of the Act to the Labour Court. Before parting with this judgment, I may add that in the present case, the representative of the petitioner had conceded before the Labour Court that the amount will be paid in accordance with the directions of the Labour Court to the claimant. Before the Labour Court there was only one applicant, that is, respondent No. 21 and the Labour Court directed the petitioner to make the payment to the respondent No. 2 who is adopted son of the deceased workman.

(39) Accordingly this petition fails and is dismissed with costs.

S. S. Sandhawlia, C.J.—(40) I have had the privilege of perusing the elaborate judgments recorded by my learned brethren Bains and Tandon, JJ. With great respect to Bains, J., I agree entirely with the view expressed by Tandon, J. and have nothing to add.

ORDER OF THE COURT

(41) In accordance with the view of the majority, the writ petition is accepted and the impugned order of the Labour Court dated the 21st of September, 1973, is hereby quashed. The parties are left to bear their own costs.

N.K.S.