

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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WP(C) No.3703/2000

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Date of decision: 24th February, 2010

POORAN SINGH

..... Petitioner

Through: Ms. Neelam Gupta with Mr. Sanjay
Mishra, Advocates

Versus

**DIRECTOR GENERAL OF POST &
TELEGRAPH**

.. Respondent

Through: Ms. Barkha Babbar with Ms. Ritha,
Advocates for UOI

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. The challenge in this writ petition is as to the order dated 31st January, 2000 of the Labour Court holding the claim of the petitioner by way of an application under Section 33 C (2) of the Industrial Disputes Act to be not maintainable for the reason of the said claim being not under any settlement or any award or under the provisions of Chapter-VA or Chapter –VB and/or further for the reason of the said claim having not been recognized by the respondent at any point of time. The Labour Court relying on *Municipal Corporation of Delhi Vs. Ganesh Razak* (1995) 1 SCC 235 held that the petitioner by way of the application under Section 33 C(2) was seeking to create a new right in his favour and which is impermissible in law.

2. In this regard, certain pleadings from the application filed by the petitioner in or about July, 1993 under Section 33 C(2) of the Act may be noticed. It was the plea of the petitioner that he was appointed as a Carpenter on 27th August, 1968 against a clear vacancy created by a Memo dated 23rd January, 1968; that he was placed in the category of skilled workers as per the Central Government Service (Civil) Rules, 1973 and the designation of Carpenter itself has always been treated as a Class-III (Skilled Worker) post for which pay scale as recommended by the Second Pay Commission was Rs.110-155 by the Third & Fourth Pay Commission was Rs.260-350 & 950-1500

respectively; that however, he was placed in Cadre-IV (Semi Skilled Worker) though there was no mention of Class-IV in his appointment memo dated 26th August, 1968; that the pay scale of Rs.85-128 being paid to him was for the post of Assistant Carpenter (Semi Skilled Worker); that subsequently on 6th January, 1972 though the post of Carpenter was declared as a Class-III post but the scale of Rs.85-128 was retained though he was entitled to the scale of Rs.110-155; that representation dated 6th September, 1972 was made by him in this regard including on the ground of disparity in pay scales of Carpenters attached to other departments of the government but his representation was rejected on 26th December, 1974 and his request for increase in pay scale was denied; however the petitioner continued to represent and his representation was again rejected on 13th June, 1989.

3. Though not so pleaded in the application under Section 33 C(2) but in the writ petition preferred before this Court it is also mentioned that the petitioner had approached the Central Administrative Tribunal, Allahabad in 1987 in this regard but his said application was also disposed of on 10th April, 1987 with the direction to him to first avail the departmental remedy available under the relevant service rules. It is also informed that the petitioner retired on superannuation w.e.f. 28th February, 1998.

4. Needless to state that the application of the petitioner under Section 33C(2) was opposed by the respondent besides on the aspect of maintainability, on merits also, denying that the petitioner was entitled to the scale claimed by him.

5. In ***Ganesh Razak*** (supra) the workmen were daily rated / casual workers and had filed the application under Section 33C(2) stating that they were doing the same kind of work as the regular workmen and, therefore they were entitled to be paid by the employer the same pay as the regular employees on the basis of the principle of 'equal pay for equal work'. The Labour Court allowed the said application of the workman and the writ petition preferred by the employer / MCD before this Court was dismissed. However, the Three Judge Bench of the Supreme Court on being approached by the employer/MCD after going through the various judgments held that where the very basis of the claim or the entitlement for the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33C(2) of the Act. It was further held that the Labour Court has no jurisdiction to first decide the workman's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter

for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33C(2), like that of the Executing Court's power to interpret the decree for the purpose of its execution. The Supreme Court further held that in the case in hand, the claim of the workers had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. It was further noted that the claim of the workmen being disputed, without an adjudication of the dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33C(2). It was yet further held that mere fact that some other worker similarly situated had been allowed the relief in writ petitions filed by them would still not empower the Labour Court under Section 33C(2) to grant the same relief to the applicants before it.

6. I have set out the pleas of the petitioner in the application under Section 33C(2) of the Act herein above only to demonstrate that it was the case of the petitioner himself that the claim, for computation of which application had been filed in 1993, was being disputed by the employer since 1972. The present case would thus be squarely covered by the judgment in ***Ganesh Razak***.

7. The counsel for the petitioner has contended on the basis of various documents that the post of Carpenter is a Class-III post and he was not being paid the scale prescribed for a Class-III post. He has urged that where the claim flows from the service rules, 33C(2) can be availed of. Even though on being taken through the various documents/rules in this regard, I am prima facie not satisfied of any such entitlement flowing to the petitioner there-from but I may add that even if it were to be so, in the face of the respondent/employer having disputed the claim since long prior to the filing of the application under Section 33C(2), the said provision would still not be attracted.

8. Though not relied upon by the counsel for the petitioner but I may notice that this Court in ***Jeet Lal Sharma v. Presiding Officer, Labour Court*** 84 (2000) DLT 706 has held that there can be recognition of the entitlement by the employer not only in the form of settlement but as per service conditions also. It was held that in case where the workman is getting the wages in a graded pay scale, he has a right to receive the said increment every year; but if for a particular year increment is not released by the employer, workman shall be entitled to file application u/s 33C(2) claiming the said increment as he has pre-existing right and he is entitled to receive such increment which can be stopped only by way of punishment as a result of departmental enquiry

or when the workman is not allowed to cross the Efficiency Bar. Similarly, it was observed that in a case where the workman claims overtime wages and the employer does not deny the right to it but only denies the claim on the ground that workman had not worked overtime, the Labour Court will have the jurisdiction to decide the claim. However, after so holding, it was further held that if the entitlement to receive the monies is disputed, the application under Section 33C(2) will not be maintainable and the appropriate course would be to seek reference under Section 10 of the Act. In the facts of that case, it was held that the monies claimed were due under service rules / conditions and had not been disputed by the employer. Section 33C(2) was thus held maintainable. Thus the aforesaid judgment in ***Jeet Lal Sharma*** (supra) also does not come to the rescue of the petitioner, the claim of the petitioner having been disputed by the respondent / employer since more than 20 years prior to the filing of the application.

9. No error can be thus be found in the order of the Labour Court. The Rule is discharged and the petition is dismissed. No order as to costs. Needless to add that the dismissal being on the ground of non maintainability, the petitioner will have remedies in law for the relief claimed.

**RAJIV SAHAI ENDLAW
(JUDGE)**

24th February, 2010
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