

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

+ **W.P.(C) 2666/2010 & CMs. 5307/2010 (stay), 4979/2012**

%

Reserved on: 6th December, 2012

Decided on: 12th February, 2013

KING AIRWAYS

..... Petitioner

Through

Mr. N.K. Kaul, Sr. Adv. with Mr. Rajiv Shankar Dvivedi, Mr. Raghavendra Bajaj, Mr. Pranav Bhaskar, Advs.

versus

CAPTAIN MANJIT SINGH

..... Respondent

Through

Mr. Shohit Chaudhary, Adv.

+ **W.P.(C) 7444/2010**

MANJIT SINGH

..... Petitioner

Through

Mr. Shohit Chaudhary, Adv.

versus

KING AIRWAYS

..... Respondent

Through

Mr. N.K. Kaul, Sr. Adv. with Mr. Rajiv Shankar Dvivedi, Mr. Raghavendra Bajaj, Mr. Pranav Bhaskar, Advs.

+ **W.P.(C) 3389/2010 & CMs. 6801/2010 (stay), 4985/2012**

KING AIRWAYS

..... Petitioner

Through

Mr. N.K. Kaul, Sr. Adv. with Mr. Rajiv Shankar Dvivedi, Mr. Raghavendra Bajaj, Mr. Pranav Bhaskar, Advs.

versus

ND KATHURIA

..... Respondent

Through

Mr. Shohit Chaudhary, Adv.

+ **W.P.(C) 7445/2010**

ND KATHURIA		 Petitioner
	Through	Mr. Shohit Chaudhary, Adv.
	versus	
KING AIRWAYS		 Respondent
	Through	Mr. N.K. Kaul, Sr. Adv. with Mr. Rajiv Shankar Dvivedi, Mr. Raghavendra Bajaj, Mr. Pranav Bhaskar, Adv.

+ **W.P.(C) 664/2010 & CMs. 1392/2010 (stay), 4986/2012**

KING AIRWAYS		 Petitioner
	Through	Mr. N.K. Kaul, Sr. Adv. with Mr. Rajiv Shankar Dvivedi, Mr. Raghavendra Bajaj, Mr. Pranav Bhaskar, Adv.

versus

CAPTAIN PRITAM SINGH		 Respondent
	Through	Mr. Shohit Chaudhary, Adv.

+ **W.P.(C) 7442/2010**

PRITAM SINGH		 Petitioner
	Through	Mr. Shohit Chaudhary, Adv.

versus

KING AIRWAYS		 Respondent
	Through	Mr. N.K. Kaul, Sr. Adv. with Mr. Rajiv Shankar Dvivedi, Mr. Raghavendra Bajaj, Mr. Pranav Bhaskar, Adv.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. These writ petitions are being disposed of by a common judgment as identical facts and legal issues are involved in these petitions. In W.P.(C) Nos. 664/2010, 3389/2010 and 2666/2010 the management has challenged the orders each dated 14th September, 2009 passed by the Industrial Tribunal-cum-Labour Court (hereinafter referred to as 'Tribunal') allowing the claim of the workman towards unpaid salary, incentives for extra flying hours and welfare expenses, which were not given by the management. The workmen in writ petitions Nos. 7442/2010, 7444/2010 and 7445/2010 have challenged the same impugned orders to the extent that in the claim petitions, interest was also prayed for, however no interest has been granted by the learned Tribunal and thus the same be awarded by this Court.

2. Learned counsel for the management contends that a petition under Section 33-C (2) of the Industrial Disputes Act, 1947 (in short the ID Act) is executory in nature and is not maintainable without an independent adjudication under Section 10 of the ID Act. No Tribunal can determine the amount under these proceedings. The benefit sought under Section 33-C(2) of the ID Act flows from a pre-existing right. Thus, the application before the Industrial Tribunal was beyond its jurisdiction. Reliance is placed on *State of U.P. & Anr. Vs. Brijpal Singh* (2005) 8 SCC 58; *State Bank of India Vs. Ram Chandra Dubey & Ors.* (2001) 1 SCC 73; *U.P. State Road Transport Corporation Vs. Birendra Bhandari* (2006) 10 SCC 211 and *Hamdard (Wakf) Laboratories Vs. Deputy Labour Commissioner & Ors.* (2007) 5 SCC 281. It is further contended that the adjudication as to whether the Pilot was a workman or not could not have been conducted by the Tribunal in a petition under Section 33-C (2) ID Act and the said adjudication having not taken place as either no petition was filed under

Section 10 ID Act or the same was dismissed in default, the workman were not entitled to any relief. Reliance is placed on *D. Krishnan & Anr. Vs. Special Officer, Vellore Cooperative Sugar Mill & Anr.* (2008) 7 SCC 22; *Municipal Corporation of Delhi Vs. Ganesh Razak* (1995) 1 SCC 235. It is next contended that the Pilots/workmen Manjit Singh, Pritam Singh and N.D. Kathuria were not workmen as they were performing supervisory functions. Reliance is also placed on *Captain R.Khosla (Capt.) Vs. Jetlite India Ltd.* (ID No. 24/2000 decided on 7th September, 2012 by the Central Government Industrial Tribunal-cum-L/C-II, Govt. of India) wherein the Tribunal held that a Pilot is not a workman and hence the Tribunal cannot take contradictory stands. It is further contended that the Pilots/workmen Manjit Singh, Pritam Singh and N.D. Kathuria refused to fly the aircraft and due to this act of indiscipline their services were terminated. Relying on the definition of the retrenchment and Section 2(oo) of the ID Act, it is stated that when the termination is by way of a punishment inflicted in disciplinary action, the same does not amount to retrenchment and would not attract the provisions of Chapter V of the ID Act. Thus, the criteria stipulated under Section 33-C of the ID Act were not satisfied. Since the issues raised by the management show that the Tribunal had no jurisdiction to entertain the petitions, the impugned orders are a nullity. It is further stated that a petition under Section 10 ID Act filed by Manjit Singh and the one filed by N.D. Kathuria against the termination were dismissed for non-prosecution. The petition of Pritam Singh under Section 10 of the ID Act has also been dismissed, which he has challenged by way of W.P.(C) 1490/2012. Distinguishing the judgment of this Court in *Mathur Aviation Vs. Lt. Governor, Delhi and Ors.* 1977 (2) LLJ 255 it is stated that in the said case

the Pilot was performing the duties of aerial spray and thus had no supervisory or managerial functions and the said decision is not an authority that a Pilot is a workman. Further in the present case the three Pilots/workmen were appointed as commanders whose duties have been defined in the operation manual which included the safety of the aircraft and its occupants during the flight, authority to take such measures as are necessary in this regard and the Commander was responsible for order and discipline on Board. Reliance is placed on Rule 141 of the Aircraft Rules which came into force after the judgment was delivered in *Mathur Aviation (supra)*. Even if the management had not placed on record the duties of the Commander, the same being statutory rules, it was the duty of the Court to have looked into Rule 141 of the Aircraft Rules which prescribes the duties of a Pilot in command. Further the onus was on the three occupants to prove that they were workman which onus has not been discharged by them. The written statement filed by the management before the Tribunal clearly demonstrated that the claim was highly exaggerated. The Pilots/workmen had accepted the reduced salary. Hence the impugned orders be set aside.

3. Learned counsel for the Pilots/workmen Manjit Singh, Pritam Singh and N.D. Kathuria states that the stand of the Management that the Pilots/workmen were not workmen was not taken in the written statement. Belated applications for amendment of the written statements were filed wherein all the issues now being raised were raised, however the learned counsel for the management did not press those issues and only pressed the issue with regard to the calculation and sought, amendment in the written statement relating to calculation. Thus the legal issues having not been pressed before the Tribunal, the management cannot raise the same now

before this Court in a petition under Article 226 of the Constitution of India. The office order dated 14th October 1996 relied upon by the management was never signed either by Manjit Singh or Pritam Singh or N.D. Kathuria. The same was signed by one M.P. Singh and thus had no application to the Pilots/workmen herein. No doubt in the impugned order relating to Manjit Singh an error has crept, however the same can be rectified before this Court and learned counsel reiterates that the claim of Manjit Singh was only for Rs. 8,71,217/-. The chart along with the operation manual of the management has been shown to contend that the workmen herein were Pilots in the lower rank and above them were Deputy Labour Operations and Manager Operations who performed supervisory jurisdiction. Only Captain Pritam Singh was authorized as an examiner by a letter of DGCA. Thus the management witness falsely stated that Captain Manjit Singh was a examiner. Further even being an examiner does not show that the workman was performing supervisory functions. Reliance is placed on *Mathur Aviation* (supra) and *Cedric Dsilva Vs. Union of India 2007 L.S.(Bom) 725* to contend that Pilot is a workman, his role is different from the Captain of a ship. The contention of the management that in a proceeding under Section 33-C(2) ID Act, the industrial Tribunal cannot determine whether the person is a workman or not is contrary to the decision of this Court in *Jetlite (India) Ltd. Vs. Capt. R. Khosla 2009 (108) DRJ 5580* wherein this Court directed the Tribunal to first decide the primary issue whether Captain R. Khosla is a workman or not before passing a final order in a proceeding under Section 33-C(2) of ID Act. This decision of the learned Single Judge of this Court has been upheld by the Division Bench in *R.Khosla (Captain) Vs. Jetlite (India) Ltd. 2012 IV AD (Delhi) 452*. Regarding the scope of Section 33-

C(2) ID Act reliance is placed on *Om Pati Vs. Delhi Transport Corporation 2010 (117) DRJ 454 and Union of India & Anr. Vs. Kankuben (dead) by LRs & Ors. (2006) 9 SCC 292* and it is stated that the case of the Pilots/workmen was based on three letters of the management and thus these being pre-existing rights, no adjudication was required thereon. The circulars were duly exhibited which were not disputed except one which was also admitted by the management witness in his cross-examination. The claim of the Pilots/workmen was under Section 33-C(2) unlike Section 33-C(1) and thus no adjudication in the form of an enquiry was required. Reliance is placed on *State Bank of India Vs. Ram Chandra Dubey and Ors. (2006) 10 SCC 211; M/s. Fabril Gasosa Vs. Labour Commissioner & Ors. AIR 1997 SC 954 and D.S. Gupta Contracts (P) Ltd. Vs. Labour Commissioner Delhi & Ors. 69 (1997) DLT 950*. It is next contended that the scope of interference in a proceeding under Article 226 of the Constitution of India is limited and only in case of jurisdictional error this Court will set aside the impugned order. Reliance is placed on *M/s. Allied Equipment & Services and Ors. Vs. Debt Recovery Tribunal & Anr. AIR 2002 Delhi 201*. Further the issues now being raised having not been raised before the learned Tribunal inasmuch as the amendments sought in the written statement were not pressed by the counsel for the management, these issues cannot be now raised by the management in the present proceedings. Reliance is placed on *Management of Horticulture/ Forest Department, Govt. of NCT of Delhi Vs. Presiding Officer & Anr. 157 (2009) DLT 623*.

4. As regards the writ petitions Nos. 7442/2010, 7444/2010 and 7445/2010 regarding grant of interest on the awarded amount, it is contended that a proceeding under Section 33-C(2) is required to be decided within

three months. However, due to the delaying tactics of the management, the orders could be passed belatedly after 12 years. Thus the learned Tribunal ought to have awarded interest pendente lite and till realization. Reliance is placed on *Secretary, Irrigation Department, Govt. of Orissa and Ors. Vs. G.C. Roy AIR 1992 SC 732* and *C.L. Gupta Vs. Delhi Development Authority 129 (2006) DLT 126*.

5. I have heard learned counsel for the parties.

6. The pilots in these petitions based their claim before the learned Tribunal on the office memo issued on 19th February, 1996 by the management offering incentives for additional flying hours to all the commanders, Circular dated 29th February, 1996 issued by the management providing for welfare expenses to all the commanders. According to the Pilots herein, from June 1995 to July 1997 the management withheld their part salaries and when they demanded their full salary and perks which were being withheld, their services were terminated. They sent letters to the management stating that the termination was illegal and their all dues be cleared. Since the management failed to clear the dues, they filed applications under Section 33-C(2) ID Act for computation of the dues. The industrial Tribunal awarded a total sum of Rs. 17,31,347/- each to Pritam Singh and Capt. Manjit Singh and a sum of Rs.22,99,085/- to Capt. N.D. Kathuria. The grievance of the Pilots herein is that the learned Tribunal did not grant any interest on the awarded amount despite a prayer being made in this regard and the case of the management is that the petitions filed before the learned Tribunal were not maintainable. It may be noted here that in his claim petition, Capt. Manjit Singh himself made a claim for a sum of Rs.8,71,217/-, however the learned Tribunal awarded a sum of

Rs.17,31,347/-, which according to Capt. Manjit Singh also, is a typographical error and can be corrected by this Court.

7. Before advertng to the issues arising in the present petitions, it would be necessary to elaborate some further facts. The Pilots/workmen filed their claim petitions under Section 33-C(2) of the ID Act before the Tribunal along with their appointment letters as Commander with net salaries. They also enclosed the office memo dated 19th February, 1996 regarding the extra incentives and the circular dated 29th February, 1996 regarding payment of a sum of Rs. 500/- per night towards welfare expenses in case the workmen were not willing to stay in company's guest house etc. The workmen computed the unpaid salary, flying incentives and welfare expenses and claimed the awarded amount except in case of Manjit Singh wherein inadvertently the claim was initially made of Rs. 9,96,217/- which was rectified in the rejoinder to Rs. 8,71,217/-. In identical written statements filed by the management it was only stated that the claim was highly exaggerated and that an amount of Rs. 95,397/- was due towards Captain Manjit Singh, Shri N.D. Kathuria and Shri Pritam Singh. The pleas now being raised in the present petitions filed by the management were not at all taken. Subsequently belated applications under Section 11 of the ID Act and Order 6 Rule 17 of the CPC and Rule 10B of the Rules were filed in October 2000 taking the preliminary objections that the proceedings under Section 33-C(2) ID Act could not be invoked as there was no pre-existing right. The applicants must establish that they were eligible for the amount claimed and computed. The applicants were not workmen as they were performing supervisory duties and drawing wages exceeding Rs. 1,600/- per mensum. The management was not an industry. In view of the termination by way of

punishment, the same did not amount to retrenchment and a para-wise replies to the statements of claim were filed denying the averments therein and reiterating that the pilots/workmen were only entitled to Rs. 95,397/-. On 25th January, 2002 the learned Tribunal decided these applications observing that the learned Counsel for the management has pressed para 15 only of the amendment which deserves to be allowed and rest of the prayer for other amendments deserve to be rejected. Thus, the averments in para 15 were permitted to be added to the written statements. The contents of para 15 of the application related to the pay scale on which the workman were employed and the fact that due to compelling circumstances qua the aviation industry, the company was constrained to re-schedule its salary structure for its employees and thus issued an office order on 14th October, 1996 revising their salaries which office memo was issued in consultation with the alleged workmen. This order dated 25th January, 2002 allowing limited amendment in the written statements of the management was neither challenged earlier nor in the present petitions. Thus, the issues now being raised that the Pilots herein are not workmen, the scope of consideration under Section 33-C(2) is limited being executory in nature cannot now be considered in the present petition. Learned counsel for the management has strenuously contended that the issues raised are jurisdictional in nature and can be raised at any stage.

8. In *D. Krishnan* (supra) while dealing with a case wherein the status of the appellant was disputed from the beginning and the documents filed by the appellants itself showed that they were unsure of their own status, in the light of uncertain documents of the appellants therein and in the light of categorical statements time and again made in these documents relied by the

appellants that they were prima facie managers, it was held that it was beyond jurisdiction of the Labour Court to determine their status in proceedings under Section 33-C(2) of the ID Act. In the present case though the management contested the status of the Pilots herein as workmen by way of the amendment applications, however the said contest was not pressed and was rejected vide order dated 25th January, 2002 which order has become final. This Court in *Jetlite India Vs. Captain R. Khosla* held that an application under Section 33-C(2) ID Act could only be moved by a person who was a workman covered within the meaning and definition of Section 2(s) of the ID Act and therefore unless the person setting the machinery under ID Act in motion satisfies the Court that he is a workman as envisaged under Section 2(s) of the ID Act, no relief can be granted by the Court in his favour. A perusal of the impugned orders reveal that the learned Tribunal held that though the management has not pleaded in its written statement that Captain Manjit Singh/ Pritam Singh/ N.D. Kathuria were not a workmen yet to confer jurisdiction on this Tribunal burden lies on Captain Manjit Singh/ Pritam Singh/ N.D. Kathuria to establish that they were workmen within the meaning of Section 2(s) of ID Act. Though no plea was raised, however the contention of the management during arguments that the Pilots herein were performing operational work for the management was duly considered and on the basis of record available it was held that it could not be said that the Pilots herein were performing manual, managerial or supervisory duty and thus the Respondents fell within the definition of workmen under Section 2(s) of the ID Act. I find no illegality in the impugned orders to this extent.

9. Learned counsel for the management has strenuously contended that the Pilots herein being Pilots in command/ commanders they were overall in-

charge of the flights which included supervision of the crew, the passengers and the management etc. However it may be noted that this is only an ancillary function and the main function of a Pilot in command is to fly the aero-plane. This issue came up for consideration before the Division Bench of Bombay High Court in *Cedri Dsilva* (supra) wherein it was held:

“11. A pilots main duty is to drive an aircraft. He performs a highly skilled technical work. The difference between a driver of the aircraft and that of any other machine e.g. motor car or a steam engine is one of the nature of machine to be driven and one of the nature of the training required for the work. The main work of a chief pilot is to drive the aircraft. All those who have undertaken air journey know it well that he hardly spends any time in exercise of control over the passengers. His position cannot be compared to that of the captain of a ship. A ship contains a much larger number of passengers and greater quantity of cargo. The trip of a ship is much longer in duration than that of an aircraft. A ship has many departments which an aircraft has not, e.g. medical. According to the wage structure given in the Services Committee Report, a senior captain of an aircraft can rise upto Rs.1,550 per mensem. Besides this basic wage, he has many allowances also. He is a technical worker. He does work with his own hands. The definition of workman given in Section 2(s) of the Industrial Disputes Act, 1947 brings within its ambit "any person employed in any industry to do any technical work for hire or reward: irrespective of the salary drawn by him. This is in contradiction with persons employed in a supervisory capacity who fall within the definition of a "workman" only when they draw wages not exceeding Rs. 500/-per mensem. I hold that all pilots, whether co-pilot or chief pilot, are "workmen" and they fall within the purview of this reference.”

10. As regards the issue whether the Tribunal could have determined the quantum in a proceedings under Section 33-C(2) the same being not a pre-

determined right in an industrial adjudication as alleged by learned counsel for the management, it may be noted that the case of the Pilots herein was based on three circulars exhibited before the Tribunal. In this regard a perusal of the affidavit of Shri Rajinder Singh, the management witness No.1 shows that the appointment letter fixing the net salary of Rs. 90,000/ 95000 per month is not denied. However, it is stated that an understanding was arrived at with the Pilots/ commanders/ Captains on 14th October, 1996 to work on reduced salary and allowances with effect from 1st October, 1996. The said letter was exhibited as Ex.MW1/1. A perusal of Ex.MW1/1 shows that the same was signed only by Captain M.P. Singh, who has filed no claim. Captain Manjit Singh or Captain Pritam Singh or Captain N.D. Kathuria have not signed the documents. MW1 Shri Rajinder Singh in his cross-examination has admitted that some of the commanders signed on this Ex.MW1/1 whereas others avoided to do so deliberately. No other document has been exhibited to deny the claim of the Respondent/ workmen as regards the incentives for additional flying hours or for welfare expenses. Thus, no dispute having been raised on these counts it cannot be said that these issues could not have been decided by the learned Tribunal in the proceedings under Section 33-C(2) ID Act.

11. The reliance of the learned counsel for the management on *State of U.P. & Anr. Vs. Brijpal Singh* (supra) is misconceived. The decisions therein deal with a situation where the High Court had granted stay on the order of termination and thus the Labour Court granted salary, wages, bonus etc. for the interregnum period of pendency of the writ petition. In the light of these facts their Lordships held that it was not competent for the Labour Court to exercise jurisdiction under Section 33-C(2) ID Act to arrogate to

itself the functions of an Industrial Tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute in a reference under Section 10 of the Act. It was held:

“11. In the case of *Municipal Corpn. of Delhi v. Ganesh Razak* [(1995) 1 SCC 235 : 1995 SCC (L&S) 296 : (1995) 29 ATC 93] this Court held as under: (SCC pp. 241-42, paras 12-13)

“12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of 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 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(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 33-C(2) like that of the executing court's power to interpret the decree for the purpose of its execution.”

12. It would be thus seen that it is not necessarily that only a pre-determined right on a reference under Section 10 of the ID Act can be enforced under Section 33-C(2) of the ID Act. Even if the benefit is recognized by the employer, the same can be also calculated and awarded to the workmen by the Tribunal in exercise of its power under Section 33-C(2) ID Act.

13. Section 33-C ID Act reads as under:

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 VA or Chapter VB] 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 recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue 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 [within a period not exceeding three months.]

[Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]”

14. It would be noted that unlike sub-Section 1 of Section 33-C ID Act where the words used are that where any money is due to a workmen from an employer under a settlement or an award or under the provisions of Chapter VA or Chapter VB, the workman may move an application to the appropriate Government for the recovery of money due to him, sub-Section 2 talks about the entitlement 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, the same has to be decided by the Labour Court as may be specified. It would be thus seen that for the Labour Court to award the money in terms of the entitlement under sub-Section 2 of Section 33-C, a settlement or an award or an order under the provisions of Chapter VA or Chapter VB of the ID Act is not a condition precedent. Sub-Section 2 of Section 33-C talks about the entitlement of the workman to receive the money from the employer. The said entitlement can be based even upon the appointment letter, terms and conditions of appointment etc. If for recovery of money an earlier order on settlement or an award is a pre-condition then sub-Section 2 of Section 33-C would be rendered otiose. There is yet another distinction between sub-Section 1 and sub-Section 2 of Section 33-C. Under Section 33-C(1) the application lies to the appropriate Government whereas under sub-Section 2 of Section 33-C the application lies to the Labour Court who has been ordained to decide the entitlement/benefit to the workmen. In *Fabril Gasosa Vs. Labour Commissioner & Ors.* AIR 1997 SC 954 the Hon'ble Supreme Court held:

17. Section 33C is in the nature of execution proceedings designed to recover the dues to the workmen. Vide Section

33C(1) and (2), the legislature has provided a speedy remedy to the workmen to have the benefits of a settlement or award which are due to them and are capable of being computed in terms of money, be recovered through the proceedings under those Sub-sections. The distinction between Sub-section (1) and Sub-section (2) of Section 33C lies mainly in the procedural aspect and not with any substantive rights of workmen as conferred by these two Sub-sections. Sub-section (1) comes into play when on the application of a workman himself or any other person assigned by him in writing in this behalf of his assignee or heirs in case of his death, the appropriate Government is satisfied that the amounts so claimed are due and payable to that workman. On that satisfaction being arrived at, the Government can initiate action under this Sub-section for recovery of the amount provided the amount is a determined one and requires no 'adjudication.' The appropriate Government does not have the power to determine the amount due to any workman under Sub-section (1) and that determination can only be done by the Labour Court under Sub-section (2) or in a reference under Section 10(1) of the Act. Even after the determination is made by the Labour Court under Sub-section (2) the amount so determined by the Labour Court, can be recovered through the summary and speedy procedure provided by Sub-section (1). Sub-section (1) does not control or affect the ambit and operation of Sub-section (2) which is wider in scope than Sub-section (1). Besides the rights conferred under Section 33C(2) exist in addition to any other mode of recovery which the workman has under the law. An analysis of the scheme of Section 33C(1) and 33C(2) shows that the difference-between the two Sub-sections is quite obvious. While the former Sub-section deals with cases where is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or V-B, Sub-section (2) deals with cases where a workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money. Thus, where the amount due to the workmen, flowing from the obligations under a settlement, is pre-determined and ascertained or can be arrived at by any

arithmetical calculation or simplistic verification and the only inquiry that is required to be made is whether it is due to the workman or not, recourse to the summary proceedings under-section 33C(1) of the Act is not only appropriate but also desirable to prevent harassment to the workmen. Sub-section (1) of Section 33C entitles the workmen to apply to the appropriate Government for issuance of a certificate of recovery for any money due to them under an award or a settlement or under the provisions of Chapter V A and the Government, if satisfied, that a specific sum is due to the workmen, is obliged to issue a certificate for the recovery of the amount due. After the requisite certificate is issued by the Government to the Collector, the Collector is under a statutory duty to recover the amounts due under the certificate issued to him. The procedure is aimed at providing a speedy, cheap and summary manner of recovery of the amount due, which the employer has wrongfully withheld. It, therefore, follows that where money due is on the basis of some amount predetermined like 'he VDA, the rate of which stands determined in terms of the settlement an award or under Chapter V-A or V-B, and the period for which the arrears are claimed is also known, the case would be covered by Sub-section (1) as only a calculation of the amount is required to be made.

15. In *Central Bank of India Ltd. and others vs. Rajagopalan (PS) and others*, 1963 (2) LLJ 89 it was held that scope of Section 33-C (2) is undoubtedly wider than that of Section 33-C (1) ID Act. It was held:

“We have already noticed that in enacting S. 33C the legislature has deliberately omitted some words which occurred in S. 20(2) of the Industrial Disputes (Appellate Tribunal) Act, 1950. It is remarkable that similar words of limitation have been used in S. 33C (1) because S. 33C(1) deals with cases where any money is due under a settlement or an award or under the provisions of Chapter VA. It is thus clear that claims made under S. 33C(1), by itself, can be only claims referable to the settlement, award, or the relevant provisions of Chapter VA.

These words of limitations are not to be found in S. 33C(2) and to that extent, the scope of S. 33C(2) is undoubtedly wider than that of S. 33C(1). It is true that even in respect of the larger class of cases which fall under S.33C(2), after the determination is made by the Labour Court the execution goes back again to S. 33C(1). That is why S. 33C (2) expressly provides that the amount so determined may be recovered as provided for in sub-section (1). It is unnecessary in the present appeals either to state exhaustively or even to indicate broadly what other categories of claims can fall under S. 33C(2). There is no doubt that the three categories of claims mentioned in S. 33C(1) fall under S. 33C(2) and in that sense, S. 33C(2) can itself be deemed to be a kind of execution proceeding; but it is possible that claims not based on settlements, awards or made under the provisions of Chapter VA, may also be competent under S. 33C(2) and that may illustrate its wider scope. We would, however, like to indicate some of the claims which would not fall under S. 33C(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. 33C(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. 33C(1). If a settlement has been duly reached between the employer and his employees and it falls under S. 18(2) or (3) of the Act and is governed by S. 19(2), it would not be open to an employee, notwithstanding the said settlement, to claim the benefit as though the said settlement had come to an end. If the settlement exists and continues to be operative, no claim can be made under S.33C(2) inconsistent with the said settlement. If the settlement is intended to be terminated, proper steps may have

to be taken in that behalf and a dispute that may arise thereafter may have to be dealt with according to the other procedure prescribed by the act. Thus, our conclusion is that the scope of S. 33C(2) is wider than S.33C(1) and cannot be wholly assimilated with it, though for obvious reasons, we do not propose to decide or indicate what additional cases would fall under S. 33C(2) which may not fall under S. 33C(1). In this connection, we may incidentally state that the observations made by this Court in the case of Punjab National Bank Ltd.(1962) I LLJ 234 (vide supra), that S. 33C is a provision in the nature of execution, should not be interpreted to mean that the scope of S. 33C(2) is exactly the same as S. 33C(1) (page 238).”

16. As regards the scope of interference by this Court in a petition under Article 226 of the Constitution of India, the Hon’ble Supreme Court in *Harjinder Singh Vs. Punjab State Warehousing Corporation* (2010) 3 SCC 192 held:

“10. We have considered the respective submissions. In our opinion, the impugned order is liable to be set aside only on the ground that while interfering with the award of the Labour Court, the learned Single Judge did not keep in view the parameters laid down by this Court for exercise of jurisdiction by the High Court under Articles 226 and/or 227 of the Constitution — *Syed Yakoob v. K.S. Radhakrishnan* [AIR 1964 SC 477] and *Surya Dev Rai v. Ram Chander Rai* [(2003) 6 SCC 675] . In *Syed Yakoob case* [AIR 1964 SC 477] , this Court delineated the scope of the writ of certiorari in the following words: (AIR pp. 479-80, paras 7-8)

“ The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are

passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Ahmad Ishaque* [AIR 1955 SC 233 : (1955) 1 SCR 1104] , *Nagendra Nath Bora v. Commr. of*

Hills Division [AIR 1958 SC 398 : 1958 SCR 1240] and *Kaushalya Devi v. Bachittar Singh* [AIR 1960 SC 1168]).

It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior court or tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior court or tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.”

17. There is no doubt that a jurisdictional error would be entertained by this Court, however in the present case neither any jurisdictional error has been committed by the learned Trial Court nor the management has raised the same before the learned Trial Court in the form of pleadings. Despite the same, the issues raised by the management during the course of arguments have been duly considered by the learned Tribunal. The contentions of the learned counsel for the Petitioner/management are based on these legal issues. During arguments no dispute has been raised qua the claim of the Respondent/ workmen on the basis of extra flying hours and welfare allowances. The only issue raised is with regard to the revised salary allegedly on a settlement which as discussed above has not been signed by the Respondent/ workmen herein. Thus, this Court is not required to go into the computations arrived at by the learned Trial Court except that in the case of Captain Manjit Singh the awarded amount will be read as Rs. 8,71,217/-.

18. As regards W.P.(C) Nos. 7442/2010, 7444/2010 and 7445/2010 it may be noted that the Pilots/workmen herein had specifically prayed for an interest, however no interest has been awarded. A perusal of the order sheets of the Tribunal shows that the Pilots/workmen have faced a protracted litigation wherein several times adjournments were sought by the management to file reply. The management proceeded ex-parte which order was vacated and then further amendments of the pleadings were sought. However, in a petition under Section 33-C (2) ID Act no new right can be conferred on the workman. Thus no interest can be awarded. In *Union of India vs. The Presiding Officer, Central Government Labour Court and another*, 1984 (2) AISLJ 567 it was held:

“21. Learned counsel for the workman submits that the deputation allowance become due to the workman in 1974 and the same has not been paid as yet. He submits that the petitioner should be directed to pay 12 percent interest from the date the amount became due and payable till realization. He refers to *Gammon India v. Niranjan Dass*, wherein it has been observed that the workman was unlawfully kept out of service and therefore it was just that the employer should pay all arrears with 12 per cent interest. That was a case of retrenchment. The present proceedings are under Section 33C(2) of the Act. The Jurisdiction of the Labour Court under Section 33C (2) of the Act is only to compute the benefit and not to confer any new benefit. I, therefore, do not find any reason to direct payment of any interest in the amount due to the workman on account of deputation allowance.”

19. In view of the above discussion, the Petitions and applications are dismissed. However, so far as the error crept in the award of Capt. Manjit Singh is concerned, it is directed that the awarded amount shall be read as Rs.8,71,217/- instead of Rs.17,31,347/-. The said impugned award is modified to the extent aforesaid.

(MUKTA GUPTA)

FEBRUARY 12, 2013

‘ga’