

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 25.08.2014

+ W.P.(C) 336/2008 & CM 651/2008

M. VADIVELU

..... Petitioner

versus

RAJKISHAN & COMPANY & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Vinay Sabharwal & Ms Neha Sabharwal

For the Respondents : Mr Sanjoy Bhaumik for R-1.

Mr S. K. Taneja, Sr. Advocate with Mr Puneet
Taneja for R-2

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner impugns an order dated 11.04.2007 (hereinafter referred to as the 'impugned order') passed by the Labour Court, Delhi in LCA No.49/2006. By the impugned order, the Labour Court has dismissed an application filed by the petitioner under Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act') claiming arrears of salary and other allowances from February 1993 till the date of his superannuation in 1998.

2. Brief facts of the case are that respondent No.1 appointed the petitioner as Quality Surveyor on 20.10.1981. Subsequently, the petitioner was promoted to the post of Senior Supervisor.

3. National Thermal Power Corporation (i.e. respondent no. 2 and hereinafter referred to as 'NTPC') is a Government of India enterprise which primarily deals in construction, operation and maintenance of the power projects in the country. NTPC has a power project known as National Capital Power Station at Dadri, Ghaziabad, Uttar Pradesh (in short 'project site'). In 1989, the NTPC awarded a contract for General Civil Works and Coal Handling Plant at the project site, to respondent no. 1.

4. The petitioner was posted at respondent no.1's establishment at the project site and it was stated by respondent no.1 that the nature of work performed by the petitioner was supervisory or administrative. The respondent no.1, subsequently, issued the transfer orders in March, 1993 transferring the petitioner to Ropar, Punjab. However, the petitioner did not join his duties at Ropar, Punjab.

5. The petitioner is aggrieved as he was not paid his salary after March 1993. On 28.03.2003, the petitioner filed an application before the Labour Court Delhi, under Section 33C(2) of the Act praying for salary and other allowances from February 1993 till the date of superannuation in 1998. The petitioner stated that the work performed by him at the project site mainly entailed noting down the activity and progress at site, taking measurements of items of work, maintaining records, preparing bills, material testing etc.

6. The respondents contested the said application; respondent no.1 asserted that the Labour Court at Delhi had no territorial jurisdiction to entertain the said application as the petitioner was not employed by respondent no.1 at Delhi but was working with its establishment at Dadri, Uttar Pradesh. It was further contended that the application filed by the petitioner was not maintainable as he was performing supervisory functions. And, consequently, the petitioner was not a workman within the meaning of section 2(s) of the Act. According to respondent no. 1, the petitioner was not entitled to any remuneration after march 1993 as he had failed to perform his duties after February 1993. Respondent no. 2 also contested the claim of the petitioner by disputing that there was any privity of contract or any employee and employer relationship, between the petitioner and the respondent no.2. Further, respondent no. 2 also disputed the jurisdiction of the Labour Court at Delhi to entertain the applications, contending that no part of cause of action arose in Delhi.

7. The petitioner stated that he had made himself available to respondent no.1 from February 1993 till his superannuation (i.e. till December 1998) and was thus entitled to be remunerated for the said period. It was further stated that the petitioner was not paid the requisite allowance for the transfer and therefore, his transfer to Ropar was not valid. The petitioner argued that since the registered office of the respondents was in Delhi, the Labour Court at Delhi would have the territorial jurisdiction to entertain the application under section 33C(2) of the Act.

8. The Labour Court framed preliminary issues as to whether the court could adjudicate the issue about status of the claimant as a workman under

Section 33C(2) of the Act. And, whether the Labour Court at Delhi would have the territorial jurisdiction to entertain the application.

9. By the impugned order, the Labour Court dismissed the said application of the petitioner holding that the status of the petitioner as a workman was disputed and a Labour Court, while dealing with the application under Section 33C(2) of the Act, did not have the jurisdiction to adjudicate the issue relating to the status of the applicant as a workman. The Labour Court further held that neither any cause of action had arisen in Delhi nor did the petitioner work in Delhi and, therefore, the Labour Court at Delhi did not have the jurisdiction to entertain the petitioner's application. Aggrieved by the dismissal of the application under Section 33C(2) of the Act, the petitioner has filed the present petition challenging the impugned order.

10. The controversy in the present case involves the question whether the Labour Court had the jurisdiction under Section 33C(2) of the Act to adjudicate the question whether the petitioner was a workman and, consequently, entitled to back wages. And, whether the Labour Court had the territorial jurisdiction in the matter in view of the fact that the petitioner was employed at Dadri (Uttar Pradesh).

11. Before proceeding further, it would be essential to refer to provisions of Section 33C(2) of the Act which is reproduced as under:-

“33C. Recovery of money due from an employer

(1) xxxx xxxx xxxx xxxx xxxx

(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.”

12. It is apparent from the plain reading of Section 33C(2) of the Act that the same is applicable only in cases 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.."* Undisputedly, the Labour Court would - in proceedings under section 33C(2) of the Act - have the jurisdiction to decide any question or dispute that may arise as to the quantum of money due or the amount at which the benefit in terms of money is computed. The scope of Section 33C(2) of the Act has been a subject matter of several decisions by the Supreme Court. In the case of **Municipal Corporation of Delhi v. Ganesh Razak & Anr.: (1995) 1 SCC 235**, the Supreme Court held that where the basis of the claim or entitlement of a workman to certain benefit(s) was disputed and there is no earlier adjudication or recognition thereof by the employer, such disputes relating to the entitlement of a workman could not be considered as incidental to the benefits claimed and, therefore, would fall outside the scope of Section 33C(2) of the Act. The Supreme Court held that the

Labour Court would have no jurisdiction to decide a workman's entitlement and then proceed to compute the benefit as available from such adjudication. An application under Section 33C(2) could be entertained by a Labour Court only when the entitlement of the workman had been adjudicated or recognised earlier. It is only in these cases that the Labour Court would have the jurisdiction to decide the quantum of the benefit available and any other matter which may be incidental thereto. It follows from the decisions rendered by the Supreme Court as well as from the plain reading of Section 33C(2) that before an application under the said Section is entertained, the pre-existing right of the workman must be recognised. In cases where there is already an award or a settlement which has been reduced in writing there is no difficulty in implementing Section 33C(2); the problem usually arises in cases where there is no settlement or an award but the claim of the workman under Section 33C(2) of the Act is premised on a pre-existing relationship of an employer and an employee.

13. This Court in the case of **Jeet Lal Sharma v. Presiding Officer, Labour Court: 84 (2000) DLT 706** had emphasized that entitlement to receive money can be based either on adjudication, settlement or on service conditions. In cases where the right to particular benefit exists, an application under Section 33C(2) would be maintainable and the jurisdiction of the Labour Court would not be barred merely because the benefit has been denied by the employer. The expression 'entitlement to receive' refers to a pre-existing right. Even in cases where the employer denies the benefit available to a workman on the basis of a pre-existing right, the Labour Court would have jurisdiction to entertain an application

under Section 33C(2) of the Act and pass appropriate orders thereon. The fact that an employer raises disputes cannot by itself oust the jurisdiction of a Labour Court to adjudicate the dispute raised provided the fundamental facts, on the basis of which the entitlement is claimed, is not disputed. In cases, where the employer and employee relationship itself is disputed, the Courts have held that the said dispute cannot be adjudicated under Section 33C(2) of the Act. In ***Jeet Lal Sharma*** (*supra*), the question that was considered by this Court was whether the dispute regarding leave encashment could be entertained under Section 33C(2) of the Act. Although, the employer had disputed the claim of the employee with regard to leave encashment of 188 days, the service conditions that entitled him to encash leave lying to his credit was not disputed. In these circumstances, the Court held that since the entitlement of the workman to encashment of leave was not disputed; the only dispute being the quantum of the leave encashment, the Labour Court would have the jurisdiction to entertain such dispute within the scope of Section 33C(2) of the Act.

14. In the facts of the present case, the fact that the petitioner was an employee of the respondent is not in dispute. However, respondent no.1 contended that the job performed by the petitioner was supervisory and as such the petitioner was not a workman under section 2(s) of the Act. It is stated that the employee was transferred from Dadri in March, 1993 and because, he had failed to join his duties at the place of his posting, he was not entitled to any remuneration, thereafter. It is also not in dispute that the petitioner had received the transfer order, however, he has stated that the same was only to harass him and as he had not been provided the requisite

allowance for joining his duties at the place of his posting, the posting order was invalid. It was contended that even though the petitioner had not worked after February/March 1993, he would be entitled to remuneration from March 1993 till the date of his superannuation in 1998 as he had made his services available to respondent no.1.

15. The quintessential question that needs to be addressed is whether, in view of the rival contentions, the petitioner's pre-existing right stands established enabling a Labour Court to compute the benefits arising to the petitioner, therefrom or whether the petitioner's entitlement to the benefits claimed is itself disputed.

16. The learned counsel for the respondents placed reliance on the decision of the Supreme Court in **Tara & Ors. v. Director, Social Welfare & Ors.:** (1998) 8 SCC 671. In that case, the question arose whether the Labour Court would have the jurisdiction to decide disputes relating to the status of a workman. The Supreme Court held that the status of the workmen i.e. whether they were Anganwari workers/helpers, was the foundation for making claim for wages at the specified rates and the same was disputed. It was held that unless this dispute was adjudicated, the question of entertaining an application under Section 33C(2) for computation of the wages did not arise.

17. The learned counsel for respondent no.1 stated that in this case also the status of the petitioner as a workman under the Act was disputed as it was claimed that the petitioner was performing a supervisory role and, therefore, was not a workman within the meaning of Section 2(s) of the

Act. It was contended that unless this dispute is adjudicated in an appropriate proceedings, an application under Section 33C(2) of the Act would not lie. The learned counsel for the petitioner has disputed this contention and stated that the question - whether the petitioner is a workman under the Act is a jurisdictional question and the Labour Court would necessarily have the jurisdiction to decide this fact. It was submitted this question is incidental to the computation of remuneration that was claimed by the petitioner. The learned counsel for the petitioner has stressed that there is no dispute that the petitioner was an employee of respondent no.1 and his services had not been validly terminated. The relationship of an employer and employee having been admitted, the only question that arose was with regard to computation of the remuneration payable. The learned counsel for the petitioner has sought to distinguish the questions which relate to jurisdictional facts and questions which relate to status of workman. According to him, the decision of the Supreme Court in the case of **Tara & Ors.** (*supra*) is not applicable because in that case the dispute was with regard to the status of workman; the Court had to decide whether the workers were Anganwari workers/helpers and should be equated with other workmen. This being in dispute, the question of computation of wages obviously did not arise. It was contended that, in the present case, there was no dispute as to the relationship of an employer and employee, as also the remuneration that the petitioner was entitled to. The only question, according to the petitioner, that remained was the computation of the amount payable to the petitioner. It was contended that the issue whether the petitioner was a workman or not would only determine the jurisdiction of the Labour Court to entertain the application

and as such, this question would have to be decided by the Labour Court itself.

18. The argument canvassed by the learned counsel for the petitioner is attractive but on a closer examination cannot be accepted. The dispute is not merely as to the status of the petitioner as a workman; the dispute essentially is whether the petitioner would be entitled to wages for the period that he had not worked. The question whether the petitioner was performing supervisory functions or fell within the definition of a workman under Section 2(s) of the Act would be fundamental to the question whether the petitioner was protected under the Act and that would be crucial in determining whether the petitioner was entitled to the wages as claimed by him. Seen from this perspective, it is obvious that the question in the present case is not limited to only adjudicating an incidental or a jurisdictional fact but the fundamental entitlement of the petitioner to claim remuneration. This entitlement is neither settled by an award in favour of the petitioner nor established by a pre-existing settlement. The only ground on which such remuneration is claimed is a relationship between an employer and an employee. This relationship of an employee and an employer is itself questioned and in the event it is found that the petitioner is not a workman and was carrying out only supervisory functions, the petitioner would not be entitled to the protection under the Act. Consequently, the petitioner may not be entitled to the wages claimed. It is, thus, obvious that this is a case where the past wages are being claimed by the petitioner on basis of an alleged entitlement/right that is disputed. It is well settled that under Section 33C(2) of the Act, the Labour Court would

not entertain disputes with regard to entitlement or adjudicate the existence of a pre-existing right but only proceed to compute the wages and adjudicate other attendant disputes that may arise in that regard. A pre-existing right must be established before an application under Section 33C(2) of the Act can be entertained by a Labour Court. This position in law was explained by the Supreme Court in **State of U.P. v. Brijpal Singh:** (2005) 8 SCC 58. In that case, the Supreme Court referred to its earlier decisions in **State Bank of India v. Ram Chandra Dubey:** (2001) 1 SCC 73 and **Punjab Beverages (P) Ltd. v. Suresh Chand:** (1978) 2 SCC 144 and held as under;-

“13. Thus, it is clear from the principle enunciated in the above decisions that the appropriate forum where question of back wages could be decided is only in a proceeding before a forum to whom a reference under Section 10 of the Act is made. Thereafter, the Labour Court, in the instant case, cannot arrogate to itself the functions of an Industrial Tribunal and entertain the claim made by the respondent herein 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 ID Act. Therefore, the Labour Court had no jurisdiction to adjudicate the claim made by the respondent herein under Section 33-C(2) of the ID Act in an undetermined claim and until such adjudication is made by the appropriate forum, the respondent workman cannot ask the Labour Court in an application under Section 33-C(2) of the ID Act to disregard his dismissal as wrongful and on that basis to compute his wages. It is, therefore, impossible for us to accept the arguments of Mrs Shyamla Pappu that the respondent workman can file application under Section 33-C(2) for determination and payment of wages on the basis that he continues to be in service pursuant to the said order passed by the High Court in Writ Petition No. 15172 of 1987 dated 28-10-1987. The

argument by the learned counsel for the workman has no force and is unacceptable. The Labour Court, in our opinion, has erred in allowing the application filed under Section 33-C(2) of the ID Act and ordering payment of not only the salary but also bonus to the workman although he has not attended the office of the appellants after the stay order obtained by him. The Labour Court has committed a manifest error of law in passing the order in question which was rightly impugned before the High Court and erroneously dismissed by the High Court. The High Court has also equally committed a manifest error in not considering the scope of Section 33-C(2) of the ID Act. We, therefore, have no hesitation in setting aside the order passed by the Labour Court in Misc. Case No. 11 of 1993 dated 23-8-1995 and the order dated 9-1-2002 passed by the High Court in CMWP No. 36406 of 1995 as illegal and uncalled for. We do so accordingly.”

19. In the case of ***Ram Chandra Dubey*** (*supra*), the Supreme Court after referring to earlier decisions had summarized the law as under:-

“Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33-C(2) of the Act. The benefit sought to be enforced under Section 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied,

for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages.”

20. Applying the aforesaid principles in the facts of the present case, it is apparent that the Labour Court did not have no jurisdiction to entertain the claim of the petitioner. In the present case, the petitioner is claiming wages for the period March 1993 till his superannuation in 1998. This claim for arrears of remuneration is premised on highly disputed questions - whether the petitioner was a workman and within the protection of the Act and whether he was entitled to such wages even though he had, admittedly, not performed any work during the relevant period.

21. In my view, the dispute in this case is, plainly, as to the entitlement of the petitioner to his wages and this inextricably linked to the question whether the petitioner was a workman under the Act. The dispute thus goes to the root of the petitioner's entitlement and therefore, is outside the scope of Section 33C(2) of the Act. The Labour Court rightly held that, in the

given facts and circumstances of the case, it had no jurisdiction to decide the question whether the petitioner was a workman under the Act.

22. The next question to be considered is whether the Labour Court has the territorial jurisdiction to entertain the application filed by the petitioner. The petitioner has pointed out that his appointment letter had been issued from respondent's no.1 office at Delhi.

23. The learned counsel for the petitioner relied upon the case of **Bageshwar Maurya v. Management Naveen Projects Pvt. Ltd.: 165 (2009) DLT 12** in support of his contention that the Labour Court having jurisdiction with respect to the area, where the cause of action had arisen, would have the jurisdiction to entertain the application under Section 33C(2) of the Act. The learned counsel for the respondent has disputed the contention that any part of the cause of action had arisen within the National Capital Territory of Delhi. He stated that the petitioner being employed at Dadri, U.P. and having been posted at Ropar, Punjab, the Courts in U.P. or the Courts in Punjab alone would have jurisdiction with regard to the grievances that the petitioner may have with respect to his employment.

24. It is relevant to note that the petitioner had filed the application under Section 33C(2) of the Act before the Labour Court at Delhi, on the basis that the office of respondent nos.1 & 2 were situated in Delhi. It was not the petitioner's case, before the Labour Court, that any part of cause of action had arisen within the territory of Delhi. The respondents had disputed that the Labour Court at Delhi would have the jurisdiction and

contended the Courts where the workman was employed would alone have the jurisdiction to entertain an application under the Act. This contention of the respondents was disputed by the petitioner and in its rejoinder, the petitioner asserted that *“for the purpose of the application, the place where the workman is employed is not at all relevant. It is the employer who must have an office within the jurisdiction of this Hon’ble Court.”*

25. In view of the above rival contentions, the question that needs to be addressed is whether the Court having jurisdiction in respect of the territories, where the office of the employer is situated would also have the jurisdiction to entertain any application/complaint under the Act irrespective of where the workman was employed.

26. In my view, the answer to the aforesaid question must be in the negative. It is now well settled that the Courts exercising jurisdiction over territories where cause of action had arisen, alone would have the jurisdiction to entertain applications/ petitions/ complaints under the Act. Since, in the present case, the application under Section 33C(2) emanates from the employment of the petitioner at Dadri, U.P., the cause of action, obviously, also arises in U.P. The cause of action in such cases is inextricably linked with the situs of employment.

27. The decision of this Court in ***Bageshwar Maurya*** (*supra*) would not be applicable as in that case even though the employee was posted in Rajasthan, his employment was controlled by the office situated at Delhi. In that case, the Court had found that the employer did not have a permanent establishment in Rajasthan. The appointment letter had been

issued from the Delhi office and the functioning of the workman was also controlled from the office at Delhi. It is in these facts that the Court found that a substantial part of the cause of action had arisen in Delhi and, therefore, Labour Courts in Delhi would have the jurisdiction to adjudicate the dispute and the Government of NCT would be the appropriate Government. In the present case, although the petitioner has alleged that his appointment letter had been issued from the respondent's office at Delhi, there are no pleadings before the Labour Court that suggest that respondent no.1 did not have an establishment at Dadri, U.P. and the petitioner's employment was controlled from its Delhi office. The petitioner had asserted that the Labour Court at Delhi had the jurisdiction on the sole basis that respondents had offices at Delhi. The situs of an office of the employer does not give rise to a cause of action within that territory. The Supreme Court in the case of **Om Prakash Srivastava v. Union of India**: (2006) 6 SCC 207 had considered what would constitute a cause of action and held as under:-

“12. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary, to prove each fact. comprises in "cause of action". (See Rajasthan High Court

Advocates' Association v. Union of India and Ors. 2001 (2) SCC 294).

13. The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit. (See Gurdit Singh v. Munsha Singh, (1977) 1 SCC 791).

14. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person. (See Black's Law Dictionary). In Stroud's Judicial Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the plaintiff must prove in order to obtain judgment. In "Words and Phrases" (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf. (See Navinchandra N. Majithia v. State of Maharashtra and Ors. (2000) 7 SCC 640.”

28. In this case, the substantial dispute is with respect to non-payment of remuneration. This has a direct nexus with the establishment of the respondent where the petitioner was employed i.e. Dadri, U.P. This Court, in the case of **DLF Universal Ltd. v. Government of National Capital Territory of Delhi and Ors.**; 2002 LLR 407, held that the situs of employment of the workman would have a direct connection with the cause of action, which in that case was the termination of employee's services.

29. A Division Bench of this Court in **B.B. Verma v. National Project Construction Corporation Ltd.:** 80 (1999) DLT 498 following the decision of Supreme Court in **Patel Roadways Ltd. v. Tropical Agrosystems Pvt. Ltd.:** AIR 1992 SC 1514 held that a Court would not have the jurisdiction to entertain a petition, if the cause of action had not arisen within its territorial jurisdiction.

30. In my view, merely because the respondents have an office in Delhi would not enable the Labour Court, Delhi to exercise jurisdiction in the matter. In my view, the Labour Court had rightly held that the situs of employment of the worker- where the cause of action had arisen - will determine the territorial jurisdiction and since, the applicant had neither worked in Delhi nor any part of cause of action had arisen in Delhi, the Labour Court did not have the jurisdiction to entertain the application under Section 33C(2) of the Act.

31. The petition and the pending application are, accordingly, dismissed. The parties are left to bear their own costs.

VIBHU BAKHRU, J

AUGUST 25, 2014
RK