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

Judgement Reserved on: 31st August, 2018
Judgement pronounced on: 16th October, 2018

+ **LPA 498/2018**
KISHAN CHAND SAINI (SINCE DECEASED)
THROUGH LRS. Appellants

Through Mr. M.Y. Khan, Advocate
versus

UNION OF INDIA & ANR. ...Respondents

Through Mr. Jagjit Singh and Mr. Preet Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL. J.

1. Challenge in this appeal filed under Clause X of the Letters Patent Act is to the order dated 01.06.2018 passed by the learned Single Judge whereby the writ petition filed by the respondents against the order dated 28.03.2007 passed by the learned Presiding Officer, Central Government, Industrial Tribunal Labour Court (hereinafter referred to as 'POCGIT') directing the respondents to pay overtime wages to the workman for the period from 21.08.1977 to 11.12.1995 within three months failing which the management was liable to pay interest @ 9%.
2. The brief facts as per the appellant leading to the filing of the present appeal are that the Kishan Chand Saini/deceased

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workman was working as Gateman at Gate No. 60B under Station Superintendent, Railway Station Rohtak with effect from 21.08.1977. The workman was working for 12 hours in a day at the Gate with one break in a week. On 11.12.1995 he was transferred to Gate No. 58B, where he worked for 8 hours in a day. He claimed 4 hours overtime wages, during the period between 21.08.1977 to 11.12.1995, for the work done at the Gate No. 60B. He filed an application under Section 33C(2) of the Industrial Disputes Act, 1947(hereinafter referred to as 'the ID Act') before POCGIT claiming Rs. 5,01,886/- as overtime wages for the period 21.08.1977 to 11.12.1995 for the work done beyond his duty hours. The said application was allowed by the learned Presiding Officer of the Labour Court and held that the workman(deceased) was entitled to the overtime wages for the period from 21.08.1977 to 11.12.1995 within three months failing which the management was liable to pay interest @ 9%. Being aggrieved, the respondents herein preferred a writ petition challenging the order dated 28.03.2007 passed by POCGIT, which was allowed by the learned Single Judge of this court. The learned Single Judge vide order dated 01.06.2018 set aside the order dated 28.03.2007 on the ground that the learned POCGIT had 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 ID Act. Hence, the present appeal is filed by the appellants.

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3. Mr. M.Y. Khan, learned counsel for the appellants has strenuously contended that the basis of the impugned order dated 01.06.2018 passed by the learned Single Judge was, on the face of it, erroneous and unjustified; that the learned Single judge erred in not appreciating the statutory provisions of Section 33C(2) of the ID Act and that the Labour Court is competent to decide incidental issues under the said section; that it was duly admitted by the respondents that the deceased workman was working for 12 hours in a day at Gate No. 60B and it was wrongly alleged that the services of the deceased workman were coming under Essentially Intermittent Services(EI) under Railway Rules; that the learned Single Judge has erroneously relied in the case of *Municipal Corporation of Delhi v. Ganesh Razak & Anr* reported in 1995 SCC (L&S) 296; that the claim was filed by the deceased workman on 20.11.1998 and the same was adjudicated upon by the Labour Court after the duration of 10 years. In order to substantiate his submissions, the learned counsel for the appellants relied on the cases of *Bank of India Ltd. v. E.S. Rajgopalan* reported in 1964 (3) SCR 140 and *Chief Mining Engineers, East India Coal Co. Ltd. v. Rameshwar* reported in AIR 1968 SC 218.
4. Per contra, Mr. Jagjit Singh, learned counsel appearing for the respondents contended that there is no illegality in the order dated 01.06.2018 passed by the learned Single Judge; that the deceased workman had worked 12 hours with weekly rest at Gate No. 60B on the railway station and therefore, fell within the purview of Essentially Intermittent (EI) as per Hours of Employment

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Regulations of the Railways; that as per said rules, the deceased workman is not entitled to any amount on account of the over-time period; that in order to facilitate the workman to work for 12 hours a day, a railway quarter was provided to him within half a kilometer from the workplace; that the learned Single Judge was right in set aside the order dated 28.03.2007 passed by the POCGIT on the ground that the Labour Court has no jurisdiction to entertain an application under Section 33C(2) of the Act if there is no prior adjudication on the claim of the workman by the competent authority.

5. We have heard learned counsel for the parties and given our thoughtful consideration to the matter.
6. The only issue which requires consideration in the present case is whether the learned Single Judge was right in setting aside the order 28.03.2007 passed by the POCGIT on the ground that the POCGIT has no jurisdiction to entertain an application filed under Section 33C(2) of the ID Act until and unless there has been prior adjudication or recognition of claim of the appellants by way of settlement/award by a Court of Competent jurisdiction or by the employer. The relevant portion of the order dated 01.06.2018 is produced hereinbelow:-

" ...19. Finally after considering all its previous judgements, mentioned above, the Hon'ble Supreme Court in Ganesh Razek's case(supra) concluded that the ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workman to a certain benefit is disputed, there being claimed and is, therefore, clearly outside the

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scope of a proceeding under Section 33C(2) of the ID Act and the Labour Court has no jurisdiction to first decide the workman's entitlement and then proceed in exercise of its power under Section 33C(2) of the ID Act. The Apex Court further explained that it is only when the entitlement has been earlier adjudicated or recognized 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) of the ID Act like that of the Executing Court's power to interpret the decree for the purpose its execution. Paragraph 12 of the judgment in Ganesh Razak's case (supra) reads as under:

"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 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, 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 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."

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Having considered the facts of this case in the light of the law laid down by the Hon'ble Supreme Court, it is found that admittedly, there was no earlier adjudication of claim of the respondent (since deceased) by way of the award and there was no settlement based on the respondent's (since deceased) rights for being interpreted by the learned POCGIT and therefore, no jurisdiction vested in learned POCGIT to entertain the application of the respondent (since deceased) under Section 33C(2) of the ID Act and the impugned order thus passed is a nullity being made without jurisdiction. As a result, the impugned order dated 28.03.2007 passed by the learned POCGIT is set aside.

7. At this stage, it is significant to re-produce Section 33C(2) of the ID Act, which 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 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*

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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."

8. The reading of the above mentioned section makes it evident that the money due to an employee can be adjudicated by a Labour Court 'specified in this behalf by the appropriate Government'. These words in no uncertain terms indicate that there has to be specification by the appropriate Government that a particular court shall have the jurisdiction to decide money claim under Section 33C(2) of the ID Act. In the case of ***State Of Uttar Pradesh & Anr vs Brijpal Singh*** reported in (2005) 8 SCC 58 attention has been drawn to the relevant paragraph of the judgement which reads as follows:

"Thereafter, the Labour Court, in the instant case, cannot arrogate to itself the functions of an Industrial Tribunal and entertain the claim made by

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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 I.D. Act. Therefore, the Labour Court has no jurisdiction to adjudicate the claim made by the respondent herein under Section 33C(2) of the I.D. 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 33C(2) of the I.D. 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. Shymala Pappu that the respondent-workman can file application under Section 33C(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 33C(2) of the I.D. 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 33C(2) of the I.D. 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

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C.M.W.P. No. 36406 of 1995 as illegal and uncalled for. We do so accordingly."

In the case of *Vijaya Bank v. Shyamal Kumar Lodh* reported in 2010 7 SCC 635, it was held that:-

"14. But this does not end the controversy. The power to adjudicate money claim is to the Labour Court "as may be specified in this behalf by the appropriate Government". Every word used by the Legislature carries meaning and therefore effort has to be made to give meaning to each and every word used by it. A construction brushing aside words in a Statute is not a sound principle of construction. The Court avoids a construction, if reasonably permissible on the language, which renders an expression or part of the Statute devoid of any meaning or application. Legislature never waste its words or says anything in vain and a construction rejecting the words of a Statute is not resorted to, excepting for compelling reasons. There does not exist any reason, much less compelling reason to adopt a construction, which renders the words "as may be specified in this behalf" used in Section 33C(2) of the Act as redundant. These words have to be given full meaning. These words in no uncertain terms indicate that there has to be specification by the appropriate Government that a particular court shall have jurisdiction to decide money claim under Section 33C(2) of the Act and it is that court alone which shall have the jurisdiction. Appropriate Government can specify the court or courts by general or special order in its discretion. In the present case, there is nothing on record to show that the Labour Court at Dibrugarh has been specified by the appropriate Government, i.e., Central Government for adjudication of the disputes under Section 33C(2) of the Industrial

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Disputes Act. This question in our opinion has squarely been answered by this Court in the case of Treogi Nath (Supra). True it is that rendering this decision, this Court did not consider the explanation appended to Section 33C of the Act, as the lis pertained to period earlier to amendment but in view of what we have said above, excepting the widening of choice pertaining to Courts, explanation does not dispense with the requirement of specification of court by appropriate Government."

It is also well settled in catena of judgments that 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 33C(2) of the ID Act and the benefit sought to be enforced must necessarily be a pre-existing benefit or one flowing from a pre-existing right. The proceedings under Section 33C(2) of the ID Act are in the nature of execution proceedings which envisage a prior adjudication or recognition by an appropriate authority. The learned Single Judge in order dated 01.06.2018 has rightly relied in the cases of *Municipal Corporation of Delhi v. Ganesh Razak & Anr* reported in 1995 SCC (L&S) 296 and *Chief Engineer, East India Coal Co. Ltd. Bararee Colliery, Dhanbad v. Rameshwar & Ors.* reported in AIR 1968 SC 218 wherein the scope of Section 33C(2) of the ID Act have been interpreted. Reading of the said judgements makes it clear that the power of the Labour Court in a proceeding under Section 33C(2) of the ID Act being akin to that

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of the Executing Court. The power of the Executing Court is only to implement the adjudication already made by a decree and not to adjudicate a disputed claim which requires adjudication for its enforcement in the form of decree. The Labour Court is competent to interpret the award or settlement on which a workman bases his claim.

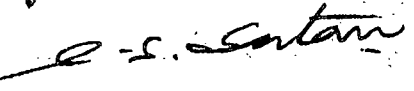
9. In the present case, it is seen that the deceased workman filed an application before the Assistant Labour Commissioner, Rohtak claiming the overtime wages for the period between 21.08.1977 to 11.12.1995, which was thereafter forwarded to the Regional Manager(North) Railway, Delhi but nothing has been placed on record to show that the said application was ever decided by any competent authority. The deceased workman preferred an application under Section 33C(2) of the ID Act before POCGIT on 20.11.1998 claiming overtime wages along with interest for the period between 21.08.1977 to 11.12.1995. It is also well settled that where the very basis of the claim or the entitlement of the workman to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement cannot be treated to be incidental to the benefit claimed and therefore the same would be clearly outside the purview of Section 33C(2) of the ID Act. In this background, it is observed that there was no prior adjudication of claim of the deceased workman by way of award or settlement. The POCGIT being an executing court cannot adjudicate a disputed claim which requires adjudication for its enforcement in the form of decree. The

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Labour Court in exercise of its power under Section 33C(2) of the ID Act cannot enlarge the scope of the said provision by arrogating to itself the function of adjudicating the dispute relating to the claim of the nature made by the workmen herein. The limitations placed on the Labour Court under Section 33C(2) of the ID Act are of such a nature which do not permit it to entertain a claim put forward by a workman in respect of a matter which is not based on an pre-existing right.

10. Without expressing any opinion on the merits of the issues sought to be raised, we find no infirmity in the order dated 28.03.2007 passed by the learned Single Judge. The appeal is dismissed.


SANGITA DHINGRA SEHGAL, J.


G.S.SISTANI, J.

OCTOBER/6, 2018

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