

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

WP(C).No. 15945 of 2011 (P)

PETITIONER:

**M.M.JOSEPH,
MANJALAMKUNNEL HOUSE,
KAYOORI P.O., ANICAD, KOTTAYAM.**

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENT(S):

- 1. LABOUR COURT,
ERNAKULAM, KOCHI-31.**
- 2. K.T.MATHEW,
MANAGING PARTNER, K.M.S.PAIKA,
KALAPPURAKKAL, PAIKA-686 577.**
- 3. SAJI MATHEW,
KMS PAIKA, POOVARANI-686 577.**

**R BY GOVERNMENT PLEADER SRI.A.RANJITH
R2 & R3 BY ADVS. SRI.B.ASHOK SHENOY
SMT.LAKSHMI B.SHENOY**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 28-01-2015, THE COURT ON 13-03-2015 DELIVERED THE
FOLLOWING:**

mbr/

WP(C).No. 15945 of 2011 (P)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 : TRUE COPY OF AWARD DATED 10.10.1994 IN I.D.NO.50/1993.

**EXHIBIT P2 : TRUE COPY OF CLAIM PETITION NO.48/2009 FILED BY THE
PETITIONER BEFORE THE 1ST RESPONDENT DATED 27.7.2009 ALONG
WITH THE CALCULATION STATEMENT.**

**EXHIBIT P3 : TRUE COPY OF WRITTEN STATEMENT FILED IN CLAIM PETITION
NO.48/2009 BY THE 2ND RESPONDENT DATED 17.3.2010.**

**EXHIBIT P4 : TRUE COPY OF ORDER DATED 27.1.2011 OF THE 1ST RESPONDENT IN
C.P.NO.48/09.**

RESPONDENT'S EXHIBITS: - **NIL**

/TRUE COPY/

P./S. TO JUDGE

mbr/

CR

K. VINOD CHANDRAN, J

W.P(C) No. 15945 of 2011 P

Dated this the 13th day of March, 2015

J U D G M E N T

A question of seminal importance, as to whether under Section 33C(2) of the Industrial Disputes Act, 1947 (for short the “I.D.Act”), the Labour Court is empowered to award interest, which has not been specifically granted in an award passed under the I.D. Act, is raised herein. When computation in terms of money is sought on the basis of a legal entitlement or on the basis of an award or settlement, and there is no specific provision to grant interest, could the principles of equity be invoked? When the claim is based on an award, will not the grant of interest be regulated by the award and will not an award; silent on that aspect be deemed to be a refusal of interest? The question is raised on the well established principle, that the Labour Court, under Section 33C(2), exercises power akin to an

execution court as contemplated under the Civil Procedure Code, 1908 [for brevity "CPC"].

2. The background facts are that the petitioner in the writ petition was a Conductor of a stage carriage operated by the management. A checking conducted on a particular day, revealed ticket-less travel of two passengers. The Conductor was charge-sheeted and found guilty in an enquiry and imposed punishment of dismissal from service. On a reference made, as to the justifiability of such dismissal, the enquiry conducted against the workman was sustained. When the matter was taken for final hearing, on the question of proportionality of punishment, an endorsement was made that the parties had settled the dispute. Later, the workman resiled from the said settlement and filed an application for considering the question on merits since the workman contended that he was not aware of the consequences and the full implication of the compromise terms.

3. The Industrial Tribunal, Kollam recused itself from the case and it was then transferred to the Industrial Tribunal, Alappuzha. The said Tribunal considered the issue on merits and found that there was absolutely no case of misappropriation and the ticket-less travel could not, at all, be attributed to the Conductor. The Tribunal found that there was undue rush on that day, in the stage carriage and the conductor could not be faulted. The Tribunal, under Section 11A, interfered with the punishment of dismissal and modified it to one of warning. The relief granted was in the following terms:

“The workman is entitled for reinstatement of service with the benefit of full backwages. The award is passed accordingly”.

4. The management challenged the award before this Court in a writ petition, then a writ appeal and finally a Special Leave Petition before the Hon'ble Supreme Court, all of which ended in favour of the

workman. The order of reinstatement and award of backwages stood confirmed. Admittedly after the award was passed on 11.11.1994, when the matter was pending before this Court under Article 226 of the Constitution, the workman was reinstated in service on February 1996. This was pursuant to a specific order dated 13.12.1998 passed in O.P.No.15787 of 1995 directing reinstatement of the workman, as verified by me from the judges papers of the said case.

5. The subsequent proceedings will also be of some import. O.P.No.15787/1995 challenging the award was disposed of by judgment dated 05.01.2005, which judgment stood affirmed in W.A No.848/2005, by judgment dated 31.01.2006. SLP (C) No.10761/2006 filed by the management stood dismissed on 26.10.2007. The petitioner in the meanwhile, had retired from service on 30.04.2003, on attaining the age of superannuation. The workman then, approached the Labour Court, under

Section 33C(2) with Claim Petition No.48/2009, which was disposed of by the impugned order dated 27.01.2011.

6. The Labour Court under Section 33C(2) granted the entire backwages claimed by the workman; which stood admitted by the management. The claim for interest specifically raised before the Labour Court, under Section 33C(2), stood declined for the reason that the award of the Labour Court, in the reference, produced as Ext.P1, dated 10.10.1994 did not at all stipulate any interest to be paid on the backwages. The application filed under Section 33C(2) was found to be one, for giving effect to Ext.P1 award. The award having not specifically granted any interest, the petitioner was found disentitled to interest.

7. The learned counsel for the petitioner would urge that interest is an equitable relief which could be granted by the Labour Court, when computing the benefits due to the petitioner; by virtue of an award. That

equitable relief would be one, which requires no adjudication and computation in terms of money as stipulated under Section 33 C(2), could be made by the Labour Court on the mere exercise of discretion, is the plea. The petitioner's counsel also has an alternative contention that in any event the workman would be entitled to claim such interest falling back upon the provisions of the Interest Act, 1978.

8. The learned counsel for the respondent however, would urge that the proceedings under Section 33C(2), as is trite, is in the nature of execution proceedings and what is not granted in the award cannot be allowed by the Labour Court, in an application for execution. The unassailable position is that no execution court can go behind the decree, which it seeks to execute and grant anything more than that was granted in the decree. There is also no legal provision which entitles interest on such claims.

9. The reliance placed on the provisions of the Interest Act, is on a misunderstanding of the provisions, argues counsel. Interest Act takes into account only proceedings for recovery of any debt or damages, which has to be understood as the original proceeding for such recovery, meaning a suit for recovery of debt or damages or in the present circumstances, the proceedings in reference, which led to the original award passed by the Labour Court; wherein backwages were granted. If such claim of interest is not made in the proceedings itself, then, the power of the Court dealing with the original proceeding, to grant interest, cannot be deferred; for exercise, at the time of execution. The provisions under Section 4 of the Interest Act would only apply in the case of there being a specific provision in any enactment, which is absent in the present case; goes the argument.

10. The Labour Court, as also the counsel for the respondents, proceed on the premise that proceedings

under Section 33C(2), is akin to that of an execution Court, under the Code of Civil Procedure. Undoubtedly, it has been stated oftener than ever, that the proceedings under Section 33C is akin to that of an execution. However, it is one thing to say that the power is akin to that of an execution Court and quite another, to assert that it exercises the jurisdiction, conferred on the execution Court, under CPC. The powers granted to the execution Court, under the CPC, is not that which is exercised by the Labour Court under Section 33C(2). If that be so, then, definitely one could import the principle that the execution court cannot go behind the award of a Labour Court; which the claimants under Section 33C(2) seeks to execute. Otherwise there is no warrant for such an assumption.

11. Considering the question of limitation under the Industrial Disputes Act. **Bombay Gas Company v Gopal Biva [AIR 1964 SC 752]** held that the Labour

Court is not a Civil Court and the provisions of the Limitation Act would not be applicable. The said finding was despite the fact that in the earlier part of the judgment the Supreme Court found that a Labour Court under Section 33C(2), can decline computation, on the ground that the award, the benefit of which is sought to be computed in terms of money, is a nullity. The said finding was on the premise that Section 33C(2) was analogous to execution proceedings. Hence, there is a distinction insofar as Section 33C(2) being found to be analogous to the proceedings under Order XXI CPC; and of identical jurisdictional import.

12. In **Town Municipal Counsel, Athani v Labour Court [AIR 1969 SC 1335]** the proposition as to the inapplicability of the Limitation Act, to proceedings under the I.D Act; was reiterated on the findings that the Courts constituted thereunder, are not Courts under the CPC. In **KSEB V T.P Kunjalamma [AIR 1977 SC 282]**,

Town Municipal Corporation (supra) stood overruled, insofar as; in a proceeding permitted by an enactment before a Civil Court, Limitation Act was held to be applicable. But the position in **Nithyanand. M Joshi v. Life Insurance Corporation [AIR 1970 SC 209]** stood undisturbed insofar as a Labour Court is concerned.

13. The Labour Court was found to be a special Court constituted under a separate enactment and the Limitation Act was found to be not applicable to such proceedings. There has been considerable deviation insofar as relief to be granted, when delay, that too an untimely delay, is occasioned. The Hon'ble Supreme Court has in recent decisions held the moulding of relief, to be the discretion of the Court, on grounds of delay. We are not concerned with that question.

14. What is significant is the declaration of the Hon'ble Supreme Court that the Labour Court would not be a Civil Court. While conceding the accepted position

that the Labour Court exercises jurisdiction akin to execution proceedings; under Section 33C(2), it is to be emphasised that the Labour Court would not be constrained, insofar as the jurisdiction being confined to that, exercised under Order XXI of the CPC. The CPC has been held to be a guide insofar as any adjudication proceeding is concerned. But one cannot limit or restrict the powers of a Special Court; under the provisions of the CPC. The Labour Court hence would not be entitled to fall back on the provisions of Section 34 to grant interest when passing an order of payment of backwages nor could it be said that; when such an interest is not granted; under sub section (2) of Section 34, there is a deemed refusal as provided therein; when the decree itself is silent on that aspect.

15. One should pause here to consider provisions of the CPC, which is "an Act to consolidate and amend the laws relating to the procedure of the Courts of

Civil Judicature". The entitlement to interest, of a plaintiff, in a suit for recovery, is not under Section 34 of the CPC and that would depend upon the contract on which the claim is based. Section 34(1) confers a discretion on the Court to award reasonable interest from the date of suit to the date of decree and future interest from the decree till payment; the latter not exceeding six percent, if the liability is not one arising from a commercial transaction. The interest so awarded, is in addition to "any interest adjudged on such principal sum for any period prior to the institution of the suit". Sub-section (2) specifically provides for a deemed refusal, if the decree is silent on the future interest. This incapacities an executing Court under Order XXI, from awarding any interest from the date of decree to the date of payment. Such a fetter does not inhibit a Labour Court under Section 33C(2).

16. Section 33 C(2) reads as under:-

“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.”

17. Under the said provision, the workman could seek for computation in terms of money, any benefit which is capable of such computation. Decisions are legion that such benefit could be one under a settlement or an award, or any other benefit legally due, which is capable of being computed in terms of money. Any money due to a workman from the employer under a settlement or an award or under the provisions of Chapter V-A or V-B is capable of being recovered through an application to the appropriate Government, under Section 33C. Sub-section (2) of Section 33C is, however, more widely

worded. “Any money or any benefit which is capable of being computed in terms of money” could be sought for in such a proceeding. Hence a claim made under an award or a settlement or a benefit which is legally due, and possible of computation in terms of money; would be entitled to be urged under Section 33C(2).

18. A learned Single Judge of this Court has in **G 4 S Security Services (India) Pvt. Ltd. v. Satheesh Kumar [2010(1) KLT 463]** considered the entire gamut of decisions on Section 33C(2) by this Court and the Hon’ble Supreme Court and found that a claim for backwages, as per an award could be claimed under Section 33C(2); to be computed in terms of the Minimum Wages Act. Despite there being a procedure stipulated under the Minimum Wages Act, for recovery of such amounts; it was held that the entitlement to minimum wages as per a notification issued by the appropriate Government was a benefit; which could be computed in

terms of money and which required no separate adjudication or a reference under Section 10 of the I.D Act.

19. The present proceedings under Section 33C (2), is one initiated by the workman for the benefit, which accrued to him under an award. That backwages is a legitimate claim flowing from the award itself; cannot be disputed. Would the Courts be rendered helpless, in providing succour to a workman, by way of interest; if the payment of amounts due under an award is delayed? If the restriction under Section 34(2) of the CPC is adopted and there is no grant of interest in the original proceeding; there is definitely a deemed refusal. However CPC on its terms, in the matter of procedure is not adopted to proceedings under the ID Act. Then a delay, whether it be justified or not, would enable the Courts to step in, to ameliorate the prejudice caused to the workman. The learned counsel for the respondent would

contend that, if a proper proceeding under Section 33C(2) is initiated, then, on an order being passed, there could be future interest granted. If it be so, then why not for the period in which delay was caused; since obviously both would only be a mere mathematical exercise of computation.

20. Interest entitlement, even when specifically provided in a statute, is on the principles of equity. On a consideration of the facts, occasioning the delay in satisfaction of an award, a Court would be entitled to consider application of interest on a granted amount, for the period of delay. There is no prohibition that two claims which are possible to be computed in terms of money has to be agitated separately. It cannot also be said that there need to be any adjudication, on the aspect of interest. De hors the provisions of the Interest Act, going by the principles of equity alone, this court would hold that the claim for interest would be a question of

discretion, even under a claim raised under Section 33 C (2) which has to be considered on the facts, which come out in a particular case.

21. The learned counsel for the petitioner has placed before me a decision of the High Court of Judicature at Mumbai in W.P(C).No.5529/2009 [**Prabhavati Ramgarib B v Divisional Railway Manager**]. The learned Single Judge in the said decision found on a an elaborate consideration of the various provisions of the Industrial Disputes Act, Civil Procedure Code and the Interest Act that the High Court has power under Article 226 to grant interest in appropriate cases. While agreeing with the said proposition, this Court would go a step further to find that the Labour Court examining an issue under Section 33C(2) could also exercise discretion insofar as the award of interest looking at the facts and circumstances of the case.

22. A brief glance into the decisions cited by the

Bombay High Court is enlightening. **Trojan & Co. Ltd. v. RM.N.N.Nagappa Chettiar [(1953) SCR 789]** was a case in which damages was claimed along with interest. The damages were claimed by the client of a stock-broker, for advising purchase of shares in a Company, without proper disclosure, and hence fraudulently. After affirming the award of damages, but with modification of the quantum; the grant of interest was also made on the reasoning:

“We think it is well settled that interest is allowed by a court of equity in the case of money obtained or retained by fraud”.

The following extract from the opinion of the Privy Council in **Johnson v. Rex [(1904) A.C.817]** was quoted with approval:

“In order to guard against any possible misapprehension of their Lordships' views they desire to say that in their opinion there

can be no doubt whatever that money obtained by fraud and retained by fraud can be recovered with interest, whether the proceedings be taken in a court of equity, or a court of law, or in a court, which has jurisdiction both equitable and legal”.

23. Satinder Singh v. Amrao Singh [(1961) 3 SCR 676] considered an appeal from the judgment of the High Court, which declined interest for the compensation awarded under the East Punjab Requisition of Immovable Property (Temporary Powers) Act, 1948; on the ground that the statute excluded the provision for interest under the Land Acquisition Act of 1894. On the aspect of exclusion, it was held that:

“Stated broadly the act of taking possession of immovable property generally implies an agreement to pay interest on the value of the property and it is on this principle that a claim for interest is made against the State”.

Again quoting the **Privy Council in Inglewood Pulp and Paper Co. Ltd. v. New Brunswick Electric Power Commission [(1928) A.C.492]**, it was held:

“but for all that, the owner is deprived of his property in this case as much as in the other, and the rule has long been accepted in the interpretation of statutes that they are not to be held to deprive individuals of property without compensation unless the intention to do so is made quite clear. The right to receive the interest takes the place of the right to retain possession and is within the rule”.

Satinder Singh (supra) was followed in **Sovintorg (India) Ltd. v. State Bank of India [(1999) 6 SCC 406]** which held so:

“Interest cannot be claimed under Section

34 of the Civil Procedure Code as its provisions have not been specifically made applicable to the proceedings under the Act. We, however, find that the general provision of section 34 being based upon justice, equity and good conscience would authorise the Redressal Forums and Commissions to also grant interest appropriately under the circumstance of each case. Interest may also be awarded in lieu of compensation or damages in appropriate cases. The interest can also be awarded on equitable grounds as was held by this Court in *Satinder Singh v. Umrao Singh*”.

No pleading on fraud arises herein. But the principles stated in the afore cited decisions would squarely apply in considering the grant of interest on principles of equity.

24. The facts which led to the dismissal and the consequent setting aside of the dismissal, by the Industrial Tribunal, was referred to above. The Industrial

Tribunal had found that the workman is entitled to reinstatement with backwages as early as in 1994. The writ petition was filed by the management as O.P.No.15787/1995, which was dismissed on 05.01.2005. The petitioner moved an application for wages under Section 17B and pursuant to a specific direction issued in the Original Petition, the petitioner was granted reinstatement in February, 1996. There would have been no cause for the petitioner to file an application under Section 33C(2) at that point of time for reason of the pending Original Petition. Subsequently, the Original Petition stood dismissed on 05.01.2005 and W.A.No.840/2006 was filed which was dismissed on 31.01.2006. In the Writ Appeal, there was a stay in operation. The SLP also stood dismissed on 2007.

25. The learned counsel for the respondent management would argue that a claim having not been raised at any point of time, the workman would not be

entitled to interest on the said amounts, during the period in which the management had been validly prosecuting, the available remedies before the higher Courts. The petitioner retired while the proceedings were pending and even after the judgment in the SLP, there was a further delay of two years in approaching the Labour Court. On facts there would be no reason why this Court should exercise discretion to grant interest, is the argument.

26. On a specific query, as to why the management did not, voluntarily pay the backwages, the learned Counsel would argue that no prudent person would do that, especially in the circumstance of a valid proceeding having been instituted against the award, in which there was a stay of the award. The prudent litigant who choses not to comply with an order of the Court and challenge the same before the higher forums without complying with the direction in the award, on the basis of the stay orders issued by the higher forums should also be

willing to take the risk of the consequences, which would flow on the available remedies being exhausted to his detriment.

27. On facts it has to be noticed that the workman had been denied payment of the backwages he was granted in 1994 till 2011; when the management paid the amounts as per the order of the Labour Court under Section 33C(2). If it is held that the claim of interest is not sustainable then, the consequence of such finding would be that a management could with ceaseless impunity refuse to comply with an award passed by the Labour Court, till all the existing remedies are over and then at the end of the day without any reference to the passage of time, pay the amounts as awarded in the distant past. That, is not the intention of the Legislature; in providing for a separate remedy with separate procedure as also separate forum, for adjudication of Industrial Disputes which has been taken out of its normal

realm under the civil law.

28. Just as has been held in the cases relating to compulsory acquisition of land; the right to receive interest takes the place of the right to have received wages when it was due. The entitlement arises at the time when the employee was illegally kept away from employment, and deprived of his wages. Levy of interest, inter alia, takes into account the diminution of money value. Bereft of any technicalities; what Rs.1lakh could have achieved 20 years back cannot at all be compared to what it could purchase now. Interest compensates that, to an extent.

29. Principles of equity definitely, commend grant of interest when the management choses not to comply with an award of the Labour Court on the basis of valid proceedings before a higher forum. There can be no question, that the management is entitled to challenge orders adverse to itself, before the appropriate forum in

appeal or revision as provided by law. The specific provisions for grant of an interim order, is also based on the principles of equity since the party approaching the higher forum should not be prejudiced insofar as having to comply with an order, which he expects to get overturned in an appeal. By rote, the specific averments made in every affidavit accompanying an interim application for stay, is that “the applicant has a reasonable belief of success in the appellate forum and hence the appellant would be prejudiced insofar as the compliance is enforced when the challenge against the order is pending”. The undisputed corollary would be that, when against the reasonable expectation of the appellant, the appellate forum upholds the impugned order, necessary consequences would follow.

30. The reasonable belief stands dispelled by the appellate order and the reasonable expectation of the opposite party, who was deprived of the fruits of the

order, at the proper time, would be; some compensation for the delay caused, by an unsuccessful appellate or revisional proceeding. "He who seeks equity must do equity". The grant of interest compensates the loss caused to the workman and repairs the injury occasioned by deprivation of lawful employment and wages due at a distant, earlier point of time. Equity is not a one way street, nor are benefits legally admissible always found between the pages of an enactment/legislation. The guiding principles in Section 34 of the CPC would be the grant of interest, to a person who is made to wait, to reap the benefits of an order; by reason of the opposite party having availed an appellate remedy. **[2002 (2) KLT SN 6 (Case No.6) (Co-operative Sugars Ltd. v. Noorudeen)]**.

31. On the above reasoning, this Court finds that the claim of interest made by the petitioner is to be allowed.

32. There would be no purpose in remanding the matter for fresh consideration since before the Labour Court, the petitioner was claiming backwages between the period 1988 to 1996 and the workman was subject to a tortuous litigation up to the Hon'ble Supreme Court spreading over more than a decade. This Court could definitely exercise its discretionary power in looking at the facts to decide on whether there is a reasonable cause to allow the claim.

33. The interest would accrue from the date of payment of wages, meaning at the end of a month. This Court would limit the same from 11.11.1994 on which date the entire backwages were awarded; to the date of payment at the rate of 10% per annum. But however, excluding the period between the dismissal of the SLP and the filing of the claim petition before the Labour Court, Ernakulam. The backwages between 11.11.1994, the date of award and February, 1996, the date of

reinstatement, would carry interest from the latter date.

34. The said amounts shall be paid to the petitioner by the respondent within a period of one month from today, failing which the said amount shall carry further interest of 10% till payment.

Writ petition is allowed.

Sd/-
K. VINOD CHANDRAN,
JUDGE

jma

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P.A to Judge