

**IN THE HIGH COURT OF PUNJAB & HARYANA, AT
CHANDIGARH.**

Date of Decision: September 3, 2015.

Letters Patent Appeal No. 478 of 2014(O&M)

The Batala Co-operative Sugar Mills Limited ----Appellant

Versus

Hardip Singh and another ----Respondents

AND

Civil Writ Petition No. 6306 of 2004

The Batala Co-operative Sugar Mills Limited ----Petitioner

Versus

Hardip Singh and another ----Respondents

CORAM:Hon'ble Mr. Justice Satish Kumar Mittal

Hon'ble Mr. Justice Mahavir S. Chauhan

Present: Shri Rahul Sharma, Advocate, for the appellant/petitioner.

Shri B.S. Jaswal, Advocate, for respondents No.1.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporter or not? Yes/No
3. Whether the judgment should be reported in the Digest? Yes/No

Mahavir S. Chauhan, J.

Can a Labour Court, while answering a reference holding a workman entitled to reinstatement in employment without back wages, give him liberty to file an application under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short, 'the Act') to lay a claim to the back wages and

then take up an exercise under that provision to adjudicate the question “whether the workman is entitled to back wages and, if yes, to what extent?”, is the question that craves an answer in the instant intra court appeal (LPA No. 478 of 2014) and Civil Writ Petition No. 6306 of 2004, which have emanated from an award dated November 07, 2003 and Award dated December 05, 2013 passed by the Labour Court. In view of commonality of facts involved and law applicable, we propose to dispose of these cases by this common order being passed in LPA No. 478 of 2014, The Batala Cooperative Sugar Mills Limited versus Hardip Singh and another.

02. Before setting out to answer the cited question it is necessary to acquaint ourselves with the facts of the case necessary for adjudication of the matter.

03. Vide order dated October 10, 1992, Hardip Singh (here-in-after referred to as 'the workman'), was employed by 'The Batala Cooperative Sugar Mills Limited' (here-in-after referred to as 'the management') as a Turbine Driver. The said post was later on converted from a regular (permanent) post to a seasonal permanent post on account of amendment of staffing pattern of the management by the Registrar Cooperative Societies, Punjab. Accordingly, the workman was paid off and was put on probation for the crushing season vide order dated April 14, 1993, and ultimately, vide order dated October 09, 1993 his services were terminated. The workman raised an industrial dispute which resulted into a reference to the learned Labour Court, Amritsar in the following terms:

“Whether termination of the services of Sh. Hardip Singh workman is justified and in order?, If not, to what

relief/exact amount of compensation is he entitled?"

04. After affording opportunity to the parties to lead evidence and of being heard, learned Labour Court, vide award dated November 07, 2003, answered the reference in the following terms:

*"In view of my findings on the above issues, the reference is answered in favour of the workman and against the management and the workman shall be reinstated in service with all benefits except back wages for which he shall be free to file application under Section 33C(2) of the Act. The direction is being given in view of the decision laid down by the Hon'ble Supreme Court in **Managing Director U.P. Warehousing Corporation and others versus Vijay Narayan Vajpayee, AIR 1980 SC 840** and following by Hon'ble Punjab and Haryana High Court in **Jagtar Singh versus State of Punjab and others, 2002(2) Recent Services Judgments 341 Supra**. The workman is directed to report for duty within 30 days the publication of the award."*

05. While the workman felt satisfied with the award dated November 07, 2003 and did not lay a challenge to it, the management assailed its correctness and sustainability by way of Civil Writ Petition No. 6306 of 2004.

06. On the other hand, on the strength of direction of the learned Labour Court, the workman filed an application under Section 33C (2) of the Act before the Industrial Tribunal, Gurdaspur wherein he claimed various benefits and the management in its defence took the stand that the matter was pending before this Court and, therefore, the foundation of claim for wages was disputed. The Tribunal, vide award dated December 05, 2013, held that the workman was entitled to the back wages with effect from the date of demand notice, together with interest @6% per annum from the

date of the award till realization.

07. To lay a challenge to award dated December 05, 2013, management brought Civil Writ Petition No. 3836 of 2014 which has been dismissed by the learned Single Judge vide order dated March 03, 2014, which is under challenge in the instant intra court appeal brought by the management under Clause X of the Letters Patent.

08. Before the learned Single Judge it was argued on behalf of the management that as per award dated November 07, 2003 back wages having been denied by the learned Labour Court, the application under Section 33C (2) of the Act was not maintainable. However, the learned Single Judge did not agree with the contention and dismissed the writ petition saying that:

“5. After hearing the counsel for the petitioner this Court is of the opinion that the said submission is without any basis. Once the award has been passed in favour of the workman necessary consequence would have been that the workman was entitled for the back wages. However, the Labour Court while ordering reinstatement of the workman with all benefits gave liberty to the workman to file an application under Section 33-C (2) of the Act in spite of the fact that it had jurisdiction to grant and decide the issues of back wages.

*6. The Hon'ble Apex Court recently in **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & others 2013 (10) SCC 324** has considered the issue of entitlement of back wages to the workman and held that it is the normal rule and the Court was to take into consideration the length of service of the employee/workman and the nature of misconduct and it is not for the superior Court to take away the amount of back wages which had been granted by the Labour Court. In the present case, the Labour Court vide award in question came to the conclusion that the workman was deemed to have been confirmed and his service conditions were wrongly changed without issuance of any notice and had directed reinstatement. The*

petitioner-management was unsuccessful in getting any interim order against the said award and presently the workman is working with the petitioner-management and thus, the right of the work man in the form of back wages for a period of about 10 years cannot be denied.

7. Accordingly, keeping in view the said principles, no illegality or irregularity can be found in the well reasoned order of the Labour Court, directing payment of back wages to the workman. The present writ petition is, accordingly, dismissed in limine, being without any merit.”

09. We have heard learned counsel for the parties.

10. Learned counsel appearing for the management has taken us through **State Bank of India versus Ram Chandra Dubey,(2001)1 SCC 73** and **State of Uttar Pradesh versus Brijpal Singh, (2005)8 SCC 58** to contend that when a reference is made to an Labour Court/Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but also to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Labour Court/Tribunal and can be appropriately examined only in a reference because when a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question was referred to the Tribunal as to the nature of relief to be granted to the workman; and 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 such benefit, he can approach the

Labour Court under Section 33C(2) of the Act. The benefit sought to be enforced under Section 33C (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 the Labour Court exercising powers under Section 33C (2) of the Act while the latter does not. Thus, according to the learned counsel for the management the appropriate forum where question of back wages could be decided was only the proceeding before the Labour Court/Tribunal to which a reference under Section 10 of the Act was made and that Labour Court/Tribunal while answering that reference had held the workman not entitled to back wages.

11. On the contrary, on behalf of the workman a reference has been made to Managing Director, Uttar Pradesh Warehousing Corporation versus Vinay Narayan Vajpayee, (1980)3 SCC 459 and Jagtar Singh versus State of Punjab, 2003(3) SCT 157 to contend that the learned Labour Court has rightly reserved liberty to the workman to invoke the provisions of Section 33C(2) of the Act and no fault can be found with the Tribunal allowing back wages to the workman vide award dated December 05, 2013 because such a power is available to the Labour Court/Tribunal as held by this Court in the case of Jagtar Singh (supra).

12. No other or further point has been urged on either side.

13. The question as regards scope and ambit of Sections 10(i)(c) and 33 C (2) of the Act is no longer *res integra*.

14. The Second Schedule appended to the Act enumerates the

matters within the jurisdiction of Labour Courts and such matters include disputes with regard to discharge or dismissal of workmen, including reinstatement of, or grant of relief to, workmen wrongfully dismissed. Section 10(i)(c) of the Act provides that “Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication”; and according to Section 33C(2) of the Act, “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.”

15. While there is no dispute that when a reference is made to an Industrial Tribunal/Labour Court to adjudicate the question not only as to whether the termination of a workman is justified or not but also to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none or say when a reference is made under Section 10(i) (c) of the Act, not only

validity of order of termination and reinstatement of the workman but all incidental questions thereto arising in the matter can also be determined by the Tribunal/Labour Court. But even a cursory look at Section 33C(2) of the Act would reveal that a proceeding under this Section is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudged, or otherwise duly provided for. The language in which Section 33C (2) of the Act has been couched, restricts jurisdiction of the Labour Court only to decide the question as to “the amount of money due or as to the amount at which such benefit should be computed”.

16. In *Chief Mining Engineer, M/s. East India Coal Co., Ltd., Bararee Colliery Dhanbad versus Rameshwar and others, AIR 1968 SC 218: (1968)1 SCR 140* a three-judge Bench of the Hon’ble Supreme Court of India examined the scope of Section 33C(2) of the Act and after referring to previous judgments on the subject, ruled as under:

*“3. The contention as-to jurisdiction of the Labour Court depends on the true construction of Section 33-C (2) as it stood in 1962 when these applications were filed and before its amendment by Act 36 of 1964. Section 33-C (2) has so far been the subject matter of decision by this Court in three cases, viz., **Punjab National Bank Ltd. v. Kharbanda, 1962 Supp (2) SCR 977, Central Bank of India v. Rajagopalan, 1964-3 SCR 140 and Bombay Gas Co. Ltd. v. Gopal Bhiva, 1964-3 SCR 709.***

4. The following propositions on the question as to the scope of Section 33-C (2) are deducible from these three decisions :-

(1) The legislative history indicates that the legislature after providing broadly for the investigation and settlement of disputes on the basis of collective bargaining, recognised the need of individual workmen of a speedy remedy to enforce their existing individual rights and therefore inserted Section 33A in 1950 and Section 33-C in 1956. These two Sections illustrate cases in which individual workmen can enforce their rights without having to take recourse to Section 10(1) and without having to depend on their union to espouse their case.

(2) In view of this history two considerations are relevant while construing the scope of Section 33-C. Where industrial disputes arise between workmen acting collectively and their employers such disputes must be adjudicated upon in the manner prescribed by the Act, as for instance under Section 10(1). But having regard to the legislative policy to provide a speedy remedy to individual workmen for enforcing their existing rights, it would not be reasonable to exclude their existing rights sought to be implemented by individual workman. Therefore though in determining the scope of Section 33-C care should be taken not to exclude cases which legitimately fall within its purview, cases which fall, for instance under Section 10(1), cannot be brought under Section 33C.

(3) Section 33-C which is in terms similar to those in Section 20 of the Industrial Disputes (Appellate Tribunal) Act 1950 is a provision in the nature of an executing provision;

(4) Section 33-C (1) applies to cases where money is due to a workman under an award or settlement or under Chapter VA of the Act already calculated and ascertained and therefore there is no dispute about its computation. But sub-section (2) applies both to non-monetary as well as monetary benefits. In the case of monetary benefit it applies where such benefit though due is not calculated and there is a dispute about its calculation;

(5) Section 33-C (2) takes within its purview cases of workmen who claim that the benefit to which they are entitled should be computed in terms of money even though the right to the benefit on which their claim is based is disputed by their employers. It is open to the Labour Court to interpret the award or settlement on which the workmen's right rests.

(6) The fact that the words of limitation used in Section 20(2) of the Industrial Disputes (Appellate Tribunal) Act 1950 are omitted in Section 33-C (2) shows that the scope of Section 33-C (2) is wider than that of Section 33-C (1). Therefore, whereas sub-section (1) is confined to claims arising under an award or settlement or Chapter V-A, claims which can be entertained under sub-section (2) are not so confined to those under an award, settlement or Chapter VA.

(7) Though the court did not indicate which cases other than those under sub-section (1) would fall under sub-section (2), it pointed out illustrative cases which would not fall under sub-section (2), viz., cases which would appropriately be adjudicated under Section 10(1) or claims which have already been the subject-matter of settlement to which Sections 18 and 19 would apply.

(8) Since proceedings under Section 33-C(2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the benefit claimed by a workman is in such cases in the position of an executing court, the Labour Court like the executing court in execution proceedings governed by the Code of Civil Procedure, is competent under Section 33-C (2) to interpret the award or settlement where the benefit is claimed under such award or settlement and it would be open to it to consider the plea of nullity where the award is made without jurisdiction.

5. It is clear that the right to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an industrial workman and his employer. Since the scope of sub-section (2) is wider than that of sub-section (1) and the sub-section is not confined to cases arising under an award, settlement or under the provisions of Chapter V-A, there is no reason to hold that a benefit provided by a statute or a Scheme made thereunder, without there being anything contrary under such statute or Section 33-C (2), cannot fall within sub-section (2). Consequently, the benefit provided in the bonus scheme made under the Coal Mines Provident Fund and Bonus Schemes Act, 1948 which remains to be computed must fall under sub-section (2) and the Labour Court therefore had jurisdiction to entertain and try such a claim, it being a claim in respect of an existing right arising from the relationship of an industrial workman and his employer. The contention that the Labour Court had no jurisdiction because the

claim arose under the said scheme or because the benefit was monetary or because it involved any substantial question between the Company and the workmen must, in view of the said decisions, fail.”

17. In **Central Inland Water Transport Corporation Ltd versus The Workmen and another, (1974)4 SCC 696**, the position of law was reiterated by the Hon’ble Apex Court as follows:

*“It is now well-settled that a proceeding under Section 33C (2) is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workmen from his employer, or if the workman is entitled to any benefit which is capable of being computed in term of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudged, or, otherwise, duly provided for. In **Chief Mining Engineer East India Coal Co. Ltd. v. Rameswar, (1968) 1 SCR 140** it was reiterated that proceedings under Section 33C (2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the benefit claimed by workmen is in such cases in the position of an executing court. It was also reiterated that the right to the benefit which is sought to be computed must be an existing one, that it to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an Industrial workmen and his employer.”*

18. In **State Bank of India versus Ram Chandra Dubey**(supra), the case put forth by the workmen was that they were appointed between May 25, 1961 to January 19, 1962 for a period of two months and continued further from time to time but their services were terminated on August 16, 1969. The Tribunal passed an award holding that the workmen were entitled to be reinstated in service with effect from August 16, 1969. The award was, however, silent in regard to payment of back wages for the period between

the date of termination of services of the workmen and their reinstatement. Challenging the said award, a writ petition (No. 9901/87) was filed by State Bank of India before the High Court. That petition was, however, dismissed. On disposal of the writ petition an application was filed by the workmen before the Central Government Industrial Tribunal-cum-Labour Court under Section 33C(2) of the Act, for computation of the back wages on the basis of the award and subsequent order of the High Court. The Tribunal-cum-Labour Court by an order made on November 19, 1998 allowed the application and computed the amounts payable to the workmen by way of back wages. Against that order, a writ petition (No. 8076 of 1999) preferred by the Bank before the High Court was dismissed. The Hon'ble Supreme Court set aside the award of the Tribunal as affirmed by the High Court, by holding as under:

“7. When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

8. The principles enunciated in the decisions referred by either side can be summed up as follows :

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 Act. The benefit sought to be enforced under Section 33C(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 33C(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.”

19. In **State of Uttar Pradesh versus Brijpal Singh**(supra), the respondent was appointed as a Seasonal Clerk on temporary and *ad hoc* basis in the office of the Senior Marketing Inspector on stop-gap arrangement vide order dated April 22, 1987. The services of the respondent were terminated on July 03, 1987. Feeling aggrieved by the termination order, the respondent filed Writ Petition No. 15172 of 1987 before the High Court. Vide order dated October 28, 1987, High Court issued notice to the

appellants and stayed the operation of the order of termination of services of the respondent. When the writ petition was still pending before the High Court, respondent filed Miscellaneous Case No. 11 of 1993 before learned Labour Court, Meerut, for payment of salary from July 04, 1987 till July, 1993 and bonus for the years 1987 to 1992 under Section 33C(2) of the Act. Learned Labour Court, vide its order dated August 23, 1995, directed the appellants to make payment of salary and bonus for the period from 1987 to 1992 within one month from the date of the said order. Aggrieved by the order of the Labour Court, the appellants filed Writ Petition No. 36406 of 1995 before the High Court contending that the Labour Court had no jurisdiction to try and decide the controversy and that the order passed by the Labour Court suffered from manifest error of law apparent on the record and hence was liable to be set aside. The High Court, by order dated January 09, 2002, dismissed Writ Petition holding that the respondent-workman was entitled for the salary and other allowances, which admittedly had not been paid to him; that so long as the Writ Petition was not finally disposed of, the liability to pay, if any, to the concerned workman under Section 33C(2) of the Act could not be avoided by the appellants and, therefore, the petition filed by the respondent under Section 33C(2) of the Act was competent and maintainable. Aggrieved by the judgment and order dated January 09, 2002, the appellants preferred appeal by way of special leave wherein the Hon'ble Apex Court set aside the award of the Tribunal and order passed by the High Court, and observed as under:

“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 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) 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 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 1983 dated 23.8.1995 and the order dated 9.1.2002 passed by the High Court in C.M.W.P. No. 36406 of 1995 as illegal and uncalled for. We do so accordingly.”

20. The position of law as aforesaid, has been reiterated in **D. Krishnan and another versus Special Officer, Vellore Coop. S.M. and another, (2008)7 SCC 22.**

21. Contention of the learned counsel for the workman that the learned Labour Court was right in reserving liberty to the workman to agitate his claim for back wages under 33 C(2) of the Act and it has been so held in **Jagtar Singh versus State of Punjab** and **Managing Director, Uttar Pradesh Warehousing Corporation versus Vinay Narayan Vajpayee**

(supra) is ex facie fallacious and misconceived. A perusal of the judgment

in the case of Jagtar Singh (Supra) no doubt reveals that the matter was disposed of by holding, "In the result, the writ petition is allowed. Award Annexure P.2 is set aside. The termination of the petitioner's service is declared illegal and quashed. Consequently, he shall be entitled to be reinstated in service **with all benefits except back wages for which he shall be free to file application under Section 33-C(2) of the Act.** The last mentioned direction is being given in view of the law laid down by the Supreme Court in **Managing Director, U.P. Warehousing Corporation and others v. Vijay Narayan Vajpayee, AIR 1980 SC 840.** It is also made clear that the competent authority of the Corporation shall be free to pass fresh order in accordance with law in the matter of termination of the petitioner's service.", but the very fact that to so hold reliance was placed on **Uttar Pradesh Warehousing Corporation versus Vinay Narayan Vajpayee** (supra) wherein order of the High Court allowing full back wages to the workman was set aside by the Hon'ble Supreme Court, goes to show that this Court did not intend to grant liberty to the workman to lay claim to back wages under Section 33 C (2) of the Act and such liberty, in our opinion, pertained to other benefits, 'except back wages', available to the workman. Be that as it may, judgment in **Jagtar Singh's case** (supra) by a learned Single Judge of this Court has to give way to the above cited judgments of the Hon'ble Supreme Court.

22. From an overview of the cited judgments it is manifestly clear that a Labour Court, while answering a reference under Section 10(i)(c) of the Act, holding a workman entitled to reinstatement in employment without back wages, cannot reserve him liberty to file an application under Section 33C (2) of the Act, to lay a claim to the same and the Labour

Court/Industrial Tribunal cannot take up an exercise under Section 33C(2) of the Act to adjudicate the question whether the workman is entitled to back wages and, if yes, to what extent.

23. The learned Single Judge, in the impugned order has also referred to **Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalya (D.Ed.), (2013)10 SCC 324** to support workman's claim for back wages. We are afraid, workman's claim for back wages cannot sustain firstly because, as here-in-before stated, such a claim could not be maintained under Section 33-C(2) of the Act and secondly because the workman has not challenged the correctness of award dated November 07, 2003 and has allowed the said award to attain finality in so far it denies back wages to him. Therefore, the judgment in the case of **Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalya (D.Ed.)** (supra) cannot work to the benefit of the workman.

24. In view of the above, CWP No. 6306 of 2004 is partly allowed and part of the award dated November 17, 2003 reserving liberty to the workman to lay claim to back wages under Section 33-C(2) of the Act is set aside and in the consequence, LPA No. 478 of 2014 succeeds and is allowed; order dated March 03, 2014 passed by the learned Single Judge and award dated December 05, 2013 passed by learned Industrial Tribunal, Gurdaspur, are set aside.

23. In the peculiar facts and circumstances of the case, parties are left to bear their own costs.

[SATISH KUMAR MITTAL]
JUDGE

[MAHAVIR S. CHAUHAN]
JUDGE

September 3, 2015