

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3829/2002**

Judgment reserved on: 19.05.2015

Judgement pronounced on: 07.07.2015

MURARI LAL

..... Petitioner

Through: Mr.S.B.S. Vashistha, Advocate with
petitioner in person.

versus

M/S. D.C.M. LTD & ANR.

..... Respondents

Through: Mr. Harvinder Singh, Advocate.

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. The brief background of the case is that the respondents M/s Delhi Cloth Mills had filed the writ petition no. 2476/1988 challenging the legality of the order of the Lieutenant Governor and others whereby the permission to close down the company under Section 25(O) of the Industrial Disputes Act was denied.

2. During the pendency of the said writ petition before the full court, the parties had reached to a settlement dated 26.11.1998 which settlement was confirmed by the full Bench of this court. In that settlement, the respondent had agreed to pay the retrenchment compensation and other benefits to its

workmen as defined in Clause 10 (1) of the Settlement.

3. The petitioner moved CM No. 3224/89 before the full Bench of this court in the said writ petition claiming the compensation in terms of the said settlement. The necessity of filing the said application arose since the respondent did not treat the petitioner as the workman of the mill.

4. The full Bench of this court issued the following directions:-

“The Full Bench was only concerned with the legality of the order of the Lt. Governor. Thus, the grievances which are raised by these various applicants cannot be redressed in this writ petition and this is not the proper forum to determine individual claims of workmen. The validity and legality of transfer orders made by the Mills and the question whether a particular employee of the Mill is a workman or not cannot be gone into in this writ petition. The two advocates, one representing the management and the other representing the workmen/Unions have been appointed to go into the individual grievances of the employees claiming to be workman. The question of their entitlement, if any, under the settlement will be considered by these two advocates.”

5. The petitioner thereafter filed the application under Section 33-C(2) of the Act which was registered as CCA No. 82/94 before the Labour Court. In the said application, the petitioner had claimed the benefit accrued to him under the said settlement agreement. His plea in the application was that he alongwith other 31 workmen through Sh. Mahesh Srivastava, Advocate, moved an application no. 3224/19889 in writ petition No. 2476/1988 wherein he was directed to approach the two Advocates appointed to go into

the individual grievances of the employees claiming to be workman. His further contention was that two Advocates in the Arbitration Panel were Sh. Ram Murthi and Sh. Rajiv Sawhni and on demise of Sh. Ram Murthi, Sh. Rajendera Sacchar, Retd. Judge High Court of Delhi became member of the Arbitration Panel. He alongwith other workers in compliance of the order of the High Court of Delhi, made an application before the Arbitration Panel in the year 1991. He had been assured by his counsel Sh. Mahesh Srivastava, Advocate, that the Arbitration Panel was hearing the matter. He waited but when nothing happened for a long time, he inquired from his Advocate, Sh. Mahesh Srivastava and asked him to return his case papers on 16th January, 1993. The papers were returned to him on 20th June, 1993. He thereafter moved an application before the Labour Commissioner on 11th March, 1993 on which the ALC Sh. K.R. Verma gave his report dated 4th February, 1994. He sent the demand notice to both the members of the Arbitration Panel besides the management which were duly served but no reply was received. He claimed that he was entitled for a sum of Rs.1,14,756/- towards its retrenchment compensation, notice pay and 72 months wages Ex-Gratia.

6. The Labour Court, after completion of the trial before it, passed the impugned order dated 30th January, 2002 wherein the court had held that the

applicant under Section 33-C(2) of the ID Act was not maintainable in view of the fact that the applicant's entitlement to this money had been objected to by the employer and that his entitlement had not yet been determined by the Arbitration panel pursuant to directions of the court in Civil Miscellaneous Application No. 3224/89 in Writ Petition No. 2476/88 of the petitioner. The Labour Court in support of its conclusion has relied upon the findings of Supreme Court in the case of *Municipal Corporation of Delhi Vs. Ganesh Razak and Anr reported in (1995) 1 SCC 235.*

7. The present writ petition has been filed by the petitioner/workmen, aggrieved by the said impugned order of the Labour Court. In the present writ petition, the petitioner has contended that he was appointed as a weaver w.e.f. 11.09.1982 by the management of respondent No.1 and he had worked with the management till the closure of the mill on 1.02.1989. He has alleged that he was covered under the settlement and entitled to get compensation as per paras 14.1 to 15.6 of the said Settlement. He has also recorded the fact that he had filed CM No. 3224/89 in writ petition No.2476/88 before the Full Court and on dismissal of his application moved an application before the panel of lawyers as per para 23 of the settlement in the year 1991 and that his Advocate, Sh. Mahesh Srivastava, had never

informed him about the fate of his application. He moved an application before the Labour Commissioner but no settlement was arrived at before the Assistant Labour Commissioner, District North and then he filed an application under Section 33 C (2) of the ID Act before the Labour court on which the impugned order had been passed.

8. He has further contended that he had also moved an application in January, 1996 for the recovery of gratuity before the Controlling Authority appointed by the Government of NCT under the Payment of Gratuity Act, 1972 and the Controlling Authority on merits after recording evidences and hearing both the parties, had held that petitioner was in regular service of the management for the period w.e.f. 11.09.82 to 22.04.89 and awarded gratuity to him.

9. The respondent had challenged the said order before the appellate authority but the appeal of the respondent was dismissed by the appellate authority vide its order dated 26.11.98. The issue *that petitioner was the workman and was in continuous service of the respondent* has thus become final which means that he is covered under the settlement and thus is entitled for the benefits under the said settlement.

10. It is further contended that the Id. Labour Court has erred in law by

holding that the application of the petitioner was still pending before the Arbitrator Panel and had failed to consider the order of the Controlling Authority under the Payment of Gratuity Act.

11. It is further contended that Id. Labour Court was erred in holding that the findings in the case of Jeetlal Sharma Vs. P.O. Labour Court-4,2000 LLR page 443 is of no help in the present case and that the remedy lies under Section 10 of the I.D. Act. On these facts, it is submitted that the impugned order is liable to be set aside.

12. The petition is contested by the respondent. It is submitted that the petitioner was engaged for intermittent period as a purely temporary employee for fixed period at a time and was not on the muster roll of the mills on 27th March, 1985 and was also not served with any notice of closure in March, 1985. Hence, he was not covered under the settlement, thus, not entitled for any compensation under the settlement. The petitioner had approached two lawyers of the Company and the Unions, as per clause 23 of the settlement dated 01.02.1989 and they had not given any decision in favour of plaintiff till date holding him entitle for closure compensation and additional compensation under the settlement.

13. It is submitted that the Controlling Authority under the Payment of

Gratuity Act has given him gratuity by treating him as being deemed to be in continuous service, as per the definition under Section 2 (a) of the Payment of Gratuity Act, 1972. The definition of continuous service under Section 2 (a) of Payment of Gratuity Act and under Section 25-B of the Industrial Disputes Act, 1947 are not the same and their scopes are entirely different and the findings of the Authority under the Payment of Gratuity Act, 1972 for the purpose of gratuity are not binding on the Labour court but the definition of the 'workman' relevant in the case of the petitioner was as provided under clause 10.1 of the settlement dated 26.11.1998 on which the petitioner has relied while raising claim of closure compensation and additional compensation under the settlement.

14. It is contended by respondent that the petitioner is not entitled for the compensation as his entitlement has not been determined and therefore he is not entitled to claim compensation under Section 33-C(2) of ID Act and the Id. Labour Court has rightly rejected his claim and that the present petition is liable to be dismissed.

15. The petitioner has filed the rejoinder to the counter affidavit in which the petitioner had taken a complete somersault. While in his petition before this court as well as in his application under Section 33-C(2), the petitioner

had taken a plea that *he had approached the Arbitrators Forum as per the direction of the High Court in CM No. 3224/89 in writ petition No 2476/88 and since no order had been passed on that application of his, he had taken his case file from his Advocate and thereafter moved the office of Assistant Labour Commissioner for settlement with the respondent*, in the rejoinder, the petitioner has completely changed his version. His plea in rejoinder is that he was never informed about the existence of the Arbitrators Forum by respondent no.1 and the same was not disclosed to him and so he had approached the Labour Court under Section 33-C(2) of the ID Act.

16. In his rejoinder, he has further taken the plea that the formation of Arbitrators Forum was not as per Section 10(A) of the ID Act and his entitlement under the settlement was not to be considered by Arbitrators tribunal. It is also denied that he was required to get his entitlement for compensation determined by Arbitrators forum. He claims that the impugned order is illegal and is liable to be set aside.

17. I have heard the arguments and have given due consideration to the rival contentions.

18. In the present case, the plea of the petitioner is that he was appointed as a Weaver w.e.f. 11.09.1982 and continued to work till the closure of the

respondent mill on 1.02.1989. This fact is contested by the respondent by stating he was never appointed as a weaver on any permanent post on continuous basis and that he had been intermittently engaged on a purely temporary /causal basis for fixed periods at a time for one or two months depending upon the temporary exigencies of the work and there were breaks in his such temporary engagements ranging from one month to 10 months and that he was not on the muster roll of the establishment on 27.03.1985.

19. In support of his claim and to belie the contentions of the respondents, the petitioner has highly relied on the order dated 26.11.1999 of the Controlling Authority under the Payment of Gratuity Act , which was passed on the application of the petitioner claiming gratuity. It is argued on behalf of the petitioner that the finding of the Controlling Authority acts as *res-judicata* and is binding on the courts and rests its contention upon the findings in the case titled as **R.C Tiwari vs. M.P. State Cooperative Marketing Federation Ltd. and Ors.** reported in AIR 1997 SC 2652. There is no dispute that principle of *res-judicata* is also applicable in the proceedings under the Industrial Disputes Act. The principle of *res-judicata* however is applicable when the fact in issue between the same parties had been determined finally by a court of competent jurisdiction. Fact in issue

between the parties in this case is whether the petitioner was workman under Clause 10 (1) (a) of the Settlement dated 26.11.1998. The petitioner can be said to have an existing right to compensation in view of the settlement dated 26.11.1998, if he fulfils the conditions set out therein. On this issue, while claim of the petitioner is that he was in continuous service with effect from 11.09.1982 till closure of establishment on 01.02.1989, the contention of the respondent is that he was not on the muster roll of the mills and he had been intermittently engaged as a temporary/casual weaver for fixed period for a month or two months depending upon the exigencies of the work and that there were long gaps between his re-employment ranging from one month to 10 months. While giving its finding on this issue, the Controlling Authority under the Payment of Gratuity Act in its order dated 26.11.1999 has clearly observed as under:-

“The main contention raised by the appellant company is that the respondent employee was not in continuous services of more than 5 years with the company. As such, he was not entitled to the payment of gratuity as has been held by the Controlling Authority. It is an admitted fact that the respondent employee was in the employment of the company from 11.09.82 to 22.04.89 but was being given the attendance as and when the work was available. This is also on record that the workman has not been employed with the management for a period arranging from 2 days to 9 months. It is also an admitted fact that the workman was never discharged or was paid any retrenchment compensation etc. during this tenure whenever the work was not available with the management.”

20. The finding of fact of the Controlling Authority under the Payment of Gratuity Act itself is that although the petitioner had worked between the period from 11.09.1982 to 22.04.89 but he was given the attendance as and when the work was available for him and that there were gaps between two engagement of the workman of the periods ranging from two days to 9 months and on discontinuance or discharge of service of workman, he was not paid any retrenchment compensation.

21. The conclusion of fact thus is that the workman had been engaged by the respondent as weaver during this off period and depending on availability of work and his period of absence from work had ranged from 2 days to 9 months at a stretch. The Controlling Authority, however, on applying Section 2(a) of the Payment of Gratuity Act which defines continuous service for the purposes of grant of gratuity, held that the petitioner was entitled for gratuity. The finding of the fact which can be said to operate as *res-judicata* however is that petitioner herein had worked with the management for intermittent period and his absence from the work had ranged from 2 months to 9 months at a stretch.

22. These findings of fact, however, are conclusive findings of the fact.

23. Now, the question comes whether he has existing right to claim

benefit under the settlement.

Clause 10 (1) of the Settlement reads as under:-

“10.1 For the purposes of this settlement:

(a) The expression “workmen” shall mean all workmen of the Undertaking including:-

- (i) All permanent, temporary and badli workers.
- (ii) Clerks
- (iii) Supervisory staff whose wages/salary was below Rs.1600 p.m. as on 27th March, 1985.
- (iv) Workmen who were dismissed after April, 1985 to date and they shall be deemed for the purposes of this settlement only to have been reinstated w.e.f. the dates of their dismissal with back wages.

provided their names were on the Undertaking's muster rolls as on 27th March, 1985 and/or who were served notices of closure retrenchment in March, 1985. The said expression shall, however, not include those workmen who have ceased/cease to be in the employment of the company or on the rolls of the undertaking after 27th March, 1985 and upto the date of its closure.”

24. As per this clause, only those workers who were permanent, temporary or badli workers and the workers dismissed after April 1985 but whose names were on the muster roll on 27.03.1985, were entitled for the benefit under the said settlement.

25. Now, the question of fact for determination is whether the petitioner was on the muster roll of the respondent on 27.03.1985. This fact is disputed by the respondent. Their contention is that the petitioner was not a muster roll employee.

26. Unless this disputed question of fact is determined, it cannot be said that the petitioner has an existing right to claim benefit under the said settlement.

27. The next question that arises is as to who will determine the said question of fact. Does the Labour Court acting under Section 33-C(2) of the ID Act has the jurisdiction to determine this question of fact i.e. entitlement of the petitioner?

28. The Supreme Court in the case of **Central Inland Water Transport Corporation Ltd. vs. Workmen reported in (1974) 4 SCC 696** has answered this question while holding as under:-

“In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff’s right to relief; (ii) the correspondent liability of the defendant, including, whether the defendant is, at all, liable or not; and (iii) the extent of the defendant’s liability, if any. The working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding. Determination No. (iii) referred to above, that is to say, the extent of the defendant’s liability may sometimes be left over for determination in execution

proceedings. But that is not the case with the determinations under heads (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. Since a proceeding under Section 33-C(2) is in the nature of an execution proceeding it should follow that an investigation of the nature of determinations (i) and (ii) above is, normally, outside its scope. It is true that in a proceeding under Section 33-C(2), as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But that is merely 'Incidental'. To call determinations (i) and (ii) 'Incidental' to an execution proceeding would be a perversion, because execution proceedings in which the extent of liability is worked out are just consequential upon the determinations (i) and (ii) and represent the last stage in a process leading to final relief. Therefore, when a claim is made before the Labour Court under Section 33-C(2) that court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions-say of an Industrial Tribunal which alone is entitled to make adjudications in the nature of Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as 'Incidental' to its main business of computation. In such cases, determinations (i) and (ii) are not 'Incidental' to the computation. The computation itself is consequential process which commenced with a reference to the Industrial Tribunal. It was, therefore, held in State Bank of Bikaner and Jaipur v. R.L. Khandelwal that a workman cannot put forward a claim in an application under Section 33-C(2) in respect of a matter which is not based on an existing right and which can be appropriately the subject-matter of an industrial dispute which requires a reference under Section 10 of the Act."

29. Following the findings of the Supreme Court in the case of Central Inland (supra), the Supreme Court in subsequent judgment in Ganesh

Razak's case (supra) has clearly held that the Labour Court has no jurisdiction under Section 33 –C(2) to adjudicate the dispute of entitlement or basis of claim of the workman. It can only interpret the award or settlement of which claim is based.

30. The jurisdiction of the labour court under Section 33-C(2) is of the nature of executing court. In that case, the workman had claimed the wages at the same rate as that of regular employees and the court had held that without the prior adjudication or recognition of disputed claim of the workman on his claim for equal pay for equal work, the application under Section 33-C(2) was not maintainable.

31. History of this case also shows that the petitioner had moved an application no. C.M.3224/89 before the Full Bench of this court in WP(C) No.2476/1988 claiming compensation in terms of Settlement dated 26.11.1998 and full bench of this court had issued the directions of the workman to approach the two Advocates appointed under Clause 23 of the Settlement to go into the individual grievances of the employees claiming to be workman. In his application under Section 33-C(2) of the Act and also in the petition before this court, the petitioner had claimed that he did approach the two advocates but in his rejoinder, had changed his stand stating that he

was not aware of any such Arbitral Forum of two Advocates. The matter of fact however remains that the disputed claim of the workman *that he is entitled for the compensation under the Settlement*, has not yet been determined by any competent forum.

32. The Labour Court has thus rightly held that it had no jurisdiction to determine the entitlement of the petitioner for retrenchment compensation under the settlement dated 26.11.1998. The impugned order does not suffer with any illegality or infirmity.

33. The writ petition has no merit and the same is dismissed.

**DEEPA SHARMA
(JUDGE)**

7th JULY, 2015
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