

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

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Reserved on: 8th January, 2015
Date of Decision: 21st January, 2015

+ W.P.(C) No. 1235/2012

DELHI TRANSPORT CORPORATION Petitioner
Through: Mr.Sarfaraz Khan, Advocate.

versus

VED PRAKASH @ PAPPIRespondent
Through: Mr.S.C. Singhal, Advocate.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. This petition is directed against award dated 01.11.2011 passed by learned Presiding Officer, Labour Court-XVII, Karkardooma Courts, Delhi in LCA No.16/2009 wherein the petitioner/management was directed to pay the entire arrears of salary and allowance to the respondent/workman for the period of his suspension from 08.11.1996 to 16.09.2001(after adjusting any amount paid by it to the workman as suspension/subsistence allowance or otherwise) along with a sum of Rs.50,000/- towards the cost.

2. Shorn off unnecessary details, the facts of the present case are that the respondent was working with the petitioner as Assistant Fitter. He was involved in a criminal case bearing FIR No.288 dated 21.08.1995 under Sections 363, 366, 376, 120B IPC registered at PS Delhi Cantt., New Delhi and was taken into custody by police on 08.11.995 and he was charge-sheeted on 17.06.1999. He remained suspended for the period from 16.11.1995 to 16.09.2001. The departmental enquiry was conducted against the workman by the management and the disciplinary authority awarded punishment of “stoppage of next due one increment without cumulative effect” vide order dated 01.06.2000. The statutory appeal was filed by the respondent challenging the said order. Since the appeal was time barred, it was rejected. Thereafter, the respondent preferred a mercy petition which was heard and decided by the Managing Director of the petitioner. Vide order dated 13.01.2005, the punishment imposed on the respondent was reduced to that of ‘censure’ which was intimated to the respondent vide letter dated 19.01.2005. The respondent, thereafter, filed a petition under Section 33 C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘ID Act’) for seeking recovery of dues against the petitioner. The statement of claims were filed by the respondent, written statement was filed by the petitioner and the witnesses were produced before the Labour Court.

3. Vide order dated 01.11.2011, award was passed by the Labour Court. Feeling aggrieved by the said award, the petitioner has filed the present petition.

4. Learned counsel for the petitioner contended that the Labour Court failed to appreciate that the petition under Section 33 C(2) of the ID Act was not maintainable in view of the fact that the respondent had no pre-existing right in his favour. The penalty of “stoppage of next due one increment without cumulative effect” was reduced by the CMD of the petitioner on the mercy petition of the respondent and no benefit with regard to the arrears of pay and allowance during suspension period was directed to be paid to him. The Labour Court has wrongly relied upon the letter dated 19.01.2005 issued by Depot Manager which was meant only to intimate the respondent about the order of the Managing Director of the respondent reducing the sentence of the respondent to ‘censure’. It was silent with regard to the payment of arrears during the period of suspension to the respondent and cannot be inferred to confer any right on him to get the salary and allowance during the period when he remained suspended.

5. It was further contended on behalf of the petitioner that the effect of impugned award is that the respondent has become entitled for the arrears during the suspension period despite the fact that the suspension order was issued against him because of his involvement in serious offence under Sections 363, 366, 376, 120B IPC. It is not the case of the respondent that the penalty as imposed upon him by the disciplinary authority was set aside and he had been given discharge by the petitioner. The principle of no work, no pay is applicable in the facts of the present case. Lastly, it was contended that it is not a case where exemplary cost of Rs.50,000/- can be imposed upon the petitioner.

6. Per contra, learned counsel for the respondent urged that after the punishment was reduced to ‘censure’, the respondent is entitled to receive the arrears of salary and increment for five years which has not been paid to him. He further submits that the petitioner has itself proved on record letter Ex.MW-1/1 which shows that the respondent is entitled to “all benefits”. Thus, the arrears of his salary, perks and allowances should be granted to him as if there was no order of suspension against him. It was also submitted that the cost of Rs.50,000/- was rightly awarded to the respondent.

7. I have bestowed my careful consideration to the submissions made by learned counsel for both the parties. I have also perused the material on record.

8. The pivotal issue, that is the scope of powers of the Labour Court under Section 33C(2) of the ID Act needs careful consideration. Section 33C(2) of the ID Act 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 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 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.]”

9. The law relating to Section 33C(2) of the ID Act is no more *res integra* in view of the law laid down by the Hon’ble Supreme Court of India in various judgments. The crux of the provision is that the workman can file an application under 33C(2) of ID Act only when he is ‘entitled to receive’ money claimed by him. His entitlement to receive money is referrable to a pre-existing right which would be established if it has been earlier adjudicated upon or provided for, that is, recognised by the employer. The recognition can be either in the form of settlement or as per the service conditions.

10. The proceedings under Section 33C(2) of the ID Act are in the nature of executive proceedings in which the Labour Court calculates the amount of money due to workman from his employer or if the workman is entitled to any benefit which is capable of being computed in terms of money. However, the right of money which is sought to be calculated or 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 relationship between the industrial workman and his employer.

11. In '**Central Inland Water Transport Corporation Ltd. vs. The Workmen & Anr.**', (1974) 4 SCC 696, it was observed as under:-

“12. It is now well-settled that a proceeding under Section 33-C(2) 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. In *Chief Mining Engineer East India Coal Co. Ltd. v. Rameshwar & Ors.* [AIR 1968 SC 218 : (1968) 1 SCR 140 : 1968 (1) Lab LJ 6] it was reiterated that 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 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 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.”

12. It is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of its implementation or enforcement thereof some ambiguity requires interpretation, that interpretation is treated as incidental to the Labour Court’s powers under Section 33C(2) of the ID Act like that of the executing court’s power to interpret the decree for the purpose of its execution. However, if the entitlement to receive money is in dispute, an application under Section 33C(2) of ID Act will not be maintainable and the appropriate course would be to seek a reference under Section 10 of the ID Act.

13. The Apex Court in **‘Municipal Corporation of Delhi vs. Ganesh Razak & Anr.’**, (1995) 1 SCC 235, held 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 33-C(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 33-C(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 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.”

14. Where a dispute between the workman and the management arises regarding a claim for relief, it involves an investigation directed to the determination of (i) workman's right to relief; (ii) the corresponding liability of the management, including whether it is at all liable or not; and lastly (iii), the extent of liability of the management, if any. Since the proceedings under Section 33C(2) of the ID Act are in the nature of execution proceedings, it is only the determination under head (iii) i.e., the extent of liability of the management that falls under its scope along with the matters 'incidental' to such determination. However, the determination under heads (i) and (ii) are normally regarded as the function of a suit and not an execution proceedings. They can also not be called as 'incidental' to the execution proceedings because the extent of liability worked out in execution proceedings are consequent upon determination of (i) and (ii) above and represent the last stage in the process leading to final relief.

15. The Hon'ble Supreme Court of India in **Central Inland Water Transport Corporation Ltd.** (*supra*) took a similar view and it was held:-

“13. 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 corresponding 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 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 upon and subsidiary to determinations (i) and (ii) as the last stage in the 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* [1968 (1) Lab LJ 589 : (1967-68) 3 FJR 462 : (1968) 38 Com Cas 400] 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.”

16. In the instant case, the workman was involved in a criminal case under Sections 363, 366, 376, 120B IPC pursuant to which he was arrested and remained absent from his duty. He was suspended for the period from 16.11.1995 to 16.09.2001 pending departmental inquiry pursuant to which he was awarded a punishment of “stoppage of next due one increment without cumulative effect”. On the workman preferring his mercy petition, his sentence was reduced to ‘censure’. It is observed that in no point of time, the workman challenge the order of suspension. It was not the case of the workman even before the trial Court that his suspension order was *mala fide* or passed on irregularities or passed by an incompetent authority. He has only claimed that since his punishment was reduced to censure, he was entitled to his entire back wages for the period for which he was suspended. The learned trial Court has granted the relief to the respondent/workman based on Ex.MW1/1 wherein it was shown that in the copy of letter dated 19.01.2005 informing the reduction of sentence of the respondent by the Managing Director, was sent to one of the branches of the management and it was directed that the workman be given “all benefits”. The same was read by learned trial Court as the acknowledgement on the part of the management that the respondent/workman was entitled to receive ‘all benefits’ including his back wages, arrears and salary, perks and allowances for the period for which he was suspended. Such an interpretation, in my view, is not

correct. The only interpretation that can be given to the letter aforementioned is that while reducing the sentence by the petitioner, it was directed that 'all benefits' which could have been granted to the respondent/workman, however, were not granted pursuant to the earlier punishment of 'stoppage of next due one increment without cumulative effect' should be granted to the respondent. The aforementioned letter cannot be read to state that the management directed the payment for even the period of suspension. It was nowhere mentioned in the said letter that the management had set aside the previous order of suspension pending inquiry and the 'benefits' even including the wages for the said period. In any case, the management has not exonerated the workman from the charges against him under disciplinary proceedings. The only thing that was done by the Managing Director by his order dated 13.01.2005 was to reduce the punishment of the respondent to censure. Such a reduction, in my opinion does not have an implication to hold that the suspension order was bad or set aside and that the respondent/workman was entitled to wages even during his suspension period.

17. Viewed in the light of the above discussion and the provision of Section 33 C(2) of ID Act, it is observed that the relief regarding the payment of wages for the period of suspension was an independent question dependent upon such a suspension being held as illegal/bad or *mala fide* and not a question incidental to the determination of the benefits accruable to the respondent. As I have already held that letter dated 19.01.2005 was not in a nature of an acknowledgement on the part of the management nor has the workman got his right regarding

the back wages for suspension period adjudicated from the competent authority. Thus, proper recourse to the workman would have been to move an appropriate proceedings under Section 10 of the ID Act to set aside the suspension order and get his right adjudicated and not a petition under Section 33 C(2) of ID Act.

18. In the cases similar as one before this Court, what could be considered as an incidental proceeding falling in the ambit of Section 33 C(2) of the ID Act can be understood in the light of an illustration. Suppose, a workman is suspended and he has not paid his subsistence allowance, for example, at the rate of 50% of the wages as per his service conditions, he can file an application under Section 33 C(2) of the ID Act claiming his entitlement to this amount as per his service conditions and this right being recognised by the employer as per service rules (as his pre-existing rights). However, if it is claimed that his suspension was illegal and that he is entitled to the entire wages during the period of suspension, application under Section 33 C(2) of the ID Act would not be maintainable. In such a case, there has to be first an adjudication as to whether suspension is legal or illegal before deciding the entitlement of the workman to receive full back wages for the period of suspension. The proper course, here would be to raise an industrial dispute under Section 10 of the ID Act and not an application under Section 33 C(2) of the ID Act.

19. Clearly Section 33C(2) of the ID Act grants relief based upon a pre-determined right adjudicated or recognized which the respondent workman has failed to establish before this Court. No proceedings under Section 10 of the ID Act were initiated by him to get his right to

back wages adjudicated for suspension period by getting his suspension set aside. Instead, he directly approached the learned trial Court under Section 33 C(2) of ID Act which is not the correct remedy under the ID Act to grant the relief prayed by him.

20. In view of the aforesaid discussion, the present petition is allowed and the impugned award dated 01.11.2011 passed by learned Presiding Officer, Labour Court-XVII, Karkardooma Courts, Delhi is set aside. No order as to costs.

21. Trial Court record be sent back forthwith.

CM No. 2661/2012

The application is dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

JANUARY 21, 2015
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