

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION NO.1157 OF 2004

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking to issue writ of certiorari calling for the records from the 5th respondent relating to its order/award, dated 30-10-2000 rendered in M.P.No.1 of 1997 and quash the same as illegal, arbitrary and violative of principles of natural justice.

2. Brief facts, which are leading to filing of the present writ petition are as follows:

The 1st respondent was appointed as Attender in petitioner's corporation on 16-11-1987. The 2nd respondent was appointed as Junior Assistant Grade II in petitioner's corporation on 24-09-1998. Respondents 3 and 4 were appointed as Bull Dozer operators on 01-04-1987 in the petitioner's corporation. They were appointed as NMRs on daily wage basis. The services of the respondents 1 to 4 were not regularized even though they have completed more than 5 years of service as per G.O.Ms.No.212, dated 22-04-1994. Respondents 1 to 4 claimed equal wages basing on the doctrine of 'equal wages for equal work'. As per the Board Resolution, the petitioner's corporation paid consolidated wages to NMR employees working in various branches. While so, the respondents 1 to 4 filed M.P.No.1 of 1997 before the Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Anantapur (for short 'the Tribunal') (5th respondent herein) *inter alia* claiming 'equal pay for equal work'. The tribunal, vide impugned order, dated 30-10-2000, allowed the petition with the following observations:

"Having regard to the facts and circumstances of the case, it is a fit case to allow this application directing the respondent to pay the difference of wages as the petitioners are eligible and entitled to get the same. Therefore, I hold that the petitioners are eligible and entitled to get difference of wages. Accordingly, the petition is allowed."

Thereafter, respondents 1 and 3 herein filed E.P.No.469 of 2003 for execution of the order of the Tribunal. Hence, the present writ petition.

3. In spite of service of notices, none appeared on behalf of the respondents 1 to 4. The writ petition against the 4th respondent herein was dismissed for default, vide Court order, dated 29-12-2010.

4. The contention of the learned counsel for the petitioner is three fold viz., 1) petition filed by the respondents 1 to 4 under Section 33-C (2) of the Industrial Disputes Act, 1947 (for short 'the Act') is not maintainable as there was no settlement or award between the petitioner and the respondents; 2) there is no pre-existing right in favour of the respondents to claim equal pay for equal work, and therefore, M.P.No.1 of 1997 is not maintainable and 3) respondents 1,2 and 4 having accepted the monetary benefit under special package, are not legally entitled to file E.P.No.469 of 2003.

5. It is not in dispute before this Court that the respondents 1 to 4 were appointed as NMRs on daily wage basis in the petitioner's corporation on different dates. Due to financial problems, the petitioner's corporation offered a special package scheme and voluntary retirement scheme. Being NMRs, the respondents 1 to 4 are not entitled for voluntary retirement scheme. Respondents 1,2 and 4 accepted the special compensation package and received the compensation amount from the petitioner's corporation in the year 2002 i.e., under special scheme. The fact remains that the respondents, 1 to 4 were not appointed on regular basis.

6. Learned counsel for the petitioner submitted that the Tribunal ought not to have entertained M.P.No.1 of 1997 under Section 33-C (2) of the Act as no pre-existing right is conferred on the respondents 1 to 4 by virtue of their appointment as NMRs. It is not the case of the respondents 1 to 4 that they are entitled for equal pay on par with the regular employees in pursuance of the settlement or the award between them and the

petitioner. Admittedly, there was no settlement or award between the petitioner and the respondents 1 to 4.

7. To substantiate the arguments, learned counsel for the petitioner relied on a decision reported in **MUNICIPAL CORPORATION OF DELHI V GANESH RAZAK AND ANOTHER**^[1], wherein it was held thus (para 8):

“Reference may be made first to the Constitution Bench decision in *Central Bank of India Ltd. v. P.S. Rajagopalan*¹ on which Shri Rao placed heavy reliance. That was a case in which the question of maintainability of proceedings under Section 33-C(2) of the Act was considered in a claim made by the workmen on the basis of the Sastry Award. The employer disputed the claim of the workmen on several grounds including the applicability of Section 33-C(2) of the Act. It was urged that since the applications involved a question of interpretation of the Sastry Award, they were outside the purview of Section 33-C(2) because interpretation of awards or settlements has been expressly provided for by Section 36-A. This objection was rejected. This Court pointed out the difference in the scope of Section 36-A and Section 33-C(2) indicating that the distinction lies in the fact that Section 36-A is not concerned with the implementation or execution of the award whereas that is the sole purpose of Section 33-C(2); and whereas Section 33-C(2) deals with cases of implementation of individual rights of workmen falling under its provisions, Section 36-A deals merely with a question of interpretation of the award where a dispute arises in that behalf between the workmen and the employer and the appropriate Government is satisfied that the dispute deserves to be resolved by reference under Section 36-A. In this context, this Court also indicated that the power of the Labour Court in a proceeding under Section 33-C(2) being akin to that of the Executing Court, the Labour Court is competent to interpret the award or settlement on which a workman bases his claim under Section 33-C(2), like the power of the Executing Court to interpret the decree for the purpose of execution. Relevant extract from that decision is as under: (SCR pp. 154-155)

“Besides, there can be no doubt that when the Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing Court to interpret the decree for the purpose of execution. It is, of course, true that the Executing Court cannot go behind the

decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court; but like the Executing Court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim under Section 33-C(2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under Section 33-C(2), it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests."

This decision itself indicates that the power of the Labour Court under Section 33-C(2) extends to interpretation of the award or settlement on which the workman's right rests, like the Executing Court's power to interpret the decree for the purpose of execution, where the basis of the claim is referable to the award or settlement, but it does not extend to determination of the dispute of entitlement or the basis of the claim if there be no prior adjudication or recognition of the same by the employer. This decision negatives instead of supporting the submission of learned counsel for the respondents."

8. He further relied on a decision reported in **STATE OF UJ.P. AND ANOTHER V BRUPAL SINGH** ^[2], wherein it was held thus (paras 10 to 12):

"10. It is well settled that the workman can proceed under Section 33-C(2) only after the Tribunal has adjudicated on a complaint under Section 33-A or on a reference under Section 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. This Court in the case of *Punjab Beverages (P) Ltd. v. Suresh Chand*¹ held that a proceeding under Section 33-C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. Proceeding further, this Court held that the right to the money which is sought to be calculated or 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 the industrial workman, and his employer. This Court further held as follows: (SCC p. 150, para 4)

"It is not competent to the Labour Court exercising

jurisdiction under Section 33-C(2) to arrogate to itself the functions of an Industrial Tribunal and entertain a claim 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 Act.”

11. In the case of *Municipal Corpn. of Delhi v. Ganesh Razak*² this Court held as under: (SCC pp. 241-42, paras 12-13)

“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 of 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.

13. In these matters, the claim of the respondent workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen’s claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of ‘equal pay for equal work’ being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents’ claim is not based

on a prior adjudication made in the writ petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made under Section 33-C(2) of the Act by these respondents.”

12. In the case of *State Bank of India v. Ram Chandra Dubey*² this Court held as under: (SCC pp. 77-78, paras 7-8)

“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 33-C(2) of the Act. The benefit sought to be enforced under Section 33-C(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 33-C(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.”

9. He further relied on a decision reported in **EXECUTIVE ENGINEER, PENSTOCK FABRICATION AND ERECTION DIVISION, CUDDAPAH AND OTHERS V P.SESHAGIRI RAO AND OTHERS** ^[3], wherein it was held thus (paras 12 and 15):

“12.Sub-section (2) of Section 33-C before its amendment by Amending Act of 1964 was confined only to "any benefit" computable in terms of money to which a workman was entitled from his employer in contradistinction to the words "any money is due to a workman from an employer" in sub-section (1) marked the distinction in the scope of jurisdiction under the two sub-sections. The language of the unamended sub-section (2) was vague as it did not specify as to under what circumstances the Labour Court could "determine" the "benefit" by computation in terms of money but the present subsection (2) clearly states that 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. Therefore, to invoke the jurisdiction of the Labour Court under the present Section 33-C(2) either of the two ingredients must be present. The first is that a workman must be entitled to receive from the employer any money or benefit which is capable of being computed in terms of

money and the second one is that a question must have arisen as to the amount of money due, or as to the amount at which such benefit should be computed. A plain reading of Section [33-C \(2\)](#) shows that the Labour Court has jurisdiction to decide both these ingredients. Thus, in a case where both these ingredients are satisfied or either of these ingredients is satisfied, the Labour Court will have the jurisdiction to determine the question. In other words, the Legislature has empowered the Labour Court to decide a dispute as to the right of workman to receive from the employer any money or any benefit which is capable of being computed in terms of money and also has authorized to decide the question as to the amount of money due as to the amount at which such benefit should be computed.

15. In this case, the daily rated/casual workers of the Delhi Municipal Corporation had claimed the same pay as paid to the regular employees on the principle of 'equal pay for equal work' because they were doing the same kind of work as the regular employees. The very basis of the claim was disputed by the Corporation as there was no earlier adjudication or recognition of the claim. As the dispute relating to entitlement is not incidental to the benefit claimed, it was held, it is outside the scope of the proceedings under Section [33-C\(2\)](#) and that the Court has no jurisdiction first to decide the workman's entitlement and then to proceed to compute the benefits so adjudicated on the basis of its power under Section [33-C\(2\)](#). The Court observed:

"It is only when the entitlement has been earlier adjudicated or recognized by the employer or 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."

If this is the position in law, the Labour Court ought not to have gone into the question whether the respondent-workmen have a right to receive wages on par with the work-charged establishment employees in terms of G.O.Ms.No.242, dated 1-6-1977 read with G.O.Ms. No.163, dated 11-5-1982 with effect from 30-4-1976. We say this because G.O.Ms.No.163, dated 11-5-1982 under which only the respondents-workmen can claim the benefits of G.O. Ms. No.242, dated 1-6-1977, was brought into force from 11-5-1982 and not with any retrospective effect much less from 30-4-1976. If the respondents-workmen claim parity of wages for the period from 30-4-1976 to 11-5-1982 on the basis of doctrine of 'equal pay for equal work,' then, it

is absolutely necessary for the workmen to establish that right in an appropriate proceeding envisaged under the Act. Such entitlement question can be decided by the labour Court or the concerned Industrial Tribunal under Section 10 of the Act and such a question cannot be decided in a proceeding under Section 33-C(2) of the Act, which is akin to an execution proceeding under CPC. In that view of the matter, we are of the considered opinion that the Labour Court has exceeded its jurisdiction in allowing the petition of the respondents-workmen. In that view of the matter, the order of the learned single Judge also cannot be sustained.”

10. As per the principle enunciated in the cases cited supra, an employee is not entitled to file a petition under Section 33-C (2) of the Act without pre-existing right or settlement or award. Any petition under Section 33-C (2) of the Act is akin to execution proceedings in a civil matter. An E.P. can be filed in pursuance of a decree passed in a civil suit. Like that a petition under Section 33-C (2) can be filed in pursuance of any settlement or award wherein the rights of the parties are adjudicated. Filing of a petition under section 33-C (2) of the Act without adjudicating the rights of the parties is not maintainable. It is not the case of the respondents that they are entitled for equal pay on par with regular employees in pursuance of the settlement arrived at between the petitioner and the respondents. Admittedly, respondents 1 to 4 have not approached the competent authority for passing of the award. Respondents 1, 2 and 4 having received the amount in pursuance of the special package, are not legally entitled to file the E.P.469 of 2003. Respondents 1, 2 and 4 by suppressing the above said fact, filed the E.P.469 of 2003 as if the petitioner's corporation has not paid any amount to them under special scheme.

11. At the time of the arguments, learned counsel for the petitioner submitted that the services of the 3rd respondent herein were regularized during the pendency of the writ petition.

12. The facts of the case on hand are almost all identical to the facts of the cases cited supra. The Tribunal has passed the impugned order, dated 30-10-2000 in M.P.No.1 of 1997 without considering the scope of Section 33-C (2) of the Act. It is needless to say that any order passed by any Court or Tribunal without jurisdiction, is no-est in the eye of law. As rightly pointed out by the learned counsel for the petitioner, the

Tribunal is empowered to entertain the application if there is any valid settlement or award. Any E.P. filed in pursuance of unenforceable award has no legal sanctity, therefore, the same cannot be enforceable.

13. Having regard to the facts and circumstances of the case and the principle enunciated in the cases cited supra, I am of the considered view that it is a fit case to exercise the power under Article 226 of the Constitution of India to set aside the impugned order, dated 30-10-2000 in M.P.No.1 of 1997 on the file of the Tribunal.

14. Accordingly, the writ petition is allowed setting aside the impugned order, dated 30-10-2000 in M.P.No.1 of 1997 on the file of the Tribunal. Consequently, E.P.No.469 of 2003 on the file of the Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Anantapur is hereby set aside. No order as to costs. Miscellaneous petitions, if any pending, in this writ petition shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 29-04-2016.

Hsd

[\[1\]](#) (1995) 1 SCC 235

[\[2\]](#) (2005) 8 SCC 58

[\[3\]](#) 2002 (3) ALD 516 (DB)