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In the High Court of Punjab and Haryana at Chandigarh.

CWP No.12560 of 2013
Date of Decision:29.01.2016

Chief Engineer (South) Punjab State Electricity Board, Patiala and others

...Petitioners

Versus

Presiding Officer Industrial Tribunal, Patiala and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Y.P. Khullar Advocate,
for the petitioners.

Mr. Gourav Goel, Advocate,
for respondent No.2.

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SABINA, J.

Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of certiorari for quashing the impugned order dated 11.12.2012 (Annexure P-4).

Learned counsel for the petitioner has submitted that the Industrial Tribunal had erred in allowing the application moved by the respondent No.2 under Section Section 33C(2) of the Industrial Disputes Act, 1947 ('Act' for short).

Learned counsel has submitted that the proceedings under Section 33C(2) of the Act were in the nature of execution proceedings. Respondent No.2 could not challenge the validity of the punishment order in an application under Section 33C(2) of the Act.

Learned counsel for the respondent, on the other hand, has opposed the petition.

Case of the respondent No.2, in brief, was that he was working with the respondent-Management. In the year 1984, respondent No.2 was posted as a Lineman at Kharar and he was transferred to Mohali. Respondent No.2 had been given the official accommodation at Kharar. On account of transfer of respondent No.2 to Mohali, he requested the respondents that he be allowed to retain the accommodation till April 1984, on account of final examination of his children. However, request made by respondent No.2 was declined by the management and penal rent was charged from him. In April 1984, respondent No.2 was again transferred to Kharar and the deduction of penal rent was stopped by the management. Show cause notice dated 13.03.1984 was issued to respondent No.2 by the management and he submitted his reply to the same. Management passed the order dated 10.09.1984 stopping one increment of respondent No.2 with cumulative effect. Thus, the management had not paid wages to the respondent No.2 with regard to the said increment from the year 1984 to 28.02.2002. Appeal filed by the respondent No.2 was rejected by the appellate authority.

Hence, the application under Section 33C(2) was filed.

Petitioner management in its reply averred that all the legal dues had already been paid to respondent No.2. Pay of the respondent No.2 could not be fixed by the Tribunal while exercising jurisdiction under Section 33C(2) of the Act.

On the pleadings of the parties following issues were framed by the Tribunal:-

> "*1. Whether the petitioner is entitled to recover the amount as detailed in the claim application, from respondent? OPW*
>
> *2. Whether the application is not maintainable under Section 33(c)(2) of the Industrial Disputes Act, 1947? OPR*
>
> *3. Whether the claim application is not proper in the eyes of law? OPR*
>
> *4. Relief.*"

Parties led their evidence in support of their respective pleas.

The Tribunal vide impugned order dated 11.12.2012 allowed the application and held that respondent No.2 was entitled to receive arrears of wages with effect from the year 1984 till the date of his retirement i.e. 28.01.2002.

Respondent No.2 by filing the application under Section 33C(2) had virtually challenged the order whereby his one increment was stopped with cumulative effect. The said order could not be challenged by the respondent No.2 in an application under Section 33 C(2) of the Act. Proceedings under Section 33C(2) of the Act are in the nature of execution proceedings and the Tribunal could have granted only pre-existing benefit to the workman while exercising jurisdiction under the said provision.

It has been held by this Court in ***Vijay Parkash versus General Manager, Haryana Roadways Depot, Kaithal***, 1995(1) PLR 231, as under:-

> *"After hearing learned counsel for the petitioner we are of the view that the contention has no merit. The orders passed by the department stopping increments whether after hearing or even without hearing the petitioner continue to be the good orders till the same are set aside in appropriate proceedings. The apex court in **State of Punjab and others v. Gurdev Sing Ashok Kumar, AIR 1991 SC 2219 : 1991 (3) S.C.T. 91** took a view that the order of dismissal though void is governed by Article 120 of the Limitation Act. Thus, it has to be concluded that a void order is also required to be set aside within the period of limitation. The petitioner has failed to show the dates of orders passed by the respondent-authorities whereby his increments were stopped. Even otherwise, the order stopping increments of the petitioner could be agitated before a forum either on the ground that the same were void or contrary to the principles of natural justice or against the statutory rules. In the absence of these orders having been set aside by a competent court, the petitioner could not straightway move a petition under section 33-C (2) of*

the Act and the Labour Court could not exercise its powers under the above provisions and grant relief. Thus, in our view the Labour Court has taken a correct view in declining the prayer and rightly dismissed the application of the petitioner under section 33-C(2) of the Act. In these circumstances, no interference is called for in the matter and the writ petition is consequently dismissed."

It has further been held by Supreme Court in ***Central Inland Water Transport Corporation Ltd. versus The Workmen and another***, 1974(4) SCC 696, as under:-

"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****, (1968) (1) SCR 140 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 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 workman and his employer.

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 or 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 function 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) 2 Lab LJ 589 (SC), 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."*

The Tribunal while allowing the relief has, thus, travelled beyond the scope of its jurisdiction. Consequently, this petition is allowed. Impugned order dated 11.12.2012 (Annexure P-4) is set aside.

January 29, 2016 **(SABINA)**
kapil **JUDGE**