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In the High Court of Punjab and Haryana at Chandigarh.

CWP No.5152 of 2014
Date of Decision:04.03.2016

State of Punjab and another

...Petitioners

Versus

Manjit Kaur and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Neeraj Yadav, AAG, Punjab.

Mr. A.K. Walia, Advocate
for respondent No.1.

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SABINA, J.

Petitioners have filed this petition challenging the order dated 08.08.2012 (Annexure P-1)

Respondent No.1 had moved an application under Section 33C(2) of the Industrial Disputes Act, 1947 ('Act' for short) claiming ex gratia, gratuity and wages in lieu of 10 months and pensionary benefits.

Case of respondent No.1 was that Amar Singh, husband of respondent No.1, was working with the petitioner as Mali-cum-Chowkidar w.e.f. 01.09.1985. Amar Singh died on 14.02.1997. Services of the co-workers of Amar Singh were regularized after completion of 10 years of service after their death. However, services of Amar Singh were not regularized by the petitioner. Respondent No.1 being widow of Amar Singh had only been granted benefit of gratuity and had not been granted other benefits which had been given to other similarly situated employees.

Petitioner in its written statement averred that Amar Singh had merely worked on daily wage basis and the relief sought by respondent No.1 could not be granted to her.

Learned State counsel has submitted that application moved by respondent no.1 was not maintainable. In fact, the proceedings under Section 33C(2) of the Act are in the nature of execution proceedings. The relief sought by respondent No.1 could have been granted to her only in case the services of Amar Singh had been ordered to be regularized by the competent authority/Court. The Industrial Tribunal while exercising jurisdiction under Section 33C(2) of the Act could not have adjudicated upon the dispute and ordered regularization of services of Amar Singh.

Learned counsel for respondent No.1, on the other hand, has submitted that the Industrial Tribunal had rightly allowed the application filed by respondent No.1. The relief claimed by respondent No.1 had been granted to co-workers of Amar Singh i.e. Nek Ram, Baldev Singh, Sadhu Singh and

Kuldeep Singh after their death. In support of his arguments, learned counsel for respondent No.1 has placed reliance on ***"Haryana State Cooperative Supply and Marketing Federation Limited Chandigarh Versus Y.N. Singhal" 2001(4) Service Cases Today 384*** , wherein it was held as under:-

> "I have considered the arguments put forward by the learned counsel and perused the impugned award. It cannot be disputed that at the time, when the workman was initially appointed on 25.12.1980 in the pay scale of Rs.525-900, he had not possess the requisite qualification. The qualification was prescribed for the first time by a rule which came into operation on 6.5.1981. In spite of the fact that the workman was not qualified, he was permitted to continue on the job. He was also paid the scale which was being paid to those employees who had acquired the qualification under the rules. A perusal of the award clearly shows that the representative of the management made a categorical statement that the management had nothing to establish on record as to why the applicant was deprived of the higher pay scale. It was also admitted by him that the higher pay scale was allowed to even those employees who did not possess the first

> Boiler Attendant certificate. All those employees who are allowed higher pay scale had the similar qualification as the applicant was having at the time of grant of the higher pay scale.
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> Keeping in view the aforesaid facts and circumstances, the Labour Court came to the conclusion that the workman was also entitled to the revised pay scale. I am of the considered opinion that the legal proposition pointed out by Mr. Goel cannot be faulted. However, the same would not be applicable to the facts and circumstances of the present case. A perusal of the award would show that there was not adjudication involved. The counsel for the management had submitted that the higher grade had been granted to persons similarly situated, who did not have the necessary qualifications. In such circumstances, I find that the order does not suffer from any error apparent on the face of the record. Thus, it would not be proper to interfere in the order passed by the Labour Court while exercising jurisdiction under Articles 226/227 of the Constitution of India."

Learned counsel for respondent No.1 has further placed reliance on ***<u>"Ram Kewal versus The Presiding Officer, Labour, Faridabad" 1997(2) Service Cases Today 506</u>***, wherein it was held as under:-

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"A reading of the above provisions clearly shows that they are independent of each other. Section 33-C(2) is not dependent on Section 33-C(1). The remedies provided under Section 33-C(1) and 33-C(2) are quite independent. It is no doubt true that the claims arising out of an award or settlement under chapter V-A and V-B can be dealt with under sub-section (1) of Section 33-C. Every claim can be entertained under Sub-Section (2) of Section 33-C. A reading of both the provision clearly shows that scope of Section 33-C(2) is wider than of Section 33-C(1). When the order of termination has been set aside and the petitioner was directed to be reinstated with full back wages, a right has accrued to the petitioner to get the back wages under the award and the claim of the workman for the monetary benefit is capable of being computed and, therefore, the claim of the petitioner for back wages, bonus, and leave salary will fall within sub-section (2) of Section 33-C. No further adjudication is required in regard to the claims made by the workmen. As already stated, the scope of Section 33- C(2) is wider than that of Section 33-C(1). Therefore, a petition under Section 33-C(2) of the Act is maintainable where an individual workman or workmen claim amount of money due or amount at

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which the benefit should be computed, but such claim must be based on an existing right. The existing right itself should have vested under a settlement of an award or under the provisions of Chapter V-A or V-B or conferred under the provisions of any statute. Once the right is shown to be existing under any of the above, the Labour Court would have jurisdiction to entertain the petition and ascertain the money due or the amount at which the benefit is to be computed. The mere denial of such an existing right by the employer does not take away the jurisdiction of the Labour Court to entertain a petition under sub-section (2) of Section 33-C. Section 33-C(1) applies to cases where money is due to a workman under an award or settlement or under Chapter V-A 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. Section 33-C(2) takes within it purview cases of workmen who claim that the benefit to which they are entitled should be computed is terms of money even though the right to the benefit on which their claim is based is disputed by their employees. Just as an executing Court is competent to interpret the decree, so also the Labour Court is competent to

> construe the settlement, award or a stature under which the right is claimed.
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> I am, therefore, of the opinion that the Labour Court has the jurisdiction to decide the application filed by the petitioner under Section 33-C(2) of the Act. As the Labour Court failed to determine the amount due to the petitioner, I am of the opinion that this is a fit case for remand to the Labour Court to compute the monetary benefit to which the petitioner workman is entitled to."

Respondent No.1 had filed application under Section 33C(2) of the Act claiming pensionary benefits. Admittedly, services of Amar Singh, husband of respondent No.1 had not been regularized before his death. Respondent No.1 could be held entitled to the relief claimed by her only in case services of Amar Singh had been regularized. The services of Amar Singh could not be treated to be deemed to have been regularized by the Industrial Tribunal. In fact, the competent authority/Court could have adjudicated upon the matter as to whether services of Amar Singh were liable to be regularized or not. In case, the services of the Amar Singh had been regularized by the competent authority/Court, respondent No.1 could be held to be entitled for the relief claimed by her. The Industrial Tribunal erred in holding that the services of Amar Singh were deemed to be regularized after completion of 10 years of service and therefore he was entitled for all the benefits which were available to regular employees. It is settled proposition of law that proceedings under Section 33C(2) are in the nature of execution proceedings.

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*

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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*

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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

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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."*

However, in the present case, there was no existing right available with respondent No.1 with regard to the relief sought by her.

In view of the facts and circumstances of the

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present case, the judgments relied upon by the learned counsel for respondent No.1 fail to advance her case as they are based on different facts. The Industrial Tribunal erred in holding that the application filed by respondent No.1 was maintainable. Accordingly, this petition is allowed. Impugned order dated 08.08.2012 (Annexure P-1) is set aside. However, respondent No.1 would be at liberty to avail other appropriate remedy, as per law.

March 04, 2016 **(SABINA)**
kapil **JUDGE**