

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No.4323 of 2000**

Manager, Food Corporation of India, Rajnandgaon (MP)

---- Petitioner

Versus

1. Presiding Officer, Labour Court, Rajnandgaon (MP)
2. Kailash Sawarkar, S/o late Smt. Sajan Bai, Near Jaiswal Atachakki, Ward No.3, Rajnandgaon, P.S. Rajnandgaon, Dist. Rajnandgaon (CG)

---- Respondents

For petitioner	:	Mr.B.P. Gupta, Advocate
For Respondent No.2	:	None present though served
Mr.N.K.Vyas and Mr.Mr.Ashish Surana, counsel appears as Amicus Curiae		

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

10/04/2017

1. Food Corporation of India/petitioner herein is a Corporation controlled and carried out by the Central Government and its all affairs are controlled by the Central Government, therefore, for the purpose of Industrial Disputes, the appropriate Government is the Central Government.
2. Respondent No.2/workman filed a case under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter called as "Act of 1947") that she was employed by a contractor in relation to the work of the petitioner and the said contract was abolished by order dated 6.3.1992 w.e.f. 1.11.1991 and as a consequence of the same, services of 158 employees were discontinued. According to original respondent No.2, her name was not in the

list of 158 employees, but despite that she was not continued in service of the FCI and therefore, she is entitled for salary about 14 months from November, 1990 to January, 1992 to the extent of ₹ 42000/-.

3. The petitioner/FCI filed its reply and also brought to notice of the Labour Court that the reference before the Central Govt. Industrial Tribunal-cum-Labour Court is already pending, therefore, the present application is not maintainable, but the Labour Court by its impugned order dated 20.6.2000 allowed the application holding that the respondent is entitled for salary to the extent of ₹ 39,000/- after holding that the respondent is entitled for salary for the said period.
4. Being aggrieved and dissatisfied with the said order, the present writ petition has been filed.
5. Mr.B.P.Gupta, learned counsel appearing for the petitioner, would submit that the Labour Court has no jurisdiction to first decide the workman's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power Section 33-C (2) of the Act of 1947. He would further submit that only when the entitlement has been earlier adjudicated or recognized by the employer, then in order to execute that award, application can be filed under Section 33-C(2) of the Act of 1947.
6. Mr.N.K.Vyas and Mr.Ashish Surana, learned counsel appearing as Amicus Curiae, would submit that Section 33-C(2) of the Act of 1947 is in the nature of execution proceedings and there must be earlier adjudication of right or recognition thereof by the employer relying upon the judgments of the Supreme Court in the matters of Central Inland Water Transport Corporation Limited Vs. The Workmen and another¹ and P.K. Singh and others Vs. Presiding Officer and others².

1 (1974) 4 SCC 696

2 (1988) 3 SCC 457

7. I have heard learned counsel appearing for the parties, considered their rival submissions made herein and also gone through the record with utmost circumspection.
8. In order to consider the dispute raised at the Bar, it would be appropriate to notice Section 33-C(2) of the Act of 1947 which states as under:-

“33-C(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 above stated provisions have been considered by the Supreme Court in umpteen number of judgments. Few of them may be noticed profitably and gainfully:-

9.1 In the matter of Chief Mining Engineer, M/s. East India Coal Co. Ltd., Bararee Colliery, Dhanbad Vs. Rameshwar and others³, the Supreme Court held as under:-

“5. It is clear 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. Since the scope of sub-section 2 is wider than that of sub-section 1 and the sub-section is not confined to cases arising under an award, settlement

or under the, provisions of Chapter VA. there is no reason to hold that a benefit provided by a statute or a Scheme made thereunder, without there being anything contrary tinder such statute or s. 33C(2), cannot fall within sub-section 2. Consequently, the benefit provided in the bonus scheme made under the Coal Mines Provident Fund and Bonus Schemes Act, 1948 which remains to be computed must fall under sub-section 2 and the Labour Court therefore had jurisdiction to entertain and try such a claim, it being a claim in respect of an existing right arising from the relationship of an industrial workman and his employer. The contention that the Labour Court had no jurisdiction because the claim arose under the said scheme or because the benefit was monetary or because it involved any substantial question between the Company and the workmen must, in view of the said decisions, fail.”

9.2. In the matter of Municipal Corporation of Delhi Vs. Ganesh Razak and another⁴, the Supreme Court has interpreted the scope of Section 33-C(2) of the Act of 1947 which is much wider than the scope of provisions of Section 33-C(1). The Supreme Court 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 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 tile 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.”

4 (1995) 1 SCC 235

9.3. The Supreme Court in the matter of **M/s Fabril Gasosa Vs. Labour Commissioner and others**⁵ has analysed the difference between the Sections 33-C(1) and 33-C(2) as under:-

“17. Section 33C is in the nature of execution proceedings designed to recover the dues to the workmen. Vide Section 83C (1) and (2), the legislature has provided a speedy remedy to the workmen to have the benefits of a settlement or award which are due to them and are capable of being computed in terms of money, be recovered through the proceedings under those sub-sections. The distinction between sub-section (1) and sub-section (2) of Section 33C lies mainly in the procedural aspect and not with any substantive rights of workmen as conferred by these two sub- sections. Sub-section (1) comes into play when on the application of a workman himself or any other person assignee or heirs in case of his death, the appropriate Government is satisfied that the amounts so claimed are due and payable to that workman. On that satisfaction being arrived at, the Government can initiate action under this sub-section for recovery of the amount provided the amount is a determined one and requires no ‘adjudication’. The appropriate Government does not have the power to determine the amount due to any workman under sub-section (1) and that determination can only be done by the Labour Court under sub-section (2) or in a reference under Section 10(1) of the Act. Even after the determination is made by the Labour Court under sub-Section (2) the amount so determined by the Labour Court, can be recovered through the summary and speedy procedure provided by sub-section (1). Sub-section (1) does not control or affect the ambit and operation of sub-section (2) which is wider in scope than sub-section (1). Besides the rights conferred under Section 33C (2) exist in addition to any other mode of recovery which the workman has under the law. an analysis of the scheme of Sections 33C (1) and 33C (2) shows that the difference between the two sub-sections is quite obvious. While the former sub-section deals with cases where money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or V-B, sub-section (2) deals with cases

where a workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money. Thus, where the amount due to the workmen, flowing from the obligations under a settlement, is per-determined and ascertained or can be arrived at by any arithmetical calculation or simplicitor verification and the only inquiry that is required to be made is whether it is due to the workman or not, recourse to the summary proceedings under Section 33C (1) of the Act is not only appropriate but also desirable to prevent harassment to the workmen. Sub-section (1) of section 33C entitles the workmen to apply to the appropriate Government for issuance of a certificate of recovery for any money due to them under an award or a settlement or under the provisions of chapter-VA and the Government. If satisfied, that a specific sum is due to the workmen, is obliged to issue a certificate for the recovery of the amount due. After the requisite certificate is issued by the Government to the collector, the collector is under a statutory duty to recover the amounts due under the certificate issued to him. The procedure is aimed at providing a speedy, cheap and summary manner of recovery of the amount due, which the employer has wrongfully withheld. It, therefore, follows that where money due is on the basis of some amount predetermined like the VDA, the rate of which stands determined in terms of the settlement an award stands determined in terms of the settlement an award or under Chapter V-A or V-B, and the period for which the arrears are claimed is also known, the case would be covered by sub- section (1) as only a calculation of the amount is required to be made.”

9.4 In the matter of **P.K. Singh and others Vs. Presiding Officer and others** (supra), the Supreme Court has clearly held that workman's claim under Section 33-C(2) cannot be disposed of unless his right to such is first adjudicated on a reference under Section 10(1) and therefore, his application under Section 33-C(2) of the Act of 1947 is not maintainable. It was observed as under:-

“6.....In the said cases this Court clearly laid down that

a workman could not put forward a claim in an application filed under Section 33-C(2) of the Act in respect of a relief which was not based on an existing right and which could be appropriately the subject matter of an industrial dispute requiring a reference under Section 10 of the Act.”

9.5. In the matter of Central Inland Water Transport Corporation Limited Vs. The Workmen and another (supra), the Supreme Court 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*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.

16. Bearing in mind these limitations of a Labour Court functioning under section 33(C)(2) we have to approach the question before us. The old Company closed its business on May 3, 1967. The Corporation, in due course, appointed a large number of the Company's employees by fresh letters of appointments, but it could not absorb all of them. The reference was made on behalf of the employees mentioned in Lists I and 11. They were in all 512. Out

of these, it appears, 24 were reemployed by the Corporation later on. The rest of them virtually claimed reemployment or at least some benefits on the basis of their alleged right to be re-employed. In actual fact, however, the Corporation did not employ these workmen after the Company's undertaking was transferred to it. The scheme of transfer did not compel the Corporation to employ the workmen. Nor is there any term in the transfer-agreement or scheme which passed over to the Corporation any responsibility in respect of the workmen. Section 25 FF-of the Industrial Disputes Act declare what are the rights of the workmen of an undertaking which is transferred. The right is to receive-compensation as if the workmen are retrenched under section 25 F and is available only against the owners of the undertaking, that is to say, the transferor of the undertaking. The liability of the transferor to pay compensation does not arise only when (i) there has been a change of employers by reason of the transfer and (ii) the 3 sub-clauses (a), (b) and (c) of the proviso of that section come into play. It is pointed out in *South Arcot Electricity Company v. N. K. Khan*⁷ that each one of the 3 conditions in clauses (a), (b) and (c) is to be satisfied before it can be held that the right conferred by the principal clause does not accrue to the workmen. In the present case there is no actual change of employers by reason of the transfer, nor do the 3 subclauses apply. Therefore, prima facie, the claim of the workmen would be for compensation under section 25FF, directed, not against the Corporation, but against the Company of which they were formerly the employees. As a matter of fact the scheme itself shows that the employees of the Company who were not taken over by the Corporation were to be paid by the Company all money due to them under the law. The scheme further shows that the Company was to be put in possession of funds by the Government of India for satisfying the liabilities to the workers."

9.6 Similarly in the matter of **D. Krishnan and another Vs. Special Officer, Vellore Cooperative Sugar Mill and another**⁸, the Supreme Court has clearly held that proceeding under Section 33-C(2) are in the nature of execution proceedings is in no doubt and such proceedings

7 (1969) 1 SCC 192

8 (2008) 7 SCC 22

presuppose some adjudication leading to determination of a right which needs to be enforced.

10. Applying the principle of law laid-down by the Supreme Court in the above-stated judgments to the facts of the present case, it is quite vivid that there is no settlement or an award or determination between the parties and entitlement is yet to be adjudicated in a duly constituted reference. In absence of entitlement or recognition by the employer, straightway application under Section 33-C(2) of the Act of 1947 was not maintainable before the Labour Court especially in view of the fact that reference has already been made at the instance of the petitioner (s) by the appropriate government to the Central Government Industrial Tribunal-cum-Labour Court for adjudication/determination of his right(s).

11. For the forgoing reasons, the writ petition is allowed and the order dated 20.6.2000 (Annexure P/1) passed by the Labour Court, Rajnandgaon in Case No.46/I.D.Act/95 Civil is hereby quashed. However, this will not bar the private respondent to proceed for determination of wage in accordance with law. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-