

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (L) No. 3803 of 2007**

Tamrakar Jewelers; Through: Its Director, Murarilal Tamrakar, Son of Late Shri Motilal Tamrakar, aged about 60 years, Resident of Sadar Bazar (Old Police Station), Takhatpur, District Bilaspur (C.G.)

---- Petitioner**Versus**

1. Chhotelal Soni, Son of Shri Ganesh Ram Soni, Resident of Tamerpara Takhatpur, District Bilaspur (C.G.)
2. The Presiding Officer; Labour Court (Under Industrial Disputes Act), Bilaspur (C.G.)

---- Respondents

For Petitioner: Mr. Malay Kumar Bhaduri, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****08/05/2017**

(1) By the impugned order, the Labour Court has allowed the application filed by respondent No.1 under Section 33-C (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "Act, 1947") granting arrears of salary to him.

(2) Learned counsel for the petitioner would submit that arrears of salary cannot be adjudicated under Section 33-C (2) of the Act, 1947 and placed reliance upon the judgment of the Supreme Court in the matter of **The Management of Reserve Bank of India, New Delhi Vs. Bhopal Singh Panchal**¹ in

1 AIR 1994 SC 552

support of his submissions.

(3) None appeared on behalf of the respondent, though served.

(4) I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

(5) 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.”

(6) The Supreme Court has considered the scope and ambit of Section 33-C (2) of the Industrial Disputes Act, 1947 in the following judgments.

6.1 In the matter of **Chief Mining Engineer, M/s. East India Coal Co. Ltd., Bararee Colliery, Dhanbad Vs. Rameshwar and others**², the Supreme Court held as

² AIR 1968 SC 218

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 under 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.”

6.2. In the matter of **Municipal Corporation of Delhi Vs. Ganesh Razak and another**³, 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 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."

6.3. The Supreme Court in the matter of **M/s Fabril Gasosa Vs. Labour Commissioner and others**⁴ 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.”

(7) In the matter of **Bhopal Singh Panchal (supra)** , their Lordships of the Supreme Court has clearly held that under Section 33-C(2) of the Act, 1947, the Labour Court cannot decide the question of entitlement of salary due to the employee.

(8) 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 the Labour Court had no jurisdiction to decide the question of salary due to the employee as the Court cannot decide the question of entitlement in the proceedings under Section under Section 33-C(2) of the Act, 1947.

(9) In view of above, the writ petition is allowed. Impugned order is set aside. However, it will not bar the respondent No.1 to recover the salary in accordance with law.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-