

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 6037 of 2011 (O&M)
Reserved on: November 14, 2017

Date of Decision: November 28, 2017

Surender Kumar

... Petitioner

Versus

P.O. Labour Court-I, Gurgaon and another

... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Sumeet Jain, Advocate,
for Mr. Pankaj Jain, Advocate,
for the petitioner.

Mr. D.S. Patwalia, Sr. Advocate with
Mr. Harsh Aggarwal and Mr. Gaurav Rana, Advocates,
for respondent No.2.

P.B. Bajanthri, J.

1. In the instant writ petition, petitioner has challenged the validity of the order dated 10.02.2010 (Annexure P/5) of the Labour Court passed in Application No. 41 of 2001 filed under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short "ID Act").

2. Petitioner while working as Technical-person of the respondent No.2 – company, during the month of February 2001 company deducted a sum of Rs. 1,266.43 from his monthly salary. Such deduction is on the allegation that petitioner while discharging the duty, he failed to complete the target of the job assigned to him, whereas petitioner's contention is that even though he was present for duty from 07.02.2001 to

10.02.2001 and 12.02.2001 to 15.02.2001, he was shown absent for duty. In this background, petitioner submitted application under Section 33-C(2) of the ID Act before the Labour Court that action of the respondent – company in deducting a sum of Rs. 1,266.43 from the pay is impermissible. The Labour Court after examining the pleadings of the petitioner as well as respondent framed two issues, namely, (i) Whether the petitioner is entitled to the amount claimed; and (ii) relief. The Labour Court proceeded to hold that application under Section 33-C(2) of the ID Act is not maintainable on the score that there is no pre-existing right or any legal right. Hence, present petition.

3. Learned counsel for the petitioner submitted that petitioner has discharged the duties for the disputed period and it is not disputed. Further, if the deduction is with reference to in not completing the allotted job timely, in that event, respondent – company cannot proceed to deduct from salary to the extent of Rs. 1,266.43. It was further submitted that based on the evidence adduced before the Labour Court in para no.9, it is evident that respondent – company cannot deduct any amount from his salary. Learned counsel for the petitioner relied reported decision - ***The Central Bank of India Ltd. vs. P.S. Rajagopalan etc.***, reported in ***AIR 1964 Supreme Court 743 (Para Nos. 15 to 19)***, to substantiate his argument that application under Section 33-C(2) of the ID Act is maintainable having regard to the factual aspect of the present case.

4. On the other hand, learned counsel for respondent no.2 – company submitted that there is no infirmity in the Labour Court's Award to the extent that application filed by the petitioner under Section 33-C(2)

of the ID Act is not maintainable having regard to the claim of the petitioner. It was further submitted that as long as pre-existing right of the petitioner and legal right is not involved. Question of entertaining any application under Section 33-C(2) of the ID Act is impermissible. In support of respondent's contention, learned counsel for respondent no.2 – company relied on the following decisions:-

- i) State of U.P. and another vs. Brijpal Singh, reported in (2005) 8 SCC 58 (Para Nos.10-13);*
- ii) U.P. State Road Transport Corporation vs. Birendra Bhandari, reported in (2006) 10 SCC 211;*
- iii) D. Krishnan and another vs. Special Officer, Vellore Coop. S.M. & Anr., reported in (2008) 7 SCC 22;*
- iv) Nagar Council, Kapurthala vs. Davinder Kumar and others, reported in (2012) 10 SCC 280.*

5. Heard learned counsel for the parties.

6. Crux of the matter in the present petition is whether petitioner's application filed under Section 33-C(2) of the ID Act is maintainable or not?

7. Section 33-C(2) of the ID Act reads as under:-

“33-C. Recovery of money due from an employer

(1) xxx xxx xxx

(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.”

The proceedings under Section 33-C(2) of the ID Act are in the nature of execution of some existing right but not by way of adjudication and creation of such right. In the present case it is not a case of pre-existing right of the petitioner having regard to the claim made in the petitioner's application before the Labour Court with reference to deduction of pay on account of not meeting the targeted job or time bound job assigned. Not like granting particular wage attached to the post or job. Supreme Court in the case of **Brijpal Singh** cited supra in para nos.10 to 13 held as under:-

“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 Pvt. Ltd. Vs. Suresh Chand, (1978) 2 SCC 144 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:

"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 Corporation of Delhi vs. Ganesh Razek & Anr., (1995) 1 SCC 235, this 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.

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 vs. Ram Chandra Dubey & Ors., (2001) 1 SCC 73, this Court held as under:*

"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"

13. *Thus it is clear from the principle enunciated in the above decisions that the appropriate forum where question of back wages could be decided is only in a proceeding before a forum to whom a reference under Section 10 of the Act is made. Thereafter, the Labour Court, in the instant case, cannot arrogate to itself the functions of an Industrial Tribunal and entertain the claim made by the respondent herein 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 I.D. Act. Therefore, the Labour Court had no jurisdiction to adjudicate the claim made by the respondent herein under Section 33-C (2) of the I.D. Act in an undetermined claim and until such adjudication is made by the appropriate forum, the respondent-workman cannot ask the Labour Court in an application under Section 33-C(2) of the I.D. Act to disregard his dismissal as wrongful and on that basis to compute his wages. It is, therefore, impossible for us to accept the arguments of Mrs. Shymala Pappu that the respondent-workman can file application under Section 33-C(2) for*

determination and payment of wages on the basis that he continues to be in service pursuant to the said order passed by the High Court in Writ Petition No. 15172 of 1987 dated 28.10.1987. The argument by the learned counsel for the workman has no force and is unacceptable. The Labour Court, in our opinion, has erred in allowing the application filed under Section 33-C (2) of the I.D. Act and ordering payment of not only the salary but also bonus to the workman although he has not attended the office of the appellants after the stay order obtained by him. The Labour Court has committed a manifest error of law in passing the order in question which was rightly impugned before the High Court and erroneously dismissed by the High Court. The High Court has also equally committed a manifest error in not considering the scope of Section 33C(2) of the I.D. Act. We, therefore, have no hesitation in setting aside the order passed by the Labour Court in Misc. Case No. 11 of 1993 dated 23.8.1995 and the order dated 9.1.2002 passed by the High Court in C.M.W.P. No. 36406 of 1995 as illegal and uncalled for. We do so accordingly.”

Even in the case of **D. Krishnan** cited supra in which State of U.P. vs. Brijpal Singh and others decisions have been taken into consideration, Supreme Court to hold that proceedings under Section 33C(2) of ID Act or in the nature of execution proceedings, such proceedings pre-suppose same adjudication leading to the determination of a right which has to be enforced. Further the same view was reiterated in the case of **Nagar Council, Kapurthala** cited supra.

8. The decision cited by the petitioner, namely, **The Central Bank of India Ltd.** is distinguishable with reference to decision cited by

the respondent. The Supreme Court elaborately discussed what is the scope and jurisdiction in respect of Section 33-C(2) of the ID Act.

9. Supreme Court in the case of ***H.P. State Electricity Board and another vs. Ranjeet Singh and others***, reported in ***(2008) 4 Supreme Court Cases 241***, in para no. 14 held as under:-

“14. In Central Inland Water Transport Corporation Ltd. v. The Workmen and Anr. (1974) 4 SCC 696, it was inter-alia held as follows:

"13. 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 of an execution proceeding. Determination (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 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 the functions--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 vs. R.L. Khandelwal* [1968] 2 L.L.J. 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."*

10. In view of the principle laid down by the Supreme Court, there is no infirmity in the order of the Labour Court dated 10.02.2010 (Annexure P/5) passed in Application No. 41 of 2001 relating to maintainability of application. Accordingly, petitioner has not made out a case so as to interfere with the order dated 10.02.2010.

11. CWP stands dismissed.

November 28, 2017
vkd

[P.B. Bajanthri]
Judge

Whether reasoned / speaking : Yes

Whether reportable : No