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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 10423/2004

VICE CHANCELLOR

..... Petitioner

Through: Mr. Mohinder J.S. Rupal, Advocate

versus

DAL CHAND

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT(ORAL)

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10.11.2017

1. The present writ petition, at the instance of the Vice Chancellor, University of Delhi, assails an order dated 23rd August, 2003, passed by the Presiding Officer Labour Court III, Karkardooma (hereinafter referred to as the “Labour Court”), on an application filed by the respondent-workman Dal Chand purportedly under Section 33 C (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act”)

2. A perusal of the said application, filed by the respondent-workman indicates that it is in the nature of an original proceeding, whereby and wherunder the workman had sought to contend that, while he was employed as a laboratory assistant on permanent basis in the Department of Anthropology, University of Delhi, he was assigned additional charge/duty to look after the laboratory and had, on this ground, asserted that he was

entitled to additional payment therefor discharging the said duty. He relied, for the said purpose, on Rule 31 of the University Non-Teaching Employees, Terms and Conditions of Service Rules, 1971, which stipulated that an employee, placed in charge of the current duties of a higher post would receive payment equivalent to one-tenth of the minimum of the scale of pay applicable to the higher post .

3. On this basis, the application of the respondent-workman prayed for issuance of a direction, to the petitioner/management of the university to pay, to him, the amount legally due “as per the statutory provisions mentioned above for holding charge of the laboratory under the respondent” Interest and costs were also claimed.

4. The Labour Court, adjudicating the aforementioned application, filed by the respondent-workmen, purportedly under Section 33 C (2) of the Act, draws up as many as five issues and concludes that the respondent-workman was entitled to get one-tenth of the minimum of the scale of pay applicable to the post of laboratory incharge “from the date he was assigned the said duty till the date he continued to hold that post”. It further directs, that default, on the part of the management, in disbursing such payment within 3 months of the date of the order, would entitle the respondent-workman to simple interest @ 9% per annum.

5. There is no appearance on the part of the respondent-workman.

6. Mr. Mohinder J.S. Rupal, learned counsel appearing for the

petitioner, submits that the impugned order, dated 23rd August, 2003, passed by the Labour Court, is entirely without jurisdiction and relies, for the said purpose, on the judgements of the Supreme Court in *P.K. Singh v. Presiding Officer*, (1988)3 SCC 457, *Municipal Corporation of Delhi v. Ganesh Razak*, (1995) 1 SCC 235 and *State of U.P. v. Brijpal Singh*, (2005) 8 SCC 58.

7. There is considerable substance in the submission of Mr. Rupal.

8. Section 33C(2) of the Act reads thus:

“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;¹ within a period not exceeding three months:]² 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 judgments relied upon by Mr. Rupal have clearly analysed Section 33C(2) of the Act *supra* and held that the jurisdiction, of the Labour Court, under the said provision, is akin to that of an executing court, and that the *sine qua non* for the exercise of such jurisdiction is the prior existence of an adjudicatory resolution, determining that the entitlements of the workman concerned, to certain moneys or benefit. The Labour Court, exercising jurisdiction under Section 33 C (2) is, applying the law laid down in these decisions, not empowered to act as an original

court adjudicating on the entitlement the workman to the moneys claimed by him, but can only act as an executing court, executing the right of the workman, the entitlement whereto stands adjudicated *a priori*.

10. Mr. Rupal submits that the law as enunciated in the above mentioned cases, continues to hold the field even as on date.

11. In view of the above, it is clear that it is not necessary for me to enter into the entitlement, of the respondent-workman on merits, to the amounts claimed by him. It is clear that the application, under Section 33C(2), as filed by the workman, was completely misconceived, and that the learned Labour Court acted in manifest excess of jurisdiction in adjudicating the same and directing payment to the respondent on that basis.

12. Resultantly, the impugned award dated 23rd August 2003, passed by the learned Labour Court, is quashed and set aside. There will be no order as to costs.

C.HARI SHANKAR, J

NOVEMBER 10, 2017

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