

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 179 of 2017**

Jagdish Verma, S/o Late Shri Ram Murty Verma, Age about 66 years, R/o MIG-2/130, Housing Board, Kumhari, District – Durg, Chhattisgarh

---- **Petitioner**

Versus

General Manager, Chhattisgarh Distilleries Limited, Kumhari, District Durg (C.G.)

---- **Respondent**

For Petitioner	:	Mr. K.P.S. Gandhi, Advocate.
For Respondent	:	Mr. Manoj Paranjpe, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

09/04/2018

(1) The petitioner's application under Section 33-C (2) of the Industrial Disputes Act, 1947 (henceforth "Act, 1947") claiming dearness allowance, annual increment, housing allowance, leave encashment and bonus was rejected by the Presiding Officer, Labour Court under the Act, 1947, against which instant writ petition has been filed questioning the same.

(2) Learned counsel appearing for the petitioner would submit that the impugned order is bad and unsustainable in law and, therefore, the same is liable to be set aside.

(3) Per contra, learned counsel for the respondent would submit that such an amount of dearness allowance, leave encashment, housing allowance and bonus cannot be claimed under Section 33-C (2) of the Act, 1947 and, therefore, the present petition as framed and filed is not maintainable.

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

(5) The Supreme Court in the matter of **U.P. State Road Transport Corporation Vs. Birendra Bhandari**¹ has clearly held that the benefits which can be enforced under Section 33-C(2) is a pre-existing benefit or one flowing from a pre-existing right. Relevant paragraphs of the report states as under:-

“ 7. The benefit which can be enforced under Section 33-C(2) is a pre-existing benefit or one flowing from a pre-existing right.

8. In ***State Bank of India v. Ram Chandra Dubey***², this Court held as under: (SCC pp. 77-78, paras 7-8)

“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

1 (2006) 10 SCC 211

2 (2001) 1 SCC 73

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.”

(6) The question raised in the application so far as dearness allowances, annual increment, housing loan and leave encashment is concerned, the same have not been adjudicated till this date, and therefore, Section 33-C(2) of the Act, 1947 cannot be invoked in the instant writ petition and, therefore, this Court is of the opinion that the labour Court has rightly rejected the petitioner's application filed under Section 33-C(2) of the Act, 1947 claiming dearness allowance, annual increment, housing allowance, leave encashment and bonus in which I do not find any illegality warranting interference by this Court in the instant writ petition.

(7) In view of foregoing, the writ petition fails and is hereby dismissed. However, the petitioner is at liberty to proceed in accordance with law.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-