

IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

CWP-15548-2013

Date of Decision : August 13, 2018

Bachittar Singh

....Petitioner.

Versus

Presiding Officer, Labour Court Ludhiana,
and others

...Respondents.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mrs. Jadgeep Bains, Advocate
for the petitioner.

Mr. Vaibhav Sehgal, Advocate
for respondents No.2 and 3.

SHEKHER DHAWAN, J.

Present writ petition is challenge to the order dated 06.09.2012 (Annexure P10) whereby application under Section 33-C (2) of the Industrial Disputes Act (hereinafter referred as, 'the Act') filed by the petitioner was dismissed to the extent that the Tribunal has not allowed the claim of the petitioner towards payment on account of revised pay scales payable to him w.e.f. 01.01.1998 to 28.06.2005.

2. Facts relevant for the purpose of decision of the present writ petition; that the petitioner was initially appointed as a Salesman in the respondent-society on 03.11.1978. Thereafter, in the year 1985, the petitioner was promoted as Secretary. For certain lapses, a charge sheet

was issued to him and the petitioner remained under suspension. However, subsistence allowances was not paid and a sum of Rs,3,21,718/- was due to him.

3. Respondent-management contested the application on the ground that the application was not maintainable as the petitioner was not covered under the definition of 'workman'. Moreover, the application was not maintainable as there was no existing right to claim difference of wages from 01.01.1998 to 28.06.2005. Otherwise, the applicant is guilty of misappropriation, concealing of facts and criminal breach of trust. The application under Section 33-C(2) of the Act is maintainable only if there is Court order or decree and the amount to be recovered is a certain amount. As regard to seeking parity with other employees, in their cases, award was pronounced and thereafter, application under Section 33-C(2) of the Act was allowed. The said matter stands admitted vide order dated 09.11.2006 and is pending for adjudication.

4. At the time of arguments, learned counsel for the petitioner contended that the petitioner was working as Secretary. Similar payments of revised pay scales were made to similarly situated workmen of the same society vide orders dated 19.04.2004 (Annexure P/3) and 20.08.2004 (Annexure P/4). Learned Industrial Tribunal completely ignored these facts while deciding the application of the petitioner filed under Section 33-C(2) of the Act. Although, learned Industrial Tribunal has allowed the claim of the present petitioner regarding payment of subsistence allowances to the tune of Rs.38,390/-, yet as regard to payment of amount on account of revision of pay scale, erroneously observed that the petitioner shall have to issue demand notice under Section 2-K of the Act and dismissed the

application accordingly.

5. While arguing on this point, learned counsel for the respondent-society contended that the Industrial Tribunal has rightly dismissed the application under Section 33-C(2) as the same is not maintainable on account of maintainability as the petitioner is seeking difference of revised pay scales. The petitioner cannot seek relief on the basis of orders passed in the case and other employees, namely, Sukhdev Singh (Annexure P3), Charanjit Singh (Annexure P-4) as in both the cases separate awards were passed by the Labour Court and thereafter, the application under Section 33-C(2) of the Act was allowed. On this point reliance was placed upon judgment of Hon'ble Apex Court **Municipal Corporation of Delhi vs. Ganesh Razak and another, (1995) 1 Supreme Court Cases, 235** wherein Hon'ble Apex Court was seized of the matter and interpreted and discussed the ambit and scope of Section 33-C(2) of the Act.

6. Learned counsel for the petitioner also contended that the petitioner as well as Sukhdev Singh (Annexure P3), Charanjit Singh (Annexure P-4), who were applicants before the Industrial Tribunal in proceedings under Section 33-C(2) of the Act vide orders Annexure P/3 and Annexure P/4, are governed by same set of rules and the petitioner is also entitled to the relief sought in terms of Orders Annexures P/3 and P/4. On this point reliance was placed on decision of this Court in **Darshan Lal vs. State of Haryana, 1999 LIC 1616.**

7. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that there is no dispute on the fact that vide impugned order dated

06.09.2012 (Annexure P/10) learned Tribunal has partly allowed the claim of the petitioner to the extent of Rs.38,390/- on account of subsistence allowances which was certain amount. However, the Tribunal declined to grant the relief with regard to payment of difference on account of revision of pay scale to the petitioner, at the same time seeking parity with Sukhdev Singh and Charnjit Singh. It is also not disputed that in the cases of these two employees, namely, Sukhdev Singh and Charnjit Singh, there were separate awards passed by the learned Tribunal and the applications under Section 33-C(2) of the Act were filed on the basis of said awards. More so, the said matter is still pending before this Court for consideration and the same stands admitted by Division Bench of this Court vide order dated 09.11.2016 and relevant extract of the order is produced as under:-

“In view of the above, writ petition is admitted.”

8. Section 33-C(2), which is relevant for the present controversy, is extracted below:-

“33C. Recovery of money due from an employer.—(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA or Chapter VB, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be

entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(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; 3 [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.”

From perusal of above provisions, it is ample clear that an application under Section 33-C(2) of the Act is maintainable only if the amount is due and the said amount is certain amount. However, in this case, the petitioner is just seeking difference on account of revision of pay scales while seeking parity with other workers, namely, Sukhdev Singh and Charnjit Singh, in whose cases there were awards passed by the Tribunal. The learned Industrial Tribunal has rightly rejected this claim of the petitioner.

9. Similar matter was before the Hon'ble Apex Court in **Chief Mining Engineer, East India Coal Co. Ltd. Vs. Rameswar**, (1968) 3 SCR 140, wherein it was held that the right to the benefit which is sought to be computed under Section 33-C(2) must be “an existing one, that is to say, already adjudicated upon or provided for”.

10. In **Ganesh Razak's case (supra)**, Hon'ble Apex Court observed as under:-

“Where the very basis of the claim or the entitlement for 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 33C(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 33C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized 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 33C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution. The power of the Labour Court under Section 33-C(2) extends to interpretation of the award or settlement on which the workman's right rests.”

11. As regard to the judgment in **Darshan Lal's case (supra)** relied upon the learned counsel for the petitioner, the said matter shall be the subject matter of controversy to be decided by this Court in the pending matters which stand admitted.

12. In view of the above, there are no grounds to interfere to set aside the order dated 06.09.2012 passed by learned Tribunal and the present writ petition stands dismissed.

(SHEKHER DHAWAN)
JUDGE

August 13, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes