

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

% *Judgment Reserved on : 09.05.2018*
Judgment Pronounced on :01.06.2018

+ **WP(C) 5507/2007**

UNION OF INDIA & ANR. Petitioners
Through: Mr.A.S.Dateer, Advocate.

versus

KISHAN CHAND SAINI (SINCE DECEASED) THROUGH
LRs Respondents
Through: Mr.Ravi Kant Jain, Advocate.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. The petitioners in this writ petition under Article 226 and 227 of the Constitution of India have challenged the order dated 28.03.2007 passed by the learned Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court No.1, New Delhi (in short 'POCGIT') in LCA No.5/98 on an application filed by the respondent under Section 33C(2) of the Industrial Disputes Act, 1947 (in brief 'ID Act') directing the petitioners to pay the respondent over-time wages for the period from 21.08.1977 to 11.12.1995 within three months failing which interest @ 9% shall be payable.
2. The facts giving rise to file the present writ petition are that the respondent Kishan Chand Saini (since deceased) was working as Gateman at Gate No.60B, under Station Superintendent,

Railway Station, Rohtak, with effect from 21.08.1977. He filed an application under Section 33C(2) of the ID Act before POCGIT claiming over-time wages for the period from 21.08.1977 to 11.12.1995 on the ground that he had to work there 12 hours a day with one weekly break. He claimed to have worked four hours more a day during the said period but was not paid over-time wages for the work done beyond the 8 hours of duty. He sent a demand notice to the petitioners by registered post on 16.12.1995 claiming over-time wages but of no avail. He made a representation to the Assistant Labour Commissioner (Central), Rohtak but that effort also failed. Ultimately, he filed an application under Section 33C(2) claiming Rs.5,01,886/- as over-time wages for the said period along with interest.

3. In its written statement, the petitioner/Management, *inter alia*, pleaded that the respondent (since deceased) had worked 12 hours a day with weekly rest; he comes under the Essentially Intermittent (EI) under Hours of Employment Regulations (HOER); as per rules, the petitioner/Management could take 12 hours work with weekly rest; and for this purpose, the petitioner/Management allotted him a railway quarter within half kilometer so that he is able to work 12 hours with one weekly rest on Gate No.60B, as per the roster hours of employment rules. It is pleaded that the respondent (since deceased) was not entitled for any amount on account of the over-time period. It was also pleaded that the POCGIT has no

jurisdiction to entertain the application as the respondent (since deceased) has also moved an application for over-time wages before the Assistant Labour Commissioner (Central), Rohtak.

4. The respondent (since deceased) filed the rejoinder to the written statement controverting the stand taken by the petitioner/Management and reaffirming the averments made in the claim application.
5. After hearing the parties, the Id. POCGIT noted that the application filed before the Assistant Labour Commissioner was forwarded by him to Regional Manager (North) Railway, Delhi and that there was nothing on record to show that the said representation was ever determined. It was also observed that the representation of the respondent (since deceased) was not disposed of finally and there was no bar to file application under Section 33C(2) of the ID Act. He further observed that the ID Act does not provide any limitation for preferring the claim under Section 33C(2) of the ID Act.
6. On merits, Id. POCGIT found that the respondent (since deceased) had worked 12 hours a day during the period 21.08.1977 to 11.12.1995 at Gate No.60B and thus worked four hours more a day during this period; the petitioner/ Management has failed to prove that the nature of duties of the respondent (since deceased) were of intermittent nature disentitling him of the over-time wages; and the Id. POCGIT directed the petitioner/Management for payment of the over-time wages to the respondent (since deceased) for the said period.

7. It is submitted by the learned counsel for the petitioner/Management that the duties assigned to the respondent (since deceased) at Gate No.60B were essentially of the intermittent nature and as and when a railway train was to cross the track at said gate, the respondent (since deceased) was to open and close the gate accordingly. He argued that since it was declared an essentially intermittent gate, as per the rules, the petitioner/Management allotted a staff quarter to the respondent (since deceased) near to the place of his duty. He further argued that the respondent (since deceased) was not to remain on gate throughout 12 hours a day and was to perform his duty to open and close the gate only when some train crosses the track near the gate.
8. He urged that proceedings under Section 33C(2) of the ID Act are essentially in the nature of execution proceedings which envisage a prior adjudication or recognition by the employer of the claims of the workman and when the very basis of the claim is disputed, the proceedings under Section 33C(2) of the ID Act are not maintainable. He emphasised that under Section 33C(2) of the ID Act, the Labour Court can only interpret the award or settlement on which the workman's right rest, but it does not extend for determination of the dispute of entitlement. He argued that to file an application under Section 33 (C) (2) of ID Act, there should be prior adjudication or recognition of the rights in favour of workman. To buttress his arguments, he has placed reliance upon the judgment of a three judges bench of the

Hon'ble Supreme Court in Municipal Corporation of Delhi vs. Ganesh Razak & Anr. 1995 SCC (L&S) 296.

9. *Per contra*, it is submitted by learned counsel for the respondent (since deceased) that the impugned order has been passed by the Id. POCGIT after due appreciation of the evidence in accordance with law and the writ petition merits dismissal.
10. I have heard learned counsel for the parties.
11. The principal contention which has been raised before the Court by the petitioner pertains to the jurisdiction of the Id. POCGIT. It is argued that the Id. POCGIT has no jurisdiction to entertain such application under Section 33C(2) of the ID Act when there is no award/settlement in favour of the workman and thus the application was outside the scope of Section 33C(2) of the ID Act and the Id. POCGIT has exceeded his jurisdiction in giving the directions.
12. It would be profitable to refer to Section 33C(2) of the ID Act to deal with the contentions of the parties.

“(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.”

13. This Section has come up for consideration before the Constitution Bench of the **Hon’ble Supreme Court** in **Central Bank of India Ltd. vs. P.S. Rajagopalan Etc. (1964) 3 SCR 140**, and the findings of the **Constitution Bench** were interpreted in **Ganesh Razak**’s case (supra). Paragraph 8 of the judgment reads as under:-

“8. Reference may be made first to the Constitution Bench decision in *Central Bank of India Ltd. v. P.S. Rajagopalan* AIR 1964 SC 743 on which Shri Rao placed heavy reliance. That was a case in which the question of maintainability of proceedings under Section 33-C(2) of the Act was considered in a claim made by the workmen on the basis of the Sastry Award. The employer disputed the claim of the workmen on several grounds including the applicability of Section 33-C(2) of the Act. It was urged that since the applications involved a question of interpretation of the Sastry Award, they were outside the purview of Section 33-C(2) because interpretation of awards or settlements has been expressly provided for by Section 36-A. This objection was rejected. This Court pointed out the difference in the scope of Section 36-A and Section 33-C(2) indicating that the distinction lies in the fact that Section 36-A is not concerned with the implementation or execution of the award whereas that is the sole purpose of Section 33-C(2); and whereas **Section 33-C(2) deals with cases of implementation of individual rights of workmen falling under its provisions**, Section 36-A deals merely with a question of interpretation of the award where a dispute arises in that behalf between the

workmen and the employer and the appropriate Government is satisfied that the dispute deserves to be resolved by reference under Section 36-A. In this context, this Court also indicated that the **power of the Labour Court in a proceeding under Section 33-C(2) being akin to that of the Executing Court, the Labour Court is competent to interpret the award or settlement on which a workman bases his claim under Section 33-C(2), like the power of the Executing Court to interpret the decree for the purpose of execution.** Relevant extract from that decision is as under:

“Besides, there can be no doubt that when the Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing Court to interpret the decree for the purpose of execution. It is, of course, true that the Executing Court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court; **but like the Executing Court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim under Section 33-C(2).** Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under Section 33-C(2), it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests.”

This decision itself indicates that 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, like the Executing Court's power to interpret the decree for the purpose of execution, where the basis of the claim is referable to the award or settlement, but it does not extend to determination of the dispute of entitlement or the basis of the claim if there be no prior adjudication or recognition of the same by the employer. This decision negatives instead of supporting the submission of learned counsel for the respondents.”

14. In **Ganesh Razak’s** case (supra), the **Hon’ble Supreme Court** has also considered its another judgment of a Co-ordinate Bench in **Bombay Gas Co. Ltd. vs. Gopal Bhiva AIR 1964 SC 752** on the scope of Section 33C(2) of the ID Act holding that the proceedings contemplated by Section 33C(2) of the ID Act are analogous to execution proceedings and the Labour Court, like the Executing Court in execution proceedings governed by the Code of Civil Procedure, would be competent to interpret the award on which the claim is based. Para No.9 of the judgment reads as under:-

“9. Another decision on the point is **Bombay Gas Co. Ltd. v. Gopal Bhiva AIR 1964 SC 752** wherein also Gajendragadkar, J., (as he then was) speaking for the Bench, referring to the above Constitution Bench decision, stated that **the proceedings contemplated by Section 33-C(2) are analogous to execution proceedings and the Labour Court, like the Executing Court in the execution proceedings governed by the Code of Civil Procedure, would be competent to interpret the award on which the claim is based. It is obvious that the power of the Executing Court is only to implement the adjudication already made by a decree and not to**

adjudicate a disputed claim which requires adjudication for its enforcement in the form of decree. The Executing Court, after the decree has been passed, is however competent to interpret the decree for the purpose of its implementation. This position was settled by the above Constitution Bench decision and has been the consistent view of this Court ever since then.”

15. A Three Judges’ Bench of the **Hon’ble Supreme Court** has further considered and elaborated the scope of Section 33C(2) of the ID Act in **Chief Mining Engineer, East India Coal Co. Ltd., Bararee Colliery, Dhanbad vs. Rameswar & Ors. AIR 1968 SC 218** on the basis of **Punjab National Bank of India vs. Kharbanda (1962) Supp. 2 SCR 977**, **Rajagopalan’s case (supra)** and **Bombay Gas Co. Ltd.’s case (supra)**.
16. Later the **Hon’ble Supreme Court** in **Ganesh Razak’s case (supra)** reiterated the principles laid down in **Chief Mining Engineer’s case (supra)**, **holding that Section 33C(2) of the ID Act takes within its purview, the cases of the workmen who claim that the benefit to which they are entitled should be computed in terms of money even though the right to the benefit on which their claim is based is disputed by their employer and it is open to the Labour Court to interpret the award/settlement on which the workman’s right rests. The proceedings under Section 33C(2) of the ID Act are analogous to execution proceedings. Paragraph 10 of the Ganesh Razak’s case (supra), dealing with Chief Mining Engineer’s case (supra), reads as under:-**

“10. Next case on this point is *Chief Mining Engineer, East India Coal Co. Ltd. v. Rameswar* AIR 1968 SC 218 wherein the above decisions were relied on. 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”. The propositions on the question as to the scope of Section 33-C(2) deducible from the earlier decisions of this Court were summarised and they include the following, namely:

“(1) The legislative history indicates that the legislature, after providing broadly for the investigation and settlement of disputes on the basis of collective bargaining, recognised the need of individual workmen of a speedy remedy to enforce their existing individual rights and therefore inserted Section 33-A in 1950 and Section 33-C in 1956. These two sections illustrate cases in which individual workmen can enforce their rights without having to take recourse to Section 10(1) and without having to depend on their union to espouse their case.

(3) Section 33-C which is in terms similar to those in Section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950 is a provision in the nature of an executing provision.

(5) Section 33-C(2) takes within its purview cases of workmen who claim that the benefit to which they are entitled should be computed in terms of money even though the right to the benefit on which their claim is based is disputed by their employers. It is open to the Labour Court to interpret the award or settlement on which the workmen's right rests.

(7) Though the court did not indicate which cases other than those under sub-section (1) would fall under sub-section (2), it pointed out illustrative cases which would not fall under sub-section (2), viz., cases which would appropriately be adjudicated under Section 10(1) or claims which have already been the subject-matter of settlement to which Sections 18 and 19 would apply.

(8) Since proceedings under Section 33-C(2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the benefit claimed by a workman is in such cases in the position of an Executing Court, the Labour Court like the Executing Court in execution proceedings governed by the Code of Civil Procedure, is competent under Section 33-C(2) to interpret the award or settlement where the benefit is claimed under such award or settlement and it would be open to it to consider the plea of nullity where the award is made without jurisdiction.”

After stating the propositions, the decision proceeds to state as under:-

“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.”

17. Again, a two Judges' Bench of the Hon'ble Supreme Court in

Central Inland Water Transport Corporation Limited vs. The Workmen & Anr. (1974) 4 SCC 696 (para No.12) while considering the nature and scope of Section 33C(2) of the ID Act reiterated that the **proceedings under Section 33C(2) are in the nature of execution proceedings wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money.**

18. **Ganesh Razak's case (supra)** also considered the **Central Inland Water Transport Corporation Limited's case (supra).**

Paragraph 11 of the judgment reads as under:-

"11. In *Central Inland Water Transport Corpn. Ltd. v. Workmen* (1974) 4 SCC 696, it was held with reference to the earlier decisions that a proceeding under Section 33-C(2) being in the nature of an execution proceeding, it would appear that an investigation of the alleged right of re-employment is outside its scope and the Labour Court exercising power under Section 33-C(2) of the Act cannot arrogate to itself the functions of adjudication of the dispute relating to the claim of re-employment. Distinction between proceedings in a suit and execution proceedings thereafter was pointed out. It was indicated that the plaintiff's right to relief against the defendant involves an investigation which can be done only in a suit and once the defendant's liability had been adjudicated in the suit, the working out of such liability with a view to give relief is the function of an execution proceeding. This distinction is clearly brought out in that decision as under:

“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 No. (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 the 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 v. R.L. Khandelwal* (1968) 1 LLJ 589 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.”

19. Finally after considering all its previous judgments, mentioned above, the **Hon’ble Supreme Court** in **Ganesh Razak’s** case (supra) concluded that ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workman 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 ID Act and the **Labour Court has no jurisdiction to first decide the workman’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 ID**

Act. The Apex Court further explained that 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) of the ID Act like that of the Executing Court's power to interpret the decree for the purpose its execution. Paragraph 12 of the judgment in Ganesh Razak's case (supra) reads 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.”

20. Having considered the facts of this case in the light of the law

laid down by the **Hon'ble Supreme Court**, it is found that admittedly, there was no earlier adjudication of claim of the respondent (since deceased) by way of the award and there was no settlement based on the respondent's (since deceased) rights for being interpreted by the learned POCGIT and therefore, no jurisdiction vested in learned POCGIT to entertain the application of the respondent (since deceased) under Section 33C(2) of the ID Act and the impugned order thus passed is a nullity being made without jurisdiction. As a result, the impugned order dated 28.03.2007 passed by the learned POCGIT is set aside.

21. The writ petition is disposed of accordingly.

JUNE 1st, 2018
dkb

(VINOD GOEL)
JUDGE

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