

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on :18.07.2017

Date of decision :15.06.2018

W.P. (Civil) 4149/2015

M/s ANSAL PROPERTIES & INDUSTRIES LTD Appellant

Through: Mr. Mahesh Srivastava, Mr.
Vaibhav Manu Srivastava,
Advocates.

versus

NEELAM BHUTANI

..... Respondent

Through: Mr. Vijay Kinger, Mr. Sanjay
Verma, Mr. Jitender Kumar,
Advocates.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

ANU MALHOTRA, J.

1. The petitioner- M/s Ansal Properties & Industries Limited vide the present Writ Petition (Civil) No. 4149/15 has assailed the order of the Labour Court of the POLC-XI, Karkardooma Courts, Delhi dated 18.12.2014 in Labour Court Application (LCA) 39/14 whereby the prayer made by the respondent/ work woman Ms. Neelam Bhutani under Section 33C(2) of the Industrial Disputes Act, 1947 for compliance of the award dated 22.01.2010 in LIR No. 762/06 (Old ID No. 220/02) as passed by the Labour Court

XIX, Karkardooma Courts, Delhi whereby the management i.e., the petitioner herein through its Managing Director/ Chairman was directed to reinstate the work woman back on duty along with full back wages and continuity of services within a period of 30 days from the date of publication of the award failing which it had been directed by the Labour Court XIX, Karkardooma Courts Delhi vide order dated 22.01.2010 that the Management would be liable to pay the interest at the rate of 12 per cent per annum till the actual payment; - was allowed to the extent that the work woman was held entitled to increment of 10 per cent for every year in her total salary, taking her basic salary to be Rs. 10,850/- as mentioned in Ex.WW1/M1 i.e. basic Rs. 7,350/-; HRA Rs. 2,300/-; conveyance allowance Rs. 1,200/- and medical one month basic salary per annum and LTC to its one month basic salary per annum as part back wages and was further held entitled to interest at the rate of 12 per cent per annum in terms of award Ex.WW1/M1 from the date 16.06.2010 till the date of actual payment of Rs. 9,73,310/- inasmuch as the management had been directed to comply with the award Ex.WW1/M1 within a period of 30 days from the publication thereof which had not been so complied with by the Management and apart from the same the Management was also directed to pay a sum of Rs. 20,000/- to the workmen towards the cost of litigation in terms of Section 11(7) of the Industrial Disputes Act, 1947.

2. The respondent to the present petition through her application under Section 33C(2) of the Industrial Disputes Act, 1947 read

with Section 151 of the CPC sought the computation of the amount and the benefits arising out of the award dated 22.01.2010 submitting to the effect that though the employer had reinstated its services on 07.07.2010 after withdrawal of the Writ Petition filed before this Court which was withdrawn on 06.07.2010, the back wages and other benefits were also not given since long time and the award had not been complied with. The respondent had further through the said application under Section 33C(2) of the Industrial Disputes Act, 1947 submitted that against the due computation and demand of the deponent for an amount of Rs. 28,53,254/- as per award dated 22.01.2010, the employer had paid Rs. 8,94,856/- only, vide a cheque bearing no. 343161 dated 30.07.2010. The respondent had further submitted through the said application under Section 33C(2) of the Industrial Disputes Act, 1947 that she had filed an application dated 21.07.2010 under Section 33C(1) before the Deputy Labour Commissioner claiming the said amount enclosing the desired documents and a sheet of computation of the amount as per the award dated 22.01.2010 claiming an amount of Rs. 28,53,254/-.

3. Vide the impugned order dated 18.12.2014 in LCA No. 39/14, POLC-XI KKD Courts Delhi, the Court had framed issues on 23.08.2011 to the effect:-

- (i) Whether the management has paid full and final dues as per the award? OPM
- (ii) Whether the workman is entitled to any outstanding dues, if so to what amount? OPW

(iii) Relief.

4. Qua issues No. 1& 2 to the effect that the management had not implemented award Ex.WW1/1 within a period of 90 days from the date of the award i.e., 17.05.2010 and as a consequence thereof, the management shall have to pay the interest at the rate of 12 per cent per annum, which interest was not included by the management towards payment to be made to the respondent. As regards the claim of the respondent in relation to LTC, medical reimbursement for the years 2001-2002 and 2009-2010 that the workman was entitled to increments in salary and was also held entitled to other benefits such as medical-one month basic salary per annum, LTC one month basic salary per annum which the respondent was held entitled to receive as part basic wages. The respondent through her application under Section 33C(2) of the Industrial Disputes Act, 1947 was however not granted her prayer seeking encashment of leave for 15 days in each year during the period 2001-2002 and 2009-2010 and also encashment of leaves for 90 days, it having been observed that there was no term of employment neither contractual nor statutory that had been brought to the notice of the POLC-XI, KKD Courts Delhi that the workman was entitled to encashment of leaves when she had already been directed to be reinstated in services with full back wages and continuity of services and the said claim was thus declined.

5. The total entitlements granted to the respondent in terms of Ex.MW1/W1, the award dated 22.01.2010 of the POLC-XI, KKD Courts Delhi were to the effect:-

Particulars	Amount	Gross Amount (Rs.)
16.06.2001 to 30.06.2001 14 days Salary [(Rs.10,850/- ÷30) x 14 days] 01.07.2001 to 31.03.2002 (10,850/- x 9)	5,063/- 97,650/-	
LTC for 2001-2002	7,350/-	
Medical Reimbursement for 2001-2002	7,350/-	1,17,413/-

1.4.2002 to 31.3.2003 12 months Salary = [(Rs. 10,850/- + 10% increment) x 12] [Rs. 11,935/- x 12]	1,43,220/-	
LTC for 2002-2003 (Rs. 7350 + 10% increment)	8,085/-	
Medical Reimbursement for 2002-2003 (Rs. 7350 + 10% increment)	8,085/-	
		1,59,390/-

1.4.2003 to 31.3.2004 12 months Salary = [(Rs. 11,935/- + 10% increment x 12] [(Rs. 13128.50 x 12)]	1,57,542/-	1,75,329/-
LTC for 2003-2004 (Rs. 8,085/- + 10% increment)	8,893.50	
Medical Reimbursement for 2003-2004 (Rs. 8,085/- + 10% increment)	8,893.50	

1.04.2004 to 31.3.2005 12 months Salary = [Rs. 13128.50 + 10% increment x 12] [(Rs. 14441.35 x 12)]	1,73,296.2 0	
LTC for 2004-2005 (Rs. 8,893.50 + 10% increment)	9,782.85	
Medical Reimbursement for 2004-2005 (Rs. 8,893.50 + 10%		

increment)	9,782.85	1,92,861.90
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1.4.2005 to 31.3.2006 12 months Salary = [(Rs. 14441.35 + 10% increment) x 12] [Rs. 15,885.48 x 12)]	1,90,625.82	
LTC for 2005-2006 (Rs. 9,782.85 + 10% increment)	10,761.13	
Medical Reimbursement for 2005-2006 (Rs. 9,782.85 + 10% increment)	10,761.13	2,12,148.08/-

1.4.2006 to 31.3.2007 12 months Salary = [(Rs. 15,885.48 + 10% increment) x 12] [(Rs. 17,474.02 x 12)]	2,09,688.24	
LTC for 2006-2007 (Rs. 10,761.13 + 10% increment)	11,837.24	
Medical Reimbursement for 2006-2007 (Rs. 10,761.13 + 10% increment)	11,837.24	
		2,33,362.72

1.4.2007 to 31.3.2008 12 months Salary = [(Rs. 17,474.02 + 10% increment) x 12] [Rs. 19,221.42 x 12)]		
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	2,30,657.04	
LTC for 2007-2008 (Rs. 11,837.24 + 10% increment)	13,020.96	
Medical Reimbursement for 2007-2008 (Rs. 11,837.24 + 10% increment)	13,020.96	
		2,56,698.98

1.4.2008 to 31.3.2009 12 months Salary = [(Rs. 19,221.42 + 10% increment) x 12] [Rs. 21,143.56 x 12]	2,53,722.72	
LTC for 2008-2009 (Rs. 13,020.96 + 10% increment)	14,323.05	
Medical Reimbursement for 2008-2009 (Rs. 13,020.96 + 10% increment)	14,323.05	

		2,82,368.82
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1.4.2009 to 31.3.2010 12 months Salary = [(Rs. 21,143.56 + 10% increment) x 12] [(Rs. 23,257.91 x 12)]	2,79,094.92	3,10,605.69
LTC for 2009-2010 (Rs. 14,323.05 + 10% increment)	15,755.35	
Medical Reimbursement for 2009-2010 (Rs. 14,323.05 + 10% increment)	15,755.35	

1.4.2010 to 30.6.2010 3 months Salary = [(Rs. 23,257.91 + 10% increment) x 3] [(Rs. 25,583.70 x 3)]	76,751.10	
1.07.2010 to 06.07.2010		

[(Rs. 25,583.70 ÷ 31) x 6 days [(Rs. 825.28 x 6)]		
	4951.68	81,702.78

Total	Rs.20,21,880.97
(rounded to Rs. 20,21,881/-	
<u>(-) Rs. 10,48,571/-</u>	
Rs. 9,73,310/-	

6. Notice of the petition was issued to the respondent on deposit of 50 per cent of the awarded amount with the Registrar General of the Court with the operation of the order dated 18.12.2014 having been stayed thereupon. The said amount in terms of directions dated 27.04.2015 is reported to have been deposited by the petitioner. The respondent put in appearance on being served with the notice of the petition.
7. Written synopsis of either side have been filed on record in compliance of directions dated 17.11.2016 of this Court and oral arguments were also addressed on 18.07.2017 by the respective counsel for both the parties.
8. The contentions raised on behalf of the petitioner, i.e., M/s Ansal Properties & Industries Ltd. are to the effect:-

- (i) Whether the Ld. Labour Court was justified to decide the claim of the respondents in respect of house rent allowance without proving the value of the same?
- (ii) Whether the Ld. Labour Court was justified to decide the claim of the respondents in respect of LTC without getting it proved on record as to whether the respondent has undertaken any travelling in a particular year?
- (iii) Whether the Ld. Labour Court was justified to decide the claim of the respondent in respect of the medical reimbursement without asking the respondent to prove on record as to what amount the respondent has incurred in availing the medical facilities?
- (iv) Whether the Ld. Labour Court was justified to decide the claim of the respondent in respect of the increment without getting it's proved on record as the annual increment is not available as a matter of course?

9. It was further contended through the petition and oral submissions made on behalf of the petitioner that on the respondent having filed the application under Section 33C(1) of the Industrial Disputes Act, 1947 on 21.07.2010 before the Deputy Labour Commissioner claiming the amount of which the Deputy Labour Commissioner asked the respondent to file the appropriate application for

computation of the amount of the benefit following from the date 22.01.2010 instead of invoking of Section 10 of the Industrial Disputes Act, 1947, the respondent filed an application under Section 33C(2) of the Industrial Disputes Act, 1947 for computation of the amount which was not capable of being computed in terms of money and that the award in LCR 762/2006 (Old ID No. 220/2002) of the learned POLC-XIX, KKD Delhi had allowed the respondent/ workman to be reinstated in services with fullback wages and continuity of service and that the award did not say anything regarding the payment towards LTC, increment and medical reimbursement and that the respondent could have established her right by invoking Section 10 of the I.D. Act instead of the provisions of Section 33C(2) of the I.D. Act.

10. The petitioner also claimed that back wages arising out of the award dated 22.01.2010 amounted to Rs. 10,48,571/- out of which after making statutory deductions (viz. P.F. and Income Tax) a sum of Rs. 8,94,856/- had been paid to the respondent/workman on 31.07.2010 and that the said amount has been paid upto 06.07.2010 and thereafter she was reinstated back into service and that the respondent had also issued a receipt for having accepted the full and final amount from the petitioner/management arising out of the award dated 22.01.2010 and the copy of the receipt was also placed on record as Annexure-E to the petition. The petitioner further submitted that the respondent was not entitled to get the increment as a matter of right as the same is linked with performance of the individual employee and that the petitioner had also submitted that

the respondent/workman was not entitled for HRA, medical reimbursement and leave encashment. The petitioner further submitted that at the time of appointment on 09.01.1978, the respondent had been issued an appointment letter wherein it has been specifically mentioned that the terms and conditions of the respondent would be governed by such rules of the company as may be applicable to the other confirmed employee of similar ranks and standing in the organizations and that it has also been specifically mentioned that no additional perquisite would be applicable unless specified by separate written orders and that it was on these terms and conditions the respondent/workman joined the services of the petitioner/management. Reference was also made by the petitioner to Rule 8 of the of the Service Rules which is applicable to all members of the staff of including maintenance, societies, committees built by them and Rule 8 thereof reads to the effect:-

8. *Salary and remuneration of each individual employee would be determined in accordance with the letter of appointment given. Increments in salaries may be given to individual employees from time to time at the sole discretion of the Employer depending upon merits and other circumstances of each employee and shall not be claimed as a matter of right by an employee.*

The increments in pursuance of grades and pay scales, if any, are always subject to continued

satisfactory work, output, efficiency, behavior and attendance of the employee concerned and if any employee is found wanting in any of the above matters or is found guilty of any misconduct then his increment is likely to be stopped or deferred at the sole discretion of the employer. Such an increment is also likely to be stopped or deferred in case of depression or slackness of business, continuous losses or any other sufficient reason.

11. The petitioner further contended that the learned Labour Court i.e., POLC-XI had included HRA and conveyance allowance as part of the wages within the meaning of Section 2(rr) of the Industrial Disputes Act, 1947 and reference was made to Section 2(rr) of the Industrial Disputes Act, 1947 which reads to the effect:-

“2(rr) “wages” means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes:-

- (i) Such allowances (including dearness allowance) as the workman is for the time being entitled to;*
- (ii) The value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food-grains or other articles;*

- (iii) *Any travelling concession;*
- (iv) *Any commission payable on the promotion of sales or business or both;]*

But does not include—

- (a) *Any bonus;*
- (b) *Any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;*
- (c) *Any gratuity payable on the termination of his service”.*

12. It was thus submitted on behalf of the petitioner that the learned Labour Court had glossed over an essential ingredient of Section 2(rr) of the Industrial Disputes Act, 1947 where it says the ‘*value of the house accommodation or medical attendance or any other amenities which have to be determined*’ and that any amount whatsoever cannot be granted in the name of HRA, Medical reimbursement and that the word ‘*value*’ specifically denotes that the employee has to furnish the value of the housing facilities being availed by him/her or the amount of the medical bill which had been incurred by him unless and that until these values are determined and proved in accordance with law, it cannot be granted on the assumption.

13. It was further submitted through the petition and urged also through the course of submissions made that the learned Labour Court, POLC-XI had granted the LTC and medical reimbursement on the basis that the respondent was availing one month basic

salary for each calendar year and it was submitted on behalf of the petitioner that during the period that the respondent had not been working and had not submitted the bill for claiming the medical reimbursement and LTC, it could not be granted as the respondent did not have any existing right to claim these benefits. It was thus submitted on behalf of the petitioner that the impugned order dated 18.12.2014 of the learned POLC-XI qua application under Section 33C(2) of the Industrial Disputes Act, 1947 of the respondent in LCA No. 39/14 suffered from apparent errors on the face of the record and was contrary to the law and to the verdict of the Hon'ble Supreme Court as well.

14. On behalf of the respondent, it was contended that the impugned order dated 18.12.2014 of the learned POLC-XI was based on the annual increment of 10 per cent per annum and LTC and Medical reimbursement of one month salary in each year and was based on the cross-examination of MW1, Mr. Vivek Kashyap, Dy. Manager (HR & Administration) who had stated *"It is correct to suggest that during her employment workman was availing LTC and Medical facility each equivalent to one month's basic salary of workman for each calendar year (April to March) of service of workman"*.

15. It was further submitted on behalf of the respondent that it is not possible for any organization to increase the salary only on performance and nor was it possible for any workman to work continuously for years without any increment and that there is a standard increment policy of salary per year. *Inter alia* the respondent submitted that her services have again been terminated

on 24.10.2011 after being reinstated on 07.07.2010 and that she had filed a case before the POLC and that the same was pending.

16. The petitioner further submitted that Section 33C(2) of the Industrial Disputes Act, 1947 has been enacted to give the executing power to the Labour Court for exercise of the same summarily and for invoking Section 33C(2) of the Industrial Disputes Act, 1947, the right of the workman must be an existing one and ought to be one that has already been adjudicated upon. Reliance in this regard was placed on behalf of the petitioner on the verdict of the Supreme Court in “**Central Bank of India Ltd. Vs. P.S. Rajgopalan Etc.**” (1964) 3SCR 140, to contend that it had been observed therein that the power of the Labour Court in proceedings under Section 33C(2) was akin to that of an executing Court.
17. Reliance was also placed on behalf of the petitioner on the verdict of the Supreme Court in “**Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameshwar And Ors.**” (1968) 3 SCR 140 to submit that it has been laid down therein that the right to benefit which is sought to be contemplated under Section 33C(2) of the Industrial Disputes Act, 1947 must be an executing one, i.e., to say the one already adjudicated upon or provided for. Reliance was also placed on behalf of the petitioner on the verdict of the Supreme Court in “**Municipal Corporation of Delhi Vs. Ganesh Razak and Ors.**” (1995) 1 SCC 235 to contend 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 33C (2) of the Act. 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 33(C) 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 is treated as incidental to the Labour Court's power under Section 33-(C) like that of the Executing Court's power to interpret the decree for the purpose of its execution.

18. *Inter alia* reliance was also placed on behalf of the petitioner on the verdict of this Court in “**Piara Lal Vs. Lt. Governor & Ors.**” 2001(1) LLN 235 submitting to the effect that it was laid down therein that the benefits claimed by the workmen other than wages i.e., bonus, leave encashment, PF, Perks etc. may not fall for determination u/s 33(C) 1 of the Industrial Disputes Act.
19. The petitioner thus contended that the respondent had claimed the benefits qua LTC or medical reimbursement and increment which have yet to be determined and which claims are disputed by the petitioner and that increments cannot be provided only on the sole discretion depending upon merits and other circumstances of each employee and shall not be claimed as a matter of right by any employee in terms of the Rule 8 of the Service Rules of the employees of the petitioner.

20. It has been submitted on behalf of the petitioner that vide the impugned order it was observed to the effect the respondent had rendered 23 years of service with the management as a Stenographer and had been granted increment of Rs. 500/- twice in the year 1998 and once in the year 2001 qua which it was submitted on behalf of the petitioner that through contentions of the respondent herself that she has got the increment thrice in the entire career of 23 years of service and thus grant of Rs. 1,000/- per annum to the workman was an assumption and that benefits claimed in respect of LTC and Medical reimbursement are also not existing rights and thus cannot be decided through any proceedings under Section 33C(2) of the Industrial Disputes Act, 1947 and that the claim filed by the respondent cannot be decided under the said provision of law and was beyond jurisdiction and not maintainable and that the impugned order was liable to be set aside.
21. On a consideration of the submissions made on behalf of either side and the catena of verdicts relied upon, it is brought forth categorically that as laid down by the Hon'ble Supreme Court vide the verdict of five Hon'ble Judges of the Supreme Court in the **“Central Bank of India Ltd. Vs. P.S. Rajgopalan etc.”** **Supreme Court Reports (1964) 3 140** that mere raising of dispute by the management about a workman's right to claim a benefit does not suffice to negate the prayer of the workman for invocation of Section 33C(2) of the Industrial Disputes Act, 1947 on a submission of the management that the right to claim a benefit has to be adjudicated upon and the same can be adjudicated upon by

other appropriate proceedings permissible under the Act and not in terms of Section 33C (2) of the Industrial Disputes Act, 1947 of the said enactment and that Section 33C(2) of the Industrial Disputes Act, 1947 which corresponds to Section 20(2) of the Industrial Disputes Act (Appellate Tribunal) Act, 1950 has been formulated to provide a speedy remedy to individual workman to execute their rights or under decision to awards or decision of Industrial Tribunals.

22. The observations of the Hon'ble Supreme Court in **“Central Bank of India Ltd. Vs. P.S. Rajgopalan etc.”** (supra) are to the effect:-

“The question which arises for our decision is, however, slightly different. It is urged by the appellant that sub-S. (2) can be invoked by a workman who is entitled to receive from the employer the benefit there specified, but the right of the workman to receive the benefit has to be admitted and could not be a matter of dispute between the parties in cases which fall under sub-S. (2). The argument is, if there is a dispute about the workman's right to claim the benefit, that has to be adjudicated upon not under sub-S. (2), but by other appropriate proceedings permissible under the Act, and since in the present appeals, the appellant disputed the respondent's right to 'claim the special allowance, the Labour Court had no jurisdiction to deal with their claim. In other words, the contention is that the opening words of sub-s. (2) postulate the existence of an admitted right vesting in a workman and do not cover cases where the said right is disputed.

On the other hand, the respondents contend that sub-S. (2) is broad enough to take in all cases where a workman claims some benefit and wants the said

benefit to be computed in terms of money. If in resisting the said claim, the employer ,makes several defences, all those defences will have to be tried by the Labour Court under sub-S. (2). On this argument all questions arising between the workmen and their employers in respect of the benefit which they claim to be computed in terms of money would fall within the scope of sub-S. (2).

Before dealing with the question of construction thus raised by the parties in the present proceedings it would be material to refer briefly to the legislative history of this provision. The Act, as it was originally passed, made relevant provisions on the broad basis that industrial disputes should be adjudicated upon between trade Unions or representatives of labour on the one hand and the workmen's employers on the other. That is why Section 10 (1) which deals with the reference of disputes to Boards Courts or Tribunals, has been interpreted by this Court to mean the disputes which are referable under S. 10(1) should be disputes which are raised by 'the trade Unions to which the workmen belong or by the representatives of workmen acting in such a representative character. It was, however, realized that in denying to the individual employees a speedy remedy to enforce their existing rights, the Act had failed to 'give due protection to them. If an individual employee does not seek to raise an industrial dispute in the sense that he does not want any change in the .terms and conditions of service, but wants only to implement or enforce his existing rights, it should not be necessary for him to have to take recourse to the remedy prescribed by S. 10(1) of the Act; that was the criticism made against the omission of the Act to provide for speedy enforcement of individual workman's existing rights. In order to meet this criticism, an amendment was made by the Legislature in 1959 by Section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950

(No. 48 of 1950). Section 20 of this Act provided for recovery of money due from an employer under an award or decision. This provision filled up the lacuna which was discovered, because even after an award was made individual workmen were not given a speedy remedy to implement or execute the said award, and so S.20 purported to supply that remedy. Section 20(1) provided that if money was due under an award or decision of an Industrial Tribunal, it may be recovered as arrears of land revenue or as a public demand by the appropriate Government on an application made to it by the person entitled to the said money. Section 20(2) then dealt with the cases where any workman was entitled to receive from the, employer any benefit under an award or decision of an industrial tribunal which is capable of being computed in terms of money, and it provided that the amount at which the said benefit could be computed may be determined subject to the rules framed in that behalf, by that Industrial Tribunal and the amount so determined may be recovered as provided for in sub-S. (1). In other words, the provisions of S.20 (2) roughly correspond to the provisions of S.33C(2) of the Act. There are, however, two points of distinction. Section 20(2) was confined to the benefits claimable by workmen under an award or decision of an Industrial tribunal; and the application to be made in that behalf had to be filed before the industrial tribunal which made the said award or decision. These two limitations have not been introduced in S. 33C(2). Section 20(3) corresponds to S.33C:(3). It would thus be noticed that S. 20 of this Act provides a speedy remedy to individual workmen to execute their rights under awards or decisions of industrial tribunals. Incidentally, we may add that section 34 of this Act made a special provision for adjudication as to whether conditions of service had been changed

during the pendency of industrial proceedings at the instance of an individual workman and for that purpose inserted in the Act S.33A. Act 48 of 1950 by which S.20 was enacted came into force on May 20, 1950.

In 1953, the Legislature took a further step by providing for additional rights to the workmen by adding Chapter VA to the Act, and passed an Amending Act No. 43 of 1953. Chapter VA deals with the workmen's claims in cases of lay-off and retrenchment. Section 25(1) which was enacted in this Chapter provided for the machinery to recover moneys due from the employers under this Chapter. It laid down, inter alia, that any: money due from an employer. under the provisions of Chapter VA may be recovered in the same manner as an arrear of land revenue or as a public demand by the appropriate: Government on an application made to it by the workman entitled to the said money. This was of course, without prejudice to the workman's right to adopt: any other mode of recovery. This provision shows, that having created additional rights in the workmen in respect of lay-off and retrenchment the legislature took the precaution of prescribing a speedy remedy for recovering the. said amounts from their employers.. This Amending Act came into force on December 23, 1953.

About three years later, the legislature passed the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (No. 36 of 1956). This Act repealed the Industrial Disputes (Appellate Tribunal) Act No. 48 of 1950, s. 25.I in Chapter VA and inserted S. 33C(1), (9) and (3) and S. 36A in the Act. The result of these modifications is that the recovery provisions are now contained in section 33C and an additional provision is made by S. 36A which deals with cases where doubt or difficulty may arise in the

interpretation of any provision of an award or settlement. This Act came into force on August 28, 1956.

In order to make the narration of the legislative background of S.33C complete, we may refer to the fact that by the Amendment Act No. 18 of 1957, two more provisions were added to Chapter VA which are numbered as S. 25FF and S. 25FFF. This Act came into force on June 6, 1957.

The legislative history to which we have just referred clearly indicates that having provided broadly for the investigation and settlement of industrial disputes on the basis of collective bargaining, the legislature recognized that individual workmen should be given a speedy remedy to enforce their existing individual rights, and so, inserted S. 33-A in the Act in 1950 and added S. 33-C in 1956. These two provisions illustrate the cases in which individual workmen can enforce their rights without having to take recourse to S. 10(1) of the Act, or without having to depend upon their Union to espouse their cause. Therefore, in construing S. 33-C we have to bear in mind two relevant considerations. The construction should not be so broad as to bring within the scope of S. 33-C cases which would fall under S. 10(1). Where industrial disputes arise between employees acting collectively and their employers, they must be adjudicated upon in the manner prescribed by the Act, as for instance, by reference under S. 10(1). These disputes cannot be brought within the purview of S. 33C. Similarly, having regard to the fact that the policy of the Legislature in enacting S. 33C is to provide a speedy remedy to the individual workmen to enforce or execute their existing rights, it would not be reasonable to exclude from the scope of this section cases of existing rights which are sought to be implemented by individual

workmen. In other words, though in determining the scope of S. 33C we must take care not to exclude cases which legitimately fall within its purview, we must also bear in mind that cases which, fall under S. 10(1) of the Act for instance cannot be brought within the scope of S. 34C.

*Let us then revert to the words used in S. 33C(2) in order to decide what would be its true scope and effect on a fair and reasonable construction. When sub-S. (2) refers to any workman entitled to receive from the employer any benefit there specified, does it mean that he must be a workman whose right to receive the said benefit is not disputed by the employer? According to the appellant, the scope of sub S. (2) is similar to that of sub-S. (1) and it is pointed out that just as under sub-S. (1) any disputed question about the workmen's right to receive the money due under an award cannot be adjudicated upon by the appropriate Government, so under sub-S.(2) if a dispute is raised about the workmen's right to receive the benefit in question, that cannot be determined by the Labour Court. The only point which the Labour Court can determine is one in relation to the computation of the benefit in terms of money. We are not impressed by this argument. **In our opinion, on a fair and reasonable construction of sub-S. (2) it is clear that if a workman's right' to receive the benefit is disputed. that may have to be determined by the Labour Court. Before proceeding to compute the benefit in terms of money the Labour Court inevitably has to deal with the question as to whether the workman has a right to receive that benefit. If the said right is not disputed, nothing more needs to be done and the Labour Court can proceed to compute the value of the benefit in terms of money; but if the said right is disputed, the Labour Court must deal with that question and decide whether the workman has the***

right to receive the benefit as alleged by him and it is only if the Labour Court answers this point in favour of the workman that the next question of making necessary computation can arise. It seems to us that the opening clause of sub S. (2) does not admit of the construction for which the appellant contends unless we add some words in that clause. The Clause "Where any workman is entitled to receive from the employer any benefit" does not mean "where such workman is admittedly, or admitted to be, entitled to receive such benefit." The appellant's construction would necessarily introduce the addition of the words "admittedly, or admitted to be" in that clause, and that clearly is not permissible. Besides, it seems to us that if the appellants construction is accepted, it would necessarily mean that it would be at the option of the employer to allow the workman to avail himself of the remedy provided by sub-S. (2), because he has merely to raise an objection on 'the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour Court to entertain the workman's application. The claim under S. 33 C (2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by sub-S. (2). As Maxwell has observed "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution. We must accordingly hold that S. 33C (2) takes within its purview cases of workmen who claimed 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 incidentally, it may be relevant to add that it would be somewhat odd that under sub-S. (3), the Labour Court should have been authorized to delegate the work of computing the money value of the benefit to the Commissioner if the determination of the said question was the only task assigned to the Labour Court under sub-S. (2). On the other hand, sub-S. 3 becomes intelligible if it is held that what can be assigned to the Commissioner includes only a part of the assignment of the Labour Court under sub- S. (2).

It is, however, urged that in dealing with the question about the existence of a right set up by the workman, the Labour Court would necessarily have to interpret the award or settlement on which the right is based, and that cannot be within its jurisdiction under S. 33C (2), because interpretation of awards or settlements has been specifically and expressly provided for by S. 36A. We have already noticed that s. 36A has also been added by the Amending Act No. 36 of 1956 along with section 33C, and the appellant's argument is that the legislature introduced the two sections together and thereby indicated that questions of interpretation fall within S. 36A and, therefore, outside S. 33C (2). There is no force in this contention. Section 36A. merely provides for the interpretation of any provision of an award or settlement where any difficulty or doubt arises as to the said interpretation. Generally, this power is invoked when the employer and his employees are not agreed as to the interpretation of any award or settlement, and the appropriate Government is satisfied that a defect or doubt has arisen in regard to any provision in the award or settlement. Sometimes, cases may arise where the awards or settlements are obscure, ambiguous or otherwise present difficulty in

construction. It is in such cases that S. 3CA can be invoked by the parties by moving the appropriate Government to make the necessary reference under it. Experience showed that where awards or settlements were defective in the manner just indicated, there was no remedy available to the parties to have their doubts or difficulties resolved and that remedy is now provided by S. 36A. But the scope of S. 36A is different from the scope of S. 33C (2), because S. 36A is not concerned with the implementation or execution of the award at all, whereas that is the sole purpose of S. 33C (2). Whereas S. 33C(2) deals with cases of implementation of individual rights of workmen falling under its provisions, S. 36A 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 S. 36A.

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 S. 33C (2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under S. 33C (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.

We have already noticed that in enacting S. 33C the legislature has deliberately omitted some words which occurred in S. 20 (94 of the Industrial Disputes (Appellate Tribunal) Act, 1950. It is remarkable that similar words of limitation have been used in S. 33C (1) because S. 33 C (1) deals with cases where any money is due under a settlement or an award or under the provisions of Chapter VA. It is thus clear that claims made under S. 33C (1), by itself can be only claims referable to the settlement, award, or the relevant provisions of Chapter VA. These words of limitations are not to be found in S. 33C (2) and to that extent, the scope of S. 33C (9.) is undoubtedly wider than that of S. 33C (1). It is true that even in respect of the larger class. of cases which fail under S. 33C (2), after the determination is made by the Labour Court the execution goes back again to S. 33C (1). That is why S. 33C (2) expressly provides that the amount so determined may be recovered as provided for in sub-section (1). It is unnecessary in the present appeals either to state exhaustively or even to indicate broadly what other categories of claims can fall under S. 33C (2). There is no doubt that the three categories of claims mentioned in S. 33C (1) fall under S. 33C (2) and in that sense, S. 33C (2) can itself be deemed to be a kind of. execution proceeding; .but it is possible that Claims not based on settlements, awards or made under the provisions of Chapter V A, may also be competent under S. 33C (2) and that may illustrate its wider scope. We would, however, like to indicate some of the claims which would not fall under S. 33C(2), because they formed the subject matter of the appeals which have been grouped together for our decision along with the appeals with which we are dealing at present. If

an employee is dismissed or demoted and it is his case that the dismissal or demotion is wrongful, it would not be open to him to make a claim for the recovery of his salary or wages under S. 33C (2). His demotion or dismissal may give rise to an industrial dispute which may be appropriately tried, but once it is shown that the employer has dismissed or demoted him, a claim that the dismissal or demotion is unlawful and, therefore, the employee continues to be the workman of the employer and is entitled to the benefits due to him under a preexisting contract, cannot be made under S. 33 C (2). If a settlement has been, duly reached between the employer and his employees and it falls under S. 18 (2) or (3) of the Act and is governed by S.(19) 2 it would not be open to an employee, notwithstanding the said settlement, to claim the benefit as though the said settlement had come to an end. If the settlement exists and continues to be operative no claim can be made under S. 33C(2) inconsistent with the said settlement. If the settlement is intended to be terminated, proper steps may have to be taken in that behalf and a dispute that may arise thereafter may have to be dealt with according to the, other procedure prescribed by the Act. Thus, our conclusion is that the scope of s. 33C(2) is wider than S. 33C (1) and cannot be wholly assimilated with it, though for obvious reasons, we do not propose to decide or indicate what additional cases would fall under S. 33C (2) which may not fall under S. 33C (1). In this connection, we may incidentally state that the observations made by this Court in the case of Punjab National Bank Ltd (1), that S. 33C is a provision in the nature of execution should not be interpreted to mean that the scope of S. 33C (2) is exactly the same as S. 33C (1).”

23. Vide the verdict of the Hon'ble Supreme Court in **“M/s Kasturi and Sons (Private) Ltd. Vs. Shri N. Salivateeswaran”** it has been laid down that under Section 33C(2) of the Industrial Disputes Act, 1947 wherein an employee makes a claim for some money, and enquiry into the claim is contemplated by the Labour Court, it is only after the Labour Court has decided the matter that the decision becomes enforceable under Section 33(1) by the summary procedure. The Hon'ble Supreme Court also observed that the approach adopted by it in terms of Section 33C(2) of the Industrial Disputes Act, 1947 was the same as in **“Shri Ambica Mills Co. Ltd. Vs. Shri S.B. Bhatt”** for interpretation of Section 15 of the Payment of Wages Act, 1936 which fell to be construed, and it was held that under the said section, when the authority exercises its jurisdiction which is made exclusive by S. 22, it has necessarily to consider various questions incidental to the claims falling thereunder, and it was added that although it would be inexpedient to lay down any hard and fast rule for determining the scope of such questions, care should be taken not to unduly extend or curtail its jurisdiction.

24. The verdict of the Hon'ble Supreme Court in **“Municipal Corporation of Delhi Vs. Ganesh Razak and Another” (1995) 1 SCC 235** also observed to the effect:-

“ 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 of 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.”

25. Reliance was however placed on behalf of the petitioner on the observations in Para 12 of this verdict, i.e., in “**Municipal Corporation of Delhi Vs. Ganesh Razak and Another**” (Supra) to the effect:-

“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 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 33-C(2) like that of the Executing Court’s power to interpret the decree for the purpose of its execution.”

26. It is apparent in terms of the verdict of the Hon’ble Supreme Court in “**Central Bank of India Ltd. Vs. P.S. Rajgopalan etc.**”

(Supra) as observed elsewhere hereinabove that the determination of the workman's right to receive a benefit even if disputed by the management may have to be computed by the Labour Court before proceeding to compute the benefits in terms of money and that the Labour Court inevitably has to deal with the question as to whether the workman has a right to receive the benefit and if the said right is not disputed, nothing more needs to be done and the Labour Court can proceed to compute the value of the benefit in terms of money and as laid down by the Hon'ble Supreme Court in this case though, this power given to the Labour Court to allow an individual workman to execute or implement his existing individual rights is virtually exercising execution powers in some cases, it is nevertheless but settled that it is open to the Executing Court to interpret the decree for the purpose of execution though undoubtedly the Executing Court cannot go behind the decree nor can it add or subtract from the provision of the decree and that these limitations would apply to the Labour Court, but like the Executing Court, the Labour Court would also be competent to interpret the award or settlement on which the workman based his/her claim under Section 33C(2) of the Industrial Disputes Act, 1947 and that for the purpose of making necessary determination under Section 33C(2) of the said enactment it would, in appropriate cases be open to the Labour Court to interpret the award or settlement on which the workman's right rests.

27. Thus, reliance placed on behalf of the petitioner/management on the verdict in “**Municipal Corporation of Delhi Vs. Ganesh**

Razak and Another” 1995 1 SCC 235 with specific reference to the observations in Para 12 of the said verdict is misplaced in as much as the observations in Para 12 of the said verdict relied upon, whereby appeals therein against the invocation of Section 33C(2) of the Industrial Disputes Act, 1947 have been allowed, it is essential to observe that in that case the claim of the respondents/workmen was to the effect that they were all daily rated/ casual workers and they were seeking wages to be paid to them on the same rate as the regular workers and the said aspect had not earlier been settled by adjudication and recognition by the employer and thus the stage of computation of that benefit could not have been said to have reached and in that particular case, the claim of the workman of equal pay for equal work was disputed and thus without adjudication of the dispute resulting in acceptance of their claim, it was held by the Hon’ble Supreme Court that there could be no occasion for computation of the benefit on that basis to attract Section 33C(2) of the Industrial Disputes Act, 1947. The verdict of this Court relied upon equally on behalf of the petitioner and on behalf of the respondent in **“Piara Lal Vs. Lt. Governor and others” 2001 (1) L.L.N. 235**, makes it apparently clear that the powers under Section 33C(2) of the Industrial Disputes Act, 1947 could have been invoked by the respondent in the facts and circumstances of the instant case to the extent that she claimed increments, DA and revision in pay scales as was granted to other employees from time to time in the category of the respondent and would fall within the ambit of the claims to which the respondent

would be entitled to claim having been directed to be reinstated back on duty thus to continue in service along with full back wages vide the award dated 22.01.2010 in FIR No. 762/06 (Old ID No. 220/02) of the Labour Court, XIX, KKD Courts, Delhi.

28. Thus, the impugned order dated 18.12.2014 in LCA No. 39/14 on an application under Section 33C(2) of the Industrial Disputes Act, 1947 of the respondent-work woman herein to the extent that it permits the prayer made for entitlement of full back wages w.e.f. 16.06.2001 onwards, i.e., to the tune of Rs.1,02,713/- and qua increment to the tune of Rs.13,88,711.52/- and the interest at the rate of 12 per cent per annum on the said amount from 16.06.2001 till the date of actual payment of Rs. 1822262.52/- with the cost of litigation to the tune of Rs. 20,000/- to the respondent/ work woman in terms of provisions of Section 11(7) of the Industrial Disputes Act, 1947 is upheld.
29. However, as regards the claim for LTC for the years 2001-02, 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, 2008-09, 2009-10 qua LTC and Medical reimbursement as granted vide impugned order dated 18.12.2014 by the learned POLC-XI, KKD Delhi, without adjudication of the entitlement of the petitioner for reimbursement in relation thereto without it being proved on record as to whether the respondent had undertaken any travel in a particular year for the claim for the LTC and qua the respondent having incurred expenses in availing medical facilities for claiming medical reimbursement, cannot be upheld and is set aside with the matter being remanded to the Labour Commissioner, Delhi to give

an opportunity to both the parties to give their calculations in relation to the LTC claims and for medical reimbursements to ascertain as to what is the money due to which the respondent would be entitled to in relation thereto with the request to Labour Commissioner to undertake the necessary exercise within a period of three months from the date of receipt of this order.

30. Copy of this order be sent to the Labour Commissioner concerned for necessary action as referred and directed hereinabove qua determination of the claim of the respondent in relation to the LTC, leave encashment and medical reimbursements, if any, and the copy of this verdict is also directed to be sent to the Labour Commissioner concerned for further necessary action in terms of Section 33C(4) of the Industrial Disputes Act, 1947 in relation to implementation of directions dated 18.12.2014 of the POLC-XI, KKD Delhi in LCA No. 39/14 to the extent that the said order has been upheld.

31. The petition is disposed of accordingly.

 **ANU MALHOTRA, J**

JUNE 15, 2018/NC