

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09-09-2019

Coram

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.1611 of 2015

And

M.P.No.1 of 2015

Management of Tamil Nadu State
Transport Corporation (Coimbatore Division) Ltd.,
38, Mettupalayam Road,
Coimbatore-641 043 Represented by its
Managing Director.

... Petitioner

vs.

1.The Presiding Officer,
Labour Court,
Coimbatore.

2.R.Devaraj

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Certiorari, calling for the records of the Labour Court,
Coimbatore in C.P.No.219 of 2010 dated 25.11.2013 and quash
the same.

For Petitioner : Mr.P.Kannan Kumar

For Respondent No.1: Labour Court

For Respondent No.2: Mr.S.Saravanan

O R D E R

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The order dated 25.11.2013, passed by the
Labour Court in C.P.No.219 of 2010, is under challenge in
the present writ petition.

2. The writ petitioner is the management of

Tamil Nadu State Transport Corporation (Coimbatore Division) Limited. The second respondent was appointed as a Driver in the writ petitioner-Corporation. On 03.06.1982, the second respondent-workman was appointed and was retired from service on 31.10.2010. The second respondent-workman filed a Computation Petition No.219 of 2010 before the first respondent, claiming Rs.1,67,680/- towards double wages for the period from 16.07.2003 to 31.10.2008, alleging that no weekly rest was given during that period and therefore, the second respondent-workman is entitled for salary during the said period.

3. In this regard, the writ petitioner-Corporation filed a detailed counter statement denying the allegations set out by the second respondent-workman. It is stated that the employees who performed their duties will be allowed to take rest on the very next day of their duty. Accordingly, the second respondent-workman had availed rest on the very next day of the duty and the workman had worked only for three days in a week and availed rest for another three days. Further, a point was raised by the writ petitioner-Corporation that the computation petition is to be dismissed on the ground of delay and laches and also on the ground that the second respondent-workman has to adjudicate his right, which is to be determined by the Labour Court. However, without any adjudication, the petition under Section 33C(2) of the Industries Disputes Act, cannot be entertained.

4. Learned counsel appearing on behalf of the second respondent-workman states that in the impugned computation petition order, the Labour Court has adjudicated the merits of the case also. Even in paragraph-8 of the said order, the Labour Court has arrived a conclusion that the payslips marked as Ex.W-5 series would show that a column has been provided to mention the rest period, but the said columns were left blank. Relying on the said documents, the Labour Court passed an Award in favour of the second respondent-workman. Learned counsel for the writ petitioner further contended that before the Labour Court the point of maintainability was not raised.

5. This apart, the second respondent-workman filed documents to establish that he is entitled for the wages for the rest period and by considering the documents filed by the second respondent-workman, the Labour Court passed an Award in favour of the second respondent-workman. It is further stated that as per Rule

28 of the Tamil Nadu Motor Transport Workers Rules 1965, the second respondent-workman is not entitled for weekly rest with wages and the said position was not disputed by the writ petitioner-Transport Corporation. Relying on this ground, the learned counsel for the second respondent-workman states that there is no infirmity in respect of the order passed by the Labour Court.

6. In respect of maintainability of the computation petition before the Labour Court under Section 33C(2) of the Industrial Disputes Act, 1947, the same is to be construed as a preliminary issue in the present writ petition. Learned counsel for the writ petitioner-Corporation contended that the other points raised in the impugned CP order cannot be taken into consideration in view of the fact that there was no pre-existing right for the purpose of filing the CP before the Labour Court under Section 33C(2) of the Industrial Disputes Act. The entire adjudication of the merits cannot be undertaken in the petition filed under Section 33C(2) of the Industrial Disputes Act. The very section stipulates that "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".

7. Thus, there must be an entitlement before entertaining a petition under Section 33C(2) of the Industrial Disputes Act. In other words, there must be a pre-existing right which is a precondition for entertaining a petition under Section 33C(2) of the Industrial Disputes Act. In the absence of any such right or entitlement, no petition can be entertained for the purpose of computing the monetary value or benefits.

8. It is further to be construed that by way of fresh adjudication, monetary benefits cannot be computed. The merits and the demerits of the issues raised cannot be adjudicated in a petition filed under Section 33C(2) of the Industrial Disputes Act. All such adjudications are to be done in the manner prescribed before the Competent Court of Law and only if the rights and entitlements are crystallised, then alone a petition under Section 33C(2) can be entertained and not otherwise. The

petition under Section 33C(2) is more or less like an execution petition and therefore, the petition under Section 33C(2) of the Act cannot be entertained for the purpose of complete adjudication of the issues. The very scheme of the Industrial Disputes Act is constituted in such a manner that there must be an adjudication, which resulted in establishing a right and only after establishing the right or entitlement, a petition can be filed for computation or claiming the benefits. When the initial Sections of the Act enumerates for adjudication of the issues, then the adjudication of the disputed issues are to be undertaken at the first instance and only thereafter, a petition for claim or computation can be filed.

9. This being the legal principles to be followed, admittedly, there was no such adjudication. In the present case, the writ petitioner-Corporation has disputed the issues. The writ petitioner-Corporation even disputed the eligibility of the workman for the rest salary. Under those circumstances, the factual aspects as well as the relevant Rules are to be adjudicated and only after such process, the claim petition can be entertained and not otherwise.

10. In this regard, it is relevant to cite a judgment of the three Judges Bench of the Hon'ble Supreme Court of India in the case of State of U.P and Another vs. Brijpal Singh [2005-III-LLJ 1003]. The relevant paragraphs-10 and 12 of the judgment cited supra are extracted as under:

"10. It is well settled that the workman can proceed under Section 33-C (2) only after the Tribunal has adjudicated on a complaint under Section 33-A or on a reference under Section 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. This Court in the case of Punjab Beverages (P) Ltd. v. Suresh Chand [(1978) 2 SCC 144 : 1978 SCC (L&S) 165] held that a proceeding under Section 33-C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman is entitled to any benefit which

is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. Proceeding further, this Court held that the right to the money which is sought to be calculated or 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 the industrial workman, and his employer. This Court further held as follows: (SCC p. 150, para 4)

"It is not competent to the Labour Court exercising jurisdiction under Section 33-C(2) to arrogate to itself the functions of an Industrial Tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject-matter of an industrial dispute in a reference under Section 10 of the Act."

In the case of Municipal Corpn. of Delhi v. Ganesh Razak [(1995) 1 SCC 235 : 1995 SCC (L&S) 296 : (1995) 29 ATC 93] this Court held as under: (SCC pp. 241-42, paras 12-13)

"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.

13. In these matters, the claim of the respondent workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of 'equal pay for equal work' being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be

no occasion for computation of the benefit on that basis to attract Section 33-C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in the writ petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made under Section 33-C(2) of the Act by these respondents."

12. Thus, it is clear from the principle enunciated in the above decisions that the appropriate forum where question of back wages could be decided is only in a proceeding before a forum to whom a reference under Section 10 of the Act is made. Thereafter, the Labour Court, in the instant case, cannot arrogate to itself the functions of an Industrial Tribunal and entertain

the claim made by the respondent herein which is not based on an existing right but which may appropriately be made the subject-matter of an industrial dispute in a reference under Section 10 of the ID Act. Therefore, the Labour Court had no jurisdiction to adjudicate the claim made by the respondent herein under Section 33-C(2) of the ID Act in an undetermined claim and until such adjudication is made by the appropriate forum, the respondent workman cannot ask the Labour Court in an application under Section 33-C(2) of the ID Act to disregard his dismissal as wrongful and on that basis to compute his wages. It is, therefore, impossible for us to accept the arguments of Mrs Shyamla Pappu that the respondent workman can file application under Section 33-C(2) for determination and payment of wages on the basis that he continues to be in service pursuant to the said order passed by the High Court in Writ Petition No. 15172 of 1987 dated 28-10-1987. The argument by the learned counsel for the workman has no force and is unacceptable. The Labour Court, in our opinion, has erred in allowing the application filed under Section 33-C(2) of the ID Act and ordering payment of not only the salary but also bonus to the workman although he has not attended the office of the appellants after the stay order obtained by him. The Labour Court has committed a manifest error of law in passing the order in question which was rightly impugned before the High Court and erroneously dismissed by the High Court. The High Court has also equally committed a manifest error in not considering the scope of Section 33-C(2) of the ID Act. We, therefore, have no hesitation in setting aside the order passed by the Labour Court in Misc. Case No. 11 of 1993 dated 23-8-1995 and the order dated 9-1-2002 passed by the High Court in CMWP No. 36406 of 1995 as

illegal and uncalled for. We do so accordingly."

11. In the case of Tara and Others vs. Director, Social Welfare and Others [(1998) 8 SCC 671], the Hon'ble Supreme Court observed as follows:-

"2. There is no infirmity in the conclusion reached by the Labour Court on the basis of the decision of this Court in Ganesh Razak [(1995) 1 SCC 235 : 1995 SCC (L&S) 296 : (1995) 29 ATC 93] that the claim made by the appellants is not maintainable under Section 33-C(2) of the Act. This is obvious from the fact that the status and nature of employment of the appellants is itself disputed and unless there is a prior adjudication on merits of the status which is the foundation for making the claim for wages at the specified rates, the question of moving an application under Section 33-C(2) for computation of the wages does not arise. We find that the Labour Court has recorded some findings which may be relevant for the disputed status of the appellants as anganwadi workers/helpers even though it has rightly reached the conclusion that the applications do not lie under Section 33-C(2) of the Act. It is clear that the question of maintainability of the applications under Section 33-C(2) was required to be determined at the threshold and the question of examining the appellants' claim on merits relating to their status could have been gone into thereafter if the applications were held to be maintainable under Section 33-C(2). In view of the conclusion rightly reached by the Labour Court that the applications were not maintainable under Section 33-C(2), its other findings relating to the status and nature of employment of the anganwadi workers/helpers were wholly uncalled for. All such findings are, therefore, not to be construed as deciding any

point relating to the status of the appellants."

12. As far as the present writ petition is concerned, the second respondent-workman directly filed a computation petition No.219 of 2010. The Labour Court also adjudicated the issues in the absence of establishing any pre-existing right by the second respondent-workman. Though the Labour Court in paragraph-11 of the order states that the proceedings under Section 33C(2) of the Industrial Disputes Act is in the nature of the execution proceedings and declined to grant interest, the very maintainability has not been decided. Contrarily, the Labour Court proceeded on the footing that the second respondent-workman is entitled for the rest salary as per the Rules and accordingly, he is entitled to get the salary for 187 days at the rate of Rs.328 x 2 and pass an Award, directing the writ petitioner-Corporation to pay a sum of Rs.1,22,672/-.

13. The Labour Court in proceedings under Section 33C(2) of the Industrial Disputes Act, cannot adjudicate the issues on merits, so as to crystallise the rights of the workmen. Such an adjudication must be done in the manner prescribed under the Industrial Disputes Act and therefore, the contention of the learned counsel for the writ petitioner-Corporation that the Labour Court considered the documents as well as the merits and accordingly granted the relief by computing the rest salary cannot be accepted. If such an adjudication on merits under Section 33C(2) is permitted, then the very spirit and purpose of the adjudication process contemplated under the other provisions of the Industrial Disputes Act, are not only diluted but also defeated. Thus, every provisions of the Industrial Disputes Act has got its own spirit and sanctity.

14. Thus, the petition under Section 33C (2), which is in the nature of execution proceedings, cannot be utilised for the purpose of adjudicating the disputed issues raised between the parties. In such an event, every such disputed facts were raised under the petition under Section 33C(2) and this will create an anomaly and further would be in violation of the very scheme of adjudication contemplated under the Industrial Disputes Act.

15. This being the legal principles to be followed, this Court is of the considered opinion that the very adjudication of the disputed issues made by the Labour

Court in the computation petition cannot be accepted and admittedly, the second respondent-workman had not raised any dispute for adjudication under the provisions of the Industrial Disputes Act. Contrarily, the second respondent-workman filed a computation petition No.219 of 2010 and based on the petition, the Labour Court also passed an order, granting the relief of wages.

16. In view of the legal principles discussed above, this Court is inclined to consider the writ petition. Consequently, the order dated 25.11.2013 passed in C.P.No.219 of 2010 is quashed and consequently the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Svn
To

- 1.The Presiding Officer,
Labour Court,
Coimbatore.
- 2.The Managing Director,
Tamil Nadu State Transport Corporation
(Coimbatore Division) Ltd.,
38, Mettupalayam Road,
Coimbatore-641 043

+1cc to Mr.S.Saravanan , Advocate SR.No. 77988

+1cc to Mr.P.Kannan , Advocate SR.No. 77858

W.P.No.1611 of 2015

A.SK(30/09/2019)

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