

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28-11-2019

Coram

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.9993 of 2018

And

W.M.P.No.11944 of 2018

The Superintending Engineer,
Tamil Nadu Electricity Board
(Now known as Tamil Nadu
Generation and Distribution
Corporation Limited),
Tiruvannamalai-606 604. ... Petitioner

vs.

1.The Presiding Officer (FAC),
Additional Labour Court,
Vellore.

2.G.Gnanajothi ... 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 first respondent in
C.P.No.253 of 2013 and quash the order dated 09.12.2014.

For Petitioner : Mr.S.Haroon AL.Rasheed for
M/s.T.S.Gopalan and Co.

For Respondent-1: Labour Court

For Respondent-2: Mr.N.Suresh

ORDER

The order passed by the first respondent dated
09.12.2014 in C.P.No.253 of 2013 is under challenge in the
present writ petition.

2. The writ petitioner is the Tamil Nadu Electricity
Board, filed the present writ petition on the ground that the
claim petition was allowed based on the orders of the Tamil Nadu
Electricity Board issued in memo dated 13.12.1996. The benefit

of ex-gratia payment granted to the contract labourers are not based on the settlement. Contrarily, the ex-gratia payments were granted based on the request made by the Union. While extending the benefit of ex-gratia payment, certain conditions were imposed and paragraph 4 of the memo dated 13.12.1996 reads as under:

"4. Based on the above decision, all officers of the Board are requested to identify the Contract Labourers who have completed 5(Five) years of regular service as on 31.3.96 and send the above particulars for the year 1995-96 within a month from the date of receipt of this memo. After verifying all the records and identifying the Contract Labourers who have completed 5(Five) years of regular service as on 31.3.96, a list showing the particulars of Contract Labourers as prescribed and enclosed along with this Memo, should be prepared and ensured and certified by the Officers concerned that the Contract Labourers have served in Tamil Nadu Electricity Board regularly and contemplated 5(Five) years of service as on 31.3.96."

3. The learned counsel for the writ petitioner states that there is no pre-existing right in respect of the benefit of ex-gratia payment. Ex-gratia payment does not fall under the terms and conditions of the 12(3) Settlement. This being the factum, an adjudication is mandatory. This apart, the contract labourers were engaged by the Private contractors with whom the Tamil Nadu Electricity Board entered into an agreement. Thus, the contract labourer was not the direct employee of the Tamil Nadu Electricity Board and there was no employer-employee relationship existed in respect of this contract labourer. Thus, the memo issued by the Tamil Nadu Electricity Board cannot have direct implications in respect of the payment of ex-gratia benefit to the contract labourers.

4. The learned counsel for the petitioner states that there was no pre-existing right, enabling the Labour Court to entertain a claim petition under Section 33 (C) (2) of the Industrial Disputes Act. Even in case, where the benefit of ex-gratia payment, claimed by the contract labourers, have to adjudicate the matter and establish that they are entitled for ex-gratia payment with reference to the conditions stipulated in the order issued by the Board on 13.12.1996.

5. This Court also considered the scope of entertaining a claim petition under Section 33(C)(2) of the Industrial Disputes Act, a claim petition can be entertained, only if there is a pre-existing right or the rights of the workman are already crystallized. In the absence of any such right, no petition under Section 33(C)(2) can be entertained by the Labour Court.

6. This Court passed an order dated 09.09.2019 in W.P.No.1611 of 2015 and the relevant paragraphs are extracted hereunder:

"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.

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."

7. In view of the fact that the Labour Court adjudicated the rights of the workman in the claim petition and granted the benefit of ex-gratia payment with reference to the orders of the

Tamil Nadu Electricity Board dated 13.12.1996, this Court is of the considered opinion that the Labour Court has exercised the jurisdiction under Section 33(C) (2) erroneously and accordingly, the writ petition is to be considered.

8. This being the factum of the case, this Court has no hesitation in coming to the conclusion that the Labour Court has committed an error in entertaining claim petition and adjudicated the merits and demerits in respect of the rights of the workman with reference to the order passed by the Tamil Nadu Electricity Board.

9. Accordingly, the order of the first respondent dated 09.12.2014 passed in C.P.No.253 of 2013 stands quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Svn

To

- 1.The Presiding Officer (FAC),
Additional Labour Court,
Vellore.
- 2.The Superintending Engineer,
Tamil Nadu Electricity Board
(Now known as Tamil Nadu
Generation and Distribution
Corporation Limited),
Tiruvannamalai-606 604.

+1cc to Mr.T.S.Gopalan & CO, Advocate, S.R.No. 99562
+1cc to Mr.N.Suresh, Advocate, S.R.No. 99613

W.P.No.9993 of 2018

SJ(CO)
GN(08/01/2020)