

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.25597 of 2010

K.G.Seshadri

...Petitioner

vs.

1. The Presiding Officer, Central Government  
Industrial Tribunal Cum Labour Court,  
"Shastri Bhavan"  
Chennai-600 034.

2. The Trustees of  
State Bank of India  
Employees Provident Fund  
rep.by Chairman/Managing Director  
State Bank of India,  
Madam Cama Road,  
Mumbai-400 002.

3. The Chief General Manager,  
State Bank of India, H.O,  
Rajaji Salai,  
Chennai-600 001.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 24.09.2010 in C.P.No.5/2010 of the first respondent Learned Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court Chennai and quash the same and direct the second and third respondents viz., The Trustees of State Bank of Employees Pension Fund and the Chief General Manager, the State Bank of India, H.O.Chennai respectively to sanction the pension due to the petitioner under the State Bank of Employees Pension Fund.

For Petitioner : Mr.C.K.Chandrasekar

For Respondents : R1-Tribunal  
Mr.K.Sankaran for RR2 & 3.

## O R D E R

The order dated 24.09.2010 passed in CP.No.5 of 2010 is under challenge in the present writ petition.

2. The writ petitioner was an employee of the State Bank of India and he joined the service of the respondent company on 17.08.1978, as a clerk and he served upto 12.12.1998. The petitioner claims that he is eligible for pension, as per the pension scheme namely the State Bank of Indian Employees Pension Fund. However, the second respondent/management refused to grant the pension under the pension scheme, resulted in the filing of a claim petition by the writ petitioner under Section 33(C)(2) of the Industrial Disputes Act.

3. The learned counsel for the writ petitioner states that the labour Court committed an error in considering the case of the writ petitioner, as he is fully eligible to get the pension under the pension scheme and his rights are being ensured under the scheme. In spite of existence of the pension scheme in favour of the employee of the State Bank of India, the Labour Court dismissed the claim petition on the ground that the petitioner has not established a pre-existing right, so as to maintain the petition under Section 33(C)(2) of the Industrial Disputes Act. The learned counsel for the writ petitioner relying on the principles laid down for entertaining the claim petition under Section 33(C)(2) emphasized that the findings of the Labour Court in this regard are contrary to the established principles of law. Thus, the order passed in the claim petition is liable to be scrapped.

4. The learned counsel for the respondents 2 and 3 disputed the contention by stating that the scheme of the pension admittedly was in force. However, the eligibility criteria as well as the terms and conditions stipulated in the scheme have to be scrupulously followed by the authorities, while sanctioning the pension to all the eligible employees. On scrutinizing of the service records of the writ petitioner, the authorities came to a conclusion that he was not eligible for want of qualifying services and accordingly, rejected the claim of the writ petitioner for grant of pension under the pension scheme. Thus, there is no infirmity in respect of rejection of claim of the writ petitioner for grant of pension. In the event of such rejection, the petitioner has to establish his right at the first instance, so as to file a claim petition under Section 33(C)(2) of the Industrial Disputes Act. Instead of raising such dispute, the writ petitioner directly filed a claim petition under Section 33(C)(2) of the Industrial Disputes Act.

5. The learned counsel for the respondents 2 and 3 further brought to the notice of this Court that the writ petitioner earlier filed W.P.No.19002 of 2008, to quash the letter dated 21.07.2008, issued by the respondent therein and to direct the respondents/State Bank of India to sanction and settle the pension with effect from 13.12.1998 and pay the arrears with interest. The said writ petition claiming the very same benefit of pension, was withdrawn by the writ petitioner on 21.04.2009. After withdrawal of the writ petition, the writ petitioner has chosen to file a claim petition under Section 33(C)(2) of the Industrial Disputes Act, and therefore, the Labour Court rightly rejected the claim of the writ petitioner merely on the ground that he has not established a pre-existing right, so as to grant the relief.

6. This Court has elaborately considered the scope of the claim petition to be entertained under Section 33(C)(2) of the Industrial Disputes Act in W.P.No.1611 of 2015 dated 09.09.2019 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. सत्यमेव जयते

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.

7. A Perusal of the order passed by the Labour Court shows that the Labour Court relied upon the judgment of the Hon'ble Supreme Court of India in MUNICIPAL CORPORATION OF DELHI vs. RAZAK (CDJ-1994-SC-483), wherein the Apex Court held as follows:

"the ratio of these decisions clearly indicates that where the basis of the claim of the entitlement of the workman to a certain right is disputed, there being, no earlier adjudication or recognition 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 workman's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of his 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 stated as incidental to the Labour

Court's powers under Section 33(C)(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution. The decision continues to lay down further "the mere fact that some other workman are alleged to have made a similar claim by filing Wps 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. Respondent's claim is not based on a prior adjudication made in the writ petitions filed by some other workmen upholding a similar claim which would be relied on as an adjudication to enure to the benefit of these respondents as well."

8. In paragraph No.8 of the order, the labour Court in clear terms arrived at a conclusion that the petitioner has not established any pre-existing right, with reference to the eligibility conditions prescribed under the pension scheme. Accordingly, the Labour Court came to a conclusion that the claim of the writ petitioner cannot be derived under a straight jacket formula as in the pension rules, as amended from time to time. Thus, the eligibility and other terms and conditions for grant of pension, are all disputed facts and to be adjudicated by way of an industrial dispute. Consequently, the claim petition filed under Section 33(C)(2) cannot be entertained by the Labour Court and there is no perversity or infirmity in respect of the findings rendered by the Labour Court. Consequently, the order dated 24.07.2010 passed in C.P.No.5 of 2010 is confirmed and the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CCC)

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Sub Assistant Registrar

To

1. The Presiding Officer, Central Government  
Industrial Tribunal Cum Labour Court,  
"Shastri Bhavan"  
Chennai-600 034.

2. The Trustees of  
State Bank of India  
Employees Provident Fund  
rep.by Chairman/Managing Director  
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Madam Cama Road,  
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3. The Chief General Manager,  
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Rajaji Salai,  
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+1cc to M/s.C.K.Chandrasekhar, Advocate Sr.91820

W.P.No.25597 of 2010

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