

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.11.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.8596 to 8602 of 2015

and

MP.Nos.1,1,1,1,1,1,1,2,2,2,2,2 & 2 of 2015

W.P.No.8596 of 2015

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

..Petitioner in all W.Ps

vs

The Presiding Officer
Labour Court,
Coimbatore.

...1st Respondent in all the W.Ps

R.SUBRAMANIAN

..2nd Respondent in W.P.No.8596/2015

N.RAMALINGAM

..2nd Respondent in W.P.No.8597/2015

K.EASWARAN

..2nd Respondent in W.P.No.8598/2015

P.THIRUMALAISAMY

..2nd Respondent in W.P.No.8599/2015

P.VELAYUTHAN

..2nd Respondent in W.P.No.8600/2015

P.SAKTHIVEL MURUGAN

..2nd Respondent in W.P.No.8601/2015

A.KANNAN

..2nd Respondent in W.P.No.8602/2015

Prayer in W.P.Nos.8596 to 8602/2015 : These Writ Petitions are filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari or any other appropriate writ or order or direction in the nature of a writ calling for the records of the first respondent/Labour Court, Coimbatore made in CP.Nos.119/2012 , 121, 124, 345, 120, 122 & 123/2012 respectively dated 30.08.2013 and quash the same.

For Petitioner : Mr. P. Kannan Kumar for all WPs.

For Respondents: R1- Labour Court for all WPs.
Mr. R. M.d. Nasrullah for R2
for all Wps.

C O M M O N O R D E R

The order dated 30.08.2013 passed by the Labour Court against the petitioner is under challenge in these present Writ Petitions.

W.P.No.8596 of 2015

2. The petitioner is Tamil Nadu State Transport Corporation, (Coimbatore Division) Limited.

3. The learned counsel for the petitioner states that the second respondent Mr. R. Subramanian was appointed as Driver on 19.03.2000 on temporary basis and his services were regularized in proceedings dated 28.01.2003 and the regularization was granted with effect from 01.03.2001. The second respondent made the claim for difference in wages in between the years 2001-2003.

4. The Claim Petition filed under section 33 C(2) of the Industrial Disputes Act was after a lapse of about ten years from the date of passing the order of regularization. This apart, it is contended that the order of regularization was not challenged by the second respondent employee. The order of regularization granted with effect from 1.3.2001 was accepted by the employee concerned. He was concerned and he was working for about ten years and after a lapse of 10 years, the Claim Petition is filed under Section 33C(2) of the Industrial Disputes Act claiming the difference in wages. In respect of legal principles applicable while considering the Claim Petition under section 33C(2) of the Industrial Disputes Act, this Court passed an order in WP.No.1611 of 2015 dated 09.09.2019 and the relevant paragraphs are extracted hereunder:

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 ensuring 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."

5. As far as the W.P.No.8596 of 2015 is concerned, the second respondent employee accepted the order of regularization granted with effect from 01.03.2001. Thereafter he worked in

the Transport Corporation for about ten years and the Claim Petition was filed in the year 2012 after a lapse of about ten years.

6. Under these circumstances, this Court is of the opinion that the Claim Petitions filed by the second respondents ought not to have been entertained, when the order of regularization became final. Once the order of regularization became final and the terms of regularization had already been accepted by the employees concerned, thereafter they cannot claim any benefit based on the order of regularization after a lapse of ten years and more so such regularization was also confirmed and not challenged by the employees concerned.

7. This being the fact and circumstances, the orders of the Labour Court under section 33 C (2) is quashed, as the Claim Petitions are perverse and not in consonance with the established principles of law. Thus the orders dated 30.08.2013 passed in CP Nos.119, 121, 124, 345, 120, 122 and 123 of 2012 is quashed and the Writ Petitions stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

mrn

To

1. The Presiding Officer
Labour Court,
Coimbatore.

+7 CCS to Mr.P. Kannan Kumar, Advocate sr 94730 to 94736.

W.P.Nos.8596 to 8602 of 2015

and

MP.Nos.1,1,1,1,1,1,2,2,2,2,2 & 2 of 2015

RSI (CO)
SP(20/12/2019)