

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.26567 of 2014

R.Karunakaran

.. Petitioner

-vs-

1.Rangasamy Motor Service,  
Proprietor T.Gunasundari,  
Gingee Road, Chetpattu.

2.The Presiding Officer,  
Principal Labour Court, Vellore.

... Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the entire records connected with the impugned order passed in C.P.No.177/2013 dated 20.02.2014 on the file of the 2<sup>nd</sup> respondent and quash the same and allow the claim petition in C.P.No.177/2013, as prayed for.

For Petitioner : Mr.R.D.Ashok Kumar  
For Respondents : R1 - Mr.S.Ravindran,  
Senior Counsel  
assisted by Mr.Bazeer Ahamed  
: R2 - Labour Court

ORDER

This writ petition is filed challenging the order dated 20.02.2014, passed in C.P.No.177 of 2013.

2.The learned counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner was employed as a driver by the 1<sup>st</sup> respondent Management. The writ petitioner was terminated from service without following the procedures and therefore, he raised an industrial dispute in I.D.No.98 of 2005. The industrial dispute was disposed of by order dated 07.06.2007, by passing an ex-parte award. The 1<sup>st</sup> respondent Management filed an interlocutory application in I.A.No.289 of 2008 in I.D.No.98 of 2005 to set aside the ex-parte award dated 07.06.2007, with a condone delay petition to condone the delay of 416 days in filing the interlocutory application. The Labour Court by order dated 21.05.2009, dismissed the condone delay petition. Challenging the ex-parte

award dated 07.06.2007 as well as the order dated 21.05.2009, the 1<sup>st</sup> respondent Management filed writ petitions before this Court in W.P.Nos.10623 and 10624 of 2009, wherein this Court has passed an order on 22.06.2010, and the operative portion of the order is as follows:-

"5. Accordingly, the order dated 21.05.2009 in I.A.No.289 of 2008 in I.D.No.98 of 2005 and order dated 07.06.2007 in I.D.No.98 of 2005 on the file of the Labour Court, Vellore are set aside. The Labour Court, Vellore is directed to take up the main I.D.No.98 of 2005 and dispose of it on merits after giving due opportunity to both within a period of twelve weeks from the date of receipt of copy of this order. In the mean time, the petitioner is directed to accommodate the workman in the same post of Driver within a period of 15 days from the date of receipt of copy of this order, without prejudice to the rights of the parties in the main I.D. The writ petitions are accordingly ordered."

3. The learned counsel for the writ petitioner relying on the directions given by this Court in the said writ petitions, contended that the order passed by this Court dated 22.06.2010, was flouted by the Management and the writ petitioner was not permitted to report for duty. The writ petitioner made several representations and approached the Management in person. In spite of his efforts, as well as the promise given by the Management, he was not permitted to join duty. Under those circumstances, the petitioner was constrained to file a claim petition under Section 33C(2) of the Industrial Disputes Act, 1947, before the Labour Court. The Labour Court erroneously rejected the claim petition on the ground that the writ petitioner ought to have filed a contempt petition in respect of non-implementation of the orders passed by this Court in W.P.Nos.10623 and 10624 of 2009.

4. The learned counsel for the writ petitioner reiterated that the Management has given a promise for reinstatement and further, this Court has also issued direction to reinstate the writ petitioner. In spite of all these directions and promise, the writ petitioner was deprived of the benefit of joining duty and therefore, the claim petition ought to have been entertained for the purpose of granting the relief as set out in the petition itself.

5. The learned Senior Counsel for the 1<sup>st</sup> respondent Management disputed the contentions by stating that it is an admitted fact that the industrial dispute was raised in I.D.No.98 of 2005 challenging the non-implementation of the

order dated 22.06.2010. An ex-parte award was passed and the said award was challenged by way of writ petitions. The writ petitions were disposed of on 22.06.2010 with a direction to the Management to reinstate the writ petitioner. The Management was all along willing to reinstate the writ petitioner, but he had not reported for duty. In view of the fact that the writ petitioner was not inclined to work, the Management had not taken any further steps and therefore, the Labour Court is right in rejecting the claim petition. The claim petition was rejected mainly on the ground that the directions of the High Court if at all not implemented by the Management, the petitioner ought to have preferred a contempt petition before the High Court and even the writ petitioner has not made any such objections in the pending dispute, which was remanded by the High Court in the said writ petitions. Therefore, the petitioner has not established any pre-existing right or entitlement so as to maintain the claim petition under Section 33C(2) of the Act.

6.This Court is of a considered opinion that this Court passed an order remanding the matter for re-adjudication, since the challenge was made against the ex-parte award. While remanding the matter back to the Labour Court, this Court issued a direction to the Management to reinstate the workman in service. The workman now made a complaint that he was not permitted to join duty. However, the fact remains that he had not taken any efforts to file contempt petition against the non-implementation of the orders of this Court. Further, the industrial dispute, which was restored, was also continued and that was pursued by the writ petitioner and the Labour Court disposed of the industrial dispute on 07.11.2014 and the Labour Court not granted the relief of reinstatement or backwages. Contrarily, the relief of compensation of Rs.32,005/- was ordered. Under these circumstances, the factual inference drawn by the Labour Court in the claim petition is based on the evidences submitted by the Management and therefore, there is no infirmity or perversity as such.

7.This Court is of a considered opinion that a claim petition under Section 33C(2) of the Act can be entertained only if there is a pre-existing right. If there is any disputed issue in respect of the claim, then the claim petition cannot be entertained at all. The principles in this regard and the maintainability of the claim petitions are considered by this Court 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.

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 Corp'n. 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. ....

13. ....

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."

8. In view of the fact that reinstatement is a disputed fact and the writ petitioner has not established that there was a pre-existing right for the purpose of entertaining a claim petition, the Labour Court is right in rejecting the claim petition filed by the petitioner under Section 33C(2) of the Act and there is no infirmity as such. This apart, the industrial dispute itself was disposed of by granting the compensation of Rs.32,005/- and under these circumstances, this Court is not inclined to grant the relief in the present writ petition.

9. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (Cj Conf)

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Sub Assistant Registrar

Abr

To

The Presiding Officer,  
Principal Labour Court, Vellore.

+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No. 97015

+1cc to Mr.J.Bazeer Ahmed, Advocate, S.R.No. 96799

W.P.No.26567 of 2014

SR(CO)  
GN(18/12/2019)