

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2019

CORAM

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

W.P.No.27882 of 2017
and
W.M.P.No.29905 of 2017

The Management of
St.Mary's Matriculation Higher Secondary School
Rep.by its Correspondent,
Mettur Dam - 636 401 ..Petitioner

vs

1.The Presiding Officer,
Labour Court,
Salem.

2.Sulochana ..Respondents

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for the records of the 1st respondent in Claim Petition
No.49 of 2011 and quash its order dated 25.07.2017.

For Petitioner : Mr.S.Ravindran, Senior counsel
For Mr.S.Bazeer Ahamed

For Respondents : R1 - Labour Court
R2 - Mr.A.M.Packianantha Easter

सत्यमेव जयते
O R D E R

The order dated 25.07.2017 passed in Claim Petition No.49
of 2011 is sought to be quashed in the present writ petition.

2. The writ petitioner states that the 2nd respondent was
working as a Staff in the writ petitioner School. On 05.06.2003
and on 06.06.2003, the 2nd respondent employee misappropriated
Rs.200/-, while collecting fees from the students and parents.
Thereafter, the 2nd respondent did not report for duty. By order
dated 02.08.2003, the writ petitioner terminated the services of
the 2nd respondent. The 2nd respondent challenged the said order
by raising Industrial Dispute before the Labour Officer, Salem.
Conciliation talks ended in failure and the 2nd respondent did

not pursue her non-employment by way of adjudicating process. In other words, no industrial dispute has been raised by the 2nd respondent employee under the provisions of the Industrial Disputes Act. Instead of adjudicating the issues, by raising an Industrial Dispute, the 2nd respondent directly filed a Claim petition in C.P.No.400 of 2004 before the 1st respondent, claiming wages for the period from June 2003 to July 2004 for a sum of Rs.58,456/-. By order dated 27.01.2006, the Labour Court allowed the claim of the 2nd respondent. The petitioner informed the 2nd respondent to give reasons as to why her termination for employment at 02.08.2003 should not be confirmed. Since the reply of the 2nd respondent was not satisfactory by letter dated 09.06.2006, the petitioner informed the 2nd respondent about her termination from service. The writ petitioner challenged the said order before the High Court in W.P.No.3786 of 2006 and this Court passed an order on 31.01.2011, dismissing the writ petition filed by the writ petitioner. On 01.07.2011, the 2nd respondent filed Claim Petition in C.P.No.49 of 2011 again, claiming wages from August 2004 to June 2011 at Rs.7,74,172/-, granting herself whimsical increase in wages. The petitioner let in elaborate evidence before the 1st respondent regarding non-employment of the 2nd respondent, which was unchallenged and further, contended that the claim petition filed by the 2nd respondent was not maintainable as there was no pre-existing right. In spite of the fact that the writ petitioner established that the 2nd respondent was dismissed from service, the 1st respondent allowed the claim petition by order dated 25.07.2017 and challenging the said order, the present writ petition is filed.

3. The learned counsel appearing on behalf of the 2nd respondent disputed the contentions raised on behalf of the writ petitioner by stating that the 2nd respondent at no point of time, was terminated from service. The claim petition was filed on the ground that she was not allowed to report for duty despite the fact that the 2nd respondent made a request with the writ petitioner Management. The learned counsel for the 2nd respondent further states that the earlier writ petition was allowed by this Court, with regard to the claim petition filed by the 2nd respondent, claiming wages with period from February 2002 to July 2004. Thus, once again, she filed another claim petition, claiming wages from August 2004 to June 2011. Considering the fact that the High Court confirmed the order passed in the claim petition on earlier occasion, the Labour Court passed an order in the present claim petition also and as such there is no infirmity.

4. The learned counsel for the 2nd respondent states that now, the 2nd respondent has been reinstated and working. Therefore, she is entitled for wages during the non-employment period. The claim petition was considered based on the orders

passed by the High Court and in that writ petition, the writ petitioner Management has not filed any document or order, establishing the termination. Thus, now they cannot come out with the pleading that the 2nd respondent had already been terminated. For all these reasons, the writ petition is liable to be rejected.

5. The learned Senior counsel appearing on behalf of the writ petitioner contended that admittedly, the order of termination was not produced before the High Court on earlier occasions. Such a misconduct should not provide any undue advantage to the workman, so as to claim wages for the subsequent period also. Such a claim petition cannot be entertained in an endless manner and even in case of misconduct by the Management in not filing the documents during the appropriate time, at least while entertaining the second claim petition, Labour Court ought to have considered the same. The writ petitioner Management filed all the documents and established that the 2nd respondent was terminated from service. Those documents were not considered by the Labour Court. Contrarily, the Labour Court allowed the claim petition on the ground that the earlier writ petition was allowed by the High Court and therefore, the claim petition is to be considered for the subsequent period also.

6. This Court is of the considered opinion in respect of the earlier claim petition, the same reached finality. The amount ordered in the earlier claim petition was settled. Subsequently, the 2nd respondent was reinstated into service and working. As far as the second claim petition is concerned, this Court is of an opinion that the Labour Court ought to have considered the merits as well as the evidences produced by the writ petitioner Management. It is not as if, the claim petitions can be decided in a routine manner based on the earlier orders passed by the High Court, when the Management admitted the fact that they had not filed the document relating to the termination of the 2nd respondent. The said document ought to have been adjudicated by the Labour Court in the latter claim petition. Contrarily, the Labour Court relying on the earlier order passed by this Court, allowed the claim petition. Such an approach is not in consonance with the settled principles. Whenever there is an error in filing a particular document in one proceedings and in some other separate proceedings and such documents are filed by the parties, then the Courts are bound to look into those documents and cull out the truth behind the contentions. Contrarily, the Courts cannot blindly followed the earlier orders passed by the Courts. Each case is to be decided on its own merits and based on the documents and evidences produced by the respective parties. Contrarily, those documents cannot be neglected by the Courts at the time of considering the issues raised by the parties.

7. In the event of allowing the present claim petition,

there is a possibility of filing such claim petitions in perpetuity. Thus, this Court is of an opinion that the 2nd respondent, at the time of filing of the second claim petition, the Labour Court ought to have examined the pre-existing right, if any exists, so as to consider the claim.

8. In respect of the impugned order in the present writ petition, the 2nd respondent has not established any pre-existing right or the rights, which all are crystallized in any other proceedings. Contrarily, the two claim proceedings were proceeded on the basis that the Management refused to provide employment and the wages are to be computed for the non-employment period. Such an approach cannot be approved by the High Court. Whenever, the claim petition under Section 33(C)(2) is filed, Labour Court is duty bound to consider whether the pre-existing right or the rights crystallized or in existence for entertaining the petition under Section 33(C)(2). In the absence of any such pre-existing right, no petition can be entertained.

9. When the Management filed a document, establishing that the employee was terminated from service, then the genuinity of the said evidence or otherwise is to be examined. The learned Senior counsel made a submission that the order of termination along with the acknowledgement was filed before the Labour Court. When the Acknowledgement of the termination order is also filed before the Labour Court, Labour Court ought to have considered the same for the purpose of ascertaining the pre-existing right, if any exists for the purpose of entertaining the claim petition under Section 33(C)(2) of the Industrial Disputes Act.

10. In respect of the pre-existing right, which is a pre-condition for entertaining a Claim petition under Section 33(C)(2), this Court considered the issues 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 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."

11. In view of the fact that the claim petition was entertained by the Labour Court without considering the order of termination as well as the acknowledgement filed by the writ petitioner Management, it is to be construed that the Labour Court has failed to consider the existence of any pre-existing right for the purpose of allowing the claim petition.

12. This being the factum, this Court has no hesitation in coming to the conclusion that the order impugned dated 25.07.2017 passed by the 1st respondent in Claim Petition No.49 of 2011 is infirm and not in consonance with the legal principles and accordingly, Claim Petition No.49 of 2011 dated 25.07.2017 is 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

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To

The Presiding Officer,
Labour Court, Salem.

+1cc to Mr.S.Bazeer Ahmeed, Advocate, S.R.No. 83293

+1cc to Mr.A.M.Packianathan Easter, Advocate, S.R.No.83434

W.P.No.27882 of 2017

GP (CO)
GN (12/11/2019)



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