

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.2832 of 2017

- 1.S.Deenadayalan
- 2.Jagathammal
- 3.K.Kalias
- 4.K.Dharmalingam
- 5.T.Venugopal
- 6.A.Jayaraman
- 7.Jagathees Chandrabose
- 8.E.Vedhachalam
- 9.T.Perumal Mudaliar
- 10.M.A.Balasubramanian
- 11.E.Swaminathan
- 12.S.Palani
- 13.J.Milton
- 14.A.Gunasekaran
- 15.V.Sambandan
- 16.K.Govindaraj
- 17.G.Selvin Victor
- 18.A.Kalai Arasan
- 19.M.Arumugam
- 20.E.Krishnan
- 21.D.Sundra rajan
- 22.A.Jayapaul
- 23.P.Arunachalam
- 24.M.Devadoss
- 25.S.Govindarajulu
- 26.M.D.Govindan
- 27.G.Damodaran
- 28.D.Jayakumar
- 29.P.Chinappan
- 30.M.Mohamed Abdullah
- 31.D.Velankanni
- 32.R.Sukumar
- 33.M.Dominic Devaraj
- 34.A.Mohambaram
- 35.A.Ravichandran
- 36.R.Dharmalingam
- 37.P.Nallamuthu
- 38.K.Murugavel
- 39.P.Ashok Kumar
- 40.T.Vevan Rodrigues
- 41.T.Sundararaj
- 42.N.Jayakumar
- 43.M.Kasi Viswanathan
- 44.D.Soundarajan

45.G.Thulasingham
46.N.E.Jayavel
47.A.Nagarajan
48.D.Vijayalakshmi
49.S.Rathinaraj
50.K.Kandan
51.T.G.Singaram
52.T.Karunakaran

...Petitioner

vs.

1. The Management of Binny Ltd.,
Having registered office at
No.106, Armenian Street,
Chennai-600001.
Now shifted to
No.1, Cooks Road,
Perambur, Chennai-600 012.

2. The Presiding Officer,
III Additional Labour Court,
Chennai-600 041.

... Respondents

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 of the 2nd respondent herein in pursuant to common order dated 12.09.2014 in Computation Petition Nos.264/2009, 292/2009, 352/2009, 379/2009, 424/2009, 438/2009, 488/2009, 489/2009, 504/2009, 572/2009, 635/2009, 644/2009, 657/2009, 663/2009, 671/2009, 683/2009, 746/2009, 832/2009, 872/2009, 882/2009, 902/2009, 108/2010, 115/2010, 217/2010, 227/2010, 228/2010, 229/2010, 253/2010, 255/2010, 259/2010, 269/2010, 313/2010, 338/2010, 339/2010, 348/2010, 460/2010, 462/2010, 465/2010, 528/2010, 538/2010, 539/2010, 558/2010, 563/2010, 568/2010, 588/2010, 599/2010, 606/2010, 610/2010, 1086/2010, 1097/2010, 1131/2010 and 1137/2010 in so far as holding that the petitioners are not having jurisdiction to claim the relief as prayed for and the 2nd respondent Labour Court cannot decide the entitlement of the petitioners pre-existing right of entitlement which is disputed by the 1st respondent management by dismissing the entire computation petitions quash the same with respect to the petitioners herein and to direct the 1st respondent Management to pay the claim amount to the petitioners herein as prayed for.

For Petitioners : Mr.G.Purushothaman

For Respondents : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co for R1.
R2-Labour Court

O R D E R

The common order dated 12.09.2014 passed by the second respondent in Computation Petition Nos.264/2009, 292/2009, 352/2009, 379/2009, 424/2009, 438/2009, 488/2009, 489/2009, 504/2009, 572/2009, 635/2009, 644/2009, 657/2009, 663/2009, 671/2009, 683/2009, 746/2009, 832/2009, 872/2009, 882/2009, 902/2009, 108/2010, 115/2010, 217/2010, 227/2010, 228/2010, 229/2010, 253/2010, 255/2010, 259/2010, 269/2010, 313/2010, 338/2010, 339/2010, 348/2010, 460/2010, 462/2010, 465/2010, 528/2010, 538/2010, 539/2010, 558/2010, 563/2010, 568/2010, 588/2010, 599/2010, 606/2010, 610/2010, 1086/2010, 1097/2010, 1131/2010 and 1137/2010, are sought to be quashed in the present writ petition.

2. The second respondent/III Additional Labour Court found that the Labour Court cannot decide the entitlement of the workmen and then compute the benefit so adjudicated. It is only when the entitlement has been earlier adjudicated or recognized by the employer, and thereafter for the purpose of implementation thereof, and if some ambiguity requires interpretation, that power of interpretation can be decided as incidental to Labour Court's power under Section 33(C), like that of executing court's power to interpret the decree for the purpose of its execution. Accordingly, the Labour Court arrived at a conclusion that the workman can proceed under Section 33-C(2), only after the Tribunal has adjudicated the right under Section 10. Assigning reasons, the computation petitions filed by the writ petitioners under Section 33-C(2) were rejected.

3. Challenging the said rejection, the learned counsel for the writ petitioner vehemently contended that the pre-existing right of the workmen, was established before the second respondent/Labour Court. To substantiate their contention, the workmen opted for Voluntary Retirement Scheme and the settlement was also received by the workmen. It is not in dispute that the writ petitioner accepted the Voluntary Retirement Scheme benefits as agreed by the Management and the workmen and they have accepted the entire benefits. The dispute arose on account of the fact that the Management entered into a Memorandum of Understanding with reference to 244 workers, who were in occupation of the quarters allotted by the Management.

4. The learned counsel for the writ petitioners contended that once the benefit is extended to 244 workers, the said benefit cannot be confined and it is to be extended to all the workmen, who opted for VRS. The action of the Management is discriminatory and therefore, the right conferred in respect of 244 workers are to be conferred in respect of all other workmen, including the petitioners in the present writ petition.

5. The learned counsel for the writ petitioners reiterates that in respect of 244 workers, 500 sq.ft. land was allotted and in view of the land, that they had been claimed Rs.15,00,000/- and consequently, filed the Computation petition under Section 33(C)(2) of the Industrial Dispute Act. The contention of the writ petitioners is that the pre-existing right was established before the Labour Court with reference to the Memorandum of Understanding signed by the Management and the Union. Therefore, the benefit extended to the 244 workers in the Memorandum of Understanding, has to be extended to all other workmen including the writ petitioner. The Labour Court rejected the said contention by stating that such disputed facts regarding the rights of the workers cannot be adjudicated in a Computation Petition filed under Section 33(C)(2) of the Industrial Disputes Act and therefore, there was no pre-existing right and consequently, rejected the computation petition.

6. The learned counsel appearing for the first respondent/Management made a submission that the first respondent/Management was referred to BIFR. On 15.06.1996, owing to floods, the operations of the petitioner's Mill at Perambur was suspended. The mill was run on a trial basis for three months. However, owing to various problems it was found that the trial was not successful and therefore, it was closed. On 28.03.1998, settlement was entered under Section 12 (3) of the I.D.Act providing for a Voluntary Retirement Scheme (VRS). In May 1998, VRS was announced and more than 4000 workmen, including the respondents, applied under the Scheme and all the dues were settled in favour of the workmen, and they have received the settlement and relieved accordingly. On acceptance of the settlement, it is contended that the employer-employee relationship ceased to exist and therefore, the employee cannot claim any further right. Only if there are dues in connection with the services already rendered by the workmen, then alone, the same can be adjudicated with reference to any other new dispute or claim. The same cannot be adjudicated as the employer employee relationship ceased to exist, after the acceptance of the VRS benefits, as per the settlement entered into between the Management and the recognized union.

7. The learned counsel for the first respondent/management contended that on 28.05.2008, Memorandum of Understanding(MOU) was entered between the Unions, quarters Committee and the representatives of 244 employees, who were then occupying the company quarters, providing 500 sq.ft of land to those employees who were in occupation of Company quarters. The workmen who had worked during the trial period in 1997 would be paid wages for those three months as directed by the Industrial Tribunal. The first respondent had acted on the MOU and complied with all its obligations under the MOU.

8. The learned counsel for the first respondent mainly contended that the writ petitioners are not workmen within the meaning of Section 2(S) of the Industrial Disputes Act. Once the petitioners have opted the VRS and received the dues in its entirety, the employer-employee relationship ceased to exist and therefore, they cannot be construed as workmen within the definition of 2(S) of the Industrial Disputes Act.

9. It is further contended that there is a pre-existing right and the claim of the writ petitioner is based on the MOU dated 28.05.2008. The said MOU does not provide any benefit to the writ petitioner. Therefore, they had no pre-existing right to file a computation petition under Section 33-C(2) of the Industrial Disputes Act.

10. It is reiterated that the labour Court cannot adjudicate the issues on merits under Section 33(C) (2) of the Industrial Disputes Act and in the absence of any pre-existing right, the computation petition filed under Section 33(C) (2) itself is not maintainable. However, the petitioners had not established any such right and therefore, the Labour Court is right in rejecting the computation petition filed by the workmen under Section 33-C(2) of the Industrial Disputes Act.

11. Though the learned counsel for the first respondent/Management solicited the attention of this Court in respect of the ground that the MOU is not discriminatory, this Court is not inclined to consider the same. In view of the fact that all such contentions are disputed by the Competent forum, this Court cannot venture into such an exercise, as those issues are incorrect with reference to the computation petition filed under Section 33-C(2) of the Industrial Disputes Act. However, the writ petitioners themselves have admitted that they had accepted for VRS and the dues were settled in accordance with the terms and conditions of VRS and no dispute was raised with reference to the terms and conditions of the VRS. Further, it is an admitted fact that the writ petitioners were not in occupation of the company quarters allotted. Thus, the case of the writ petitioners cannot be compared with the case of the 244 employees, who were in occupation of the company quarters, and with reference to their occupation, negotiations were conducted and MOU was entered into between the parties. Extension of benefit is not part of the VRS. Therefore, the petitioners cannot claim that they are also having the same benefit on par with 244 employees who were in occupation of the quarters and the MOU entered into between the Management and the Union.

12. The Memorandum of Understanding dated 28.05.2008 reveals that "the parties agree that the plan of the land to be allotted will be prepared by the Management in consultation with the Unions and the 244 workers will be given the land by

drawal of lots conducted in the presence of Union representatives. The land shall be allotted to the workers authorized by the Unions, within 30 days from the date of receipt of Order from the AAIFR discharging the Company from the purview of BIFR. The land shall be registered within 60 days from the date of allotment upon handing over the vacant possession. Simultaneously, the management has liberty to demolish respective quarters."

13. On a reading of the conditions in the MOU, it is clear that the benefit of 500 sq.ft was extended only to 244 workers, who were in occupation of the company quarters. Thus, the Labour Court arrived at a conclusion that the writ petitioners had not established any pre-existing right so as to entertain a computation petition under Section 33-C(2) of the Industrial Disputes Act. Further, the Labour Court found that the merits on issues raised by the writ petitioners in computation petition cannot be decided under Section 33-C(2) of the Industrial Disputes Act.

14. This Court also considered the legal principles in this regard in W.P.No.1611 of 2015 dated 09.09.2019, 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."

15. In view of the facts and circumstances as well as the legal principles, this Court has no hesitation in coming to a conclusion that there is no perversity or infirmity in respect of the common order passed by the second respondent/Labour Court on 12.09.2014 in computation petition filed under Section 33-C(2) of the Industrial Disputes Act.

16. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

ssb
To

1. The Management of Binny Ltd.,
Having registered office at
No.106, Armenian Street,
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2. The Presiding Officer,
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+1cc to Mr.G.Purushothaman, Advocate SR.No.87107
+1cc to M/s.T.S.Gopalan & Co, Advocate SR.No.87074

W.P.No.2832 of 2017

VSN II (CO)

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