

\$~28

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision :- 19.11.2019

+ W.P.(C) 12376/2018 & C.M. No.48039/2018 (for stay)

DELHI SOCIETY FOR PREVENTION OF CRUELTY TO
ANIMAL (DSPCA) Petitioner

Through: Ms.Sonia A. Menon & Ms.Vanita
Chauhan, Advs.

versus

JOINT LABOUR COMMISSIONER & ORS. Respondents

Through: Mr.Jawahar Raja, ASC with
Ms.Kritika Padode, Advs. for R-1.
Mr.Rajiv Agarwal with Ms.Sugandha
Kochar & Mr.Nawlendu Bhushan,
Advs. for R-2 to 8.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition filed by the management seeks quashing of the show cause notice dated 12.10.2018 issued to it by the respondent no.1, directing the petitioner society to deposit an amount of Rs.51,56,132/- in compliance of the award dated 22.12.2017.

2. The award dated 22.12.2017 was passed by the Industrial Tribunal, Dwarka Court in I.D. No. 07/16 (Old No. 24/1972) whereunder the Tribunal, after holding that the respondent/workmen had been illegally terminated from services , directed the petitioner to pay them 50% backwages along with continuity of service and all

other consequential benefits; this award has attained finality as it has not been assailed by any of the parties. Since the petitioner did not release the amount payable to the workmen in terms of the award, they filed an application under Section 33C(1) of the Industrial Disputes Act ('the ID Act' for short) before the respondent no.1. Notice of the application was issued and the petitioner was granted time to file a reply.

3. In its reply, the petitioner merely disputed the calculations of the respondents, but did not specify the quantum of amount payable to the respondents, according to the petitioner, in terms of the award. Instead, the petitioner pleaded that since the relevant records were not traceable, it was unable to quantify the amount payable to the respondents and that, instead, the respondents ought to be directed to approach the Labour Court in terms of Section 33C(2) of the ID Act, for such quantification. Thus, the petitioner's stand was that it was neither in a position to file any calculations, nor did it wish to file the same, in view of its perception that an application under Section 33C(1) of the ID Act was not maintainable, for the reliefs sought by the workmen. In these circumstances, the respondent no.1 after seeking further clarification from the respondent/workmen, came to the conclusion that they were entitled to receive a sum of Rs.51,56,132/- from the petitioner. Accordingly, the impugned show cause notice was issued to the petitioner by the respondent no.1.

Learned counsel for the petitioner vehemently submits that by considering the workmen's application under Section 33C(1) of the ID Act, the respondent no.1 has overstepped its jurisdiction. She

submits that an application under this provision was not maintainable as the award in question did not quantify the amount payable to the respondents. As per statutory provisions, it was incumbent upon the respondent nos.2 to 8 to approach the Labour Court by filing an application under Section 33C(2) of the ID Act. On a query by this Court as to whether the petitioner was in a position to provide calculations of the amount which, according to the petitioner, was payable to the respondent/workmen, learned counsel for the petitioner has expressed her inability to do so as the petitioner is not in possession of the requisite records. By placing reliance on a decision dated 04.05.2010 passed by a Coordinate Bench of this Court in ***Hindustan Vegetable Oils Corporation Vs. Assistant Labour Commissioner & Ors.*** [W.P.(C) No.4012/2003], she submits that the amount of money payable under an award can only be computed by the Labour Court under Section 33C(2) of the ID Act. In support of her aforesaid submissions, she also places reliance on a decision of Supreme Court in ***M/s Hamdard (Wakf) Laboratories v. Deputy Labour Commissioner & Ors.*** [AIR 2008 SC 968] and three decisions of this Court in ***K.V.S. v. Praveen Kumar*** [2019 II AD (DELHI) 349], ***Union of India & Anr. v. Kishan Chand Saini (Since Deceased) Through Lrs*** [2018 VI AD (DELHI) 85] and ***Indian Refrigeration Industries v. Lt. Governor & Ors.*** [44 (1991) Delhi Law Times 552]. She, therefore, prays that the impugned show cause notice issued by the respondent no.1/ Deputy Commissioner be set aside.

4. On the other hand, Mr.Jawahar Raja, learned counsel for the respondent no.1 supports the impugned order and submits that the

petitioner is deliberately misinterpreting the provisions of Section 33C(1) of the ID Act. He submits that once the Tribunal directed reinstatement of the respondent nos.2 to 8 with 50% backwages, the subsequent exercise of computing the exact amount payable to them involved simple arithmetic calculations, which were duly carried out by the respondent no.1 by taking into account the calculations furnished by the respondents/workmen and after giving the Management an opportunity to contest the same. He submits that in a case like this, where the award is crystal clear regarding the benefit granted to a workman, the question of directing the workmen to once again approach the Tribunal under Section 33C(2) of the ID Act does not arise. In support of his contention, he places reliance on *M/s. Fabril Gasosa & Ors. vs. Labour Commissioner & Ors.*, [1997 (1) Scale 544] wherein the Supreme Court, after examining the scheme of Sections 33C(1) and 33C(2) of the ID Act, has categorically held that when the amount due to a workman can be arrived at by any arithmetical calculation or simpliciter verification and only an inquiry to that extent is required to be made, the workman may take recourse to summary proceedings under Section 33C(1) of the ID Act. In this regard, he also places reliance on a decision of the Bombay High Court in *Canara Bank Staff Union, Mumbai & Ors. vs. Canara Bank & Anr.*, [2005 Lab. I.C. 1397]. He, therefore, prays that the writ petition be dismissed.

5. Mr. Agarwal, learned counsel for respondent nos.2 to 8 adopts the arguments advanced on behalf of the respondent by Mr. Raja and prays that the writ petition be dismissed.

6. Having considered the submissions of the learned counsel for the parties, I find that the only question arising for my consideration in the present case is as to whether the application filed by the respondents under Section 33C(1) of the ID Act was maintainable or not. The sole ground of the petitioner's challenge to the maintainability of the application is that since the amount awarded to the workman had not been quantified, such quantification had to necessarily be carried out by the Tribunal by taking recourse to Section 33C(2) of the ID Act before any recovery certificate could be issued by respondent no.1. In order to appreciate this contention, it would be appropriate to reproduce Sections 33C(1) and 33C(2) of the ID Act which, to the relevant extent, read as under:-

“33-C. Recovery of money due from an employer.—(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

(2) 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 within a period not exceeding three months:

*(3) to (5)***”*

7. A combined reading of the aforesaid provisions shows that they are intended to operate in two different situations. Where payment is due to be made under a settlement or an award, the workman is entitled to approach the appropriate Government for issuance of a recovery certificate by way of an application under Section 33C(1) of the ID Act. This provision is undoubtedly meant to provide summary manner to the workman to recover any amount due under an award. On the other hand, Section 33C(2) of the ID Act would be applicable to cases where the workman claims any amount or benefit which though is capable of being computed, the quantum of such payment and the extent of such benefit is yet to be determined and therefore in such circumstances, he has to approach the Labour Court/Tribunal for this purpose. In the present case, the respondent/workmen are admittedly seeking payment in terms of the award in their favour, which has already attained finality and, to that end, the record shows that along with their application under Section 33C(1) of the ID Act, the respondents set forth calculations of the amounts payable to them. Evidently the petitioner was provided with a copy of these calculations for verification in order to assist the respondent no.1 in issuing an appropriate recovery certificate. Therefore, the onus was upon the petitioner to refute the workmen's calculations by presenting what it considered to be the correct calculation of the amounts payable

to them which onus it failed to discharge on a misconception that the application under Section 33C(1) was not maintainable. In my considered view, under the scheme of the Act, the respondents had correctly invoked jurisdiction under Section 33C(1) of the ID Act by approaching the concerned Labour Commissioner. Reference in this regard may also be made to the observations in Paragraph 19 of ***Fabril Gasosa & Ors.*** (*supra*), wherein the Supreme Court while analysing the scheme of Sections 33C(1) and 33C(2) observed as under:-

19. Section 33-C is in the nature of execution proceedings designed to recover the dues to the workmen. Vide Sections 33-C(1) and (2), the legislature has provided a speedy remedy to the workmen to have the benefits of a settlement or award which are due to them and are capable of being computed in terms of money, be recovered through the proceedings under those sub-sections. The distinction between sub-section (1) and sub-section (2) of Section 33-C lies mainly in the procedural aspect and not with any substantive rights of workmen as conferred by these two sub-sections. Sub-section (1) comes into play when on the application of a workman himself or any other person assigned by him in writing in this behalf or his assignee or heirs in case of his death, the appropriate Government is satisfied that the amounts so claimed are due and payable to that workman. On that satisfaction being arrived at, the Government can initiate action under this sub-section for recovery of the amount provided the amount is a determined one and requires no "adjudication". The appropriate Government does not have the power to determine the amount due to any workman under sub-section (1) and that determination can only be done by the labour court under sub-section (2) or in a reference under Section 10(1) of the Act. Even after the determination is made by the labour court under

sub-section (2) the amount so determined by the labour court, can be recovered through the summary and speedy procedure provided by sub-section (1). Sub-section (1) does not control or affect the ambit and operation of sub-section (2) which is wider in scope than sub-section (1). Besides the rights conferred under Section 33-C(2) exist in addition to any other mode of recovery which the workman has under the law. An analysis of the scheme of Sections 33-C(1) and 33-C(2) shows that the difference between the two sub-sections is quite obvious. While the former sub-section deals with cases where money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or V-B, sub-section (2) deals with cases where a workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money. Thus, where the amount due to the workmen, flowing from the obligations under a settlement, is predetermined and ascertained or can be arrived at by any arithmetical calculation or simpliciter verification and the only inquiry that is required to be made is whether it is due to the workmen or not, recourse to the summary proceedings under Section 33-C(1) of the Act is not only appropriate but also desirable to prevent harassment to the workmen. Sub-section (1) of Section 33-C entitles the workmen to apply to the appropriate Government for issuance of a certificate of recovery for any money due to them under an award or a settlement or under the provisions of Chapter V-A and the Government, if satisfied, that a specific sum is due to the workmen, is obliged to issue a certificate for the recovery of the amount due. After the requisite certificate is issued by the Government to the Collector, the Collector is under a statutory duty to recover the amounts due under the certificate issued to him. The procedure is aimed at providing a speedy, cheap and summary manner of recovery of the amount due, which the employer has wrongfully withheld. It, therefore, follows that where

money due is on the basis of some amount predetermined like the VDA, the rate of which stands determined in terms of the settlement, an award or under Chapter V-A or V-B, and the period for which the arrears are claimed is also known, the case would be covered by sub-section (1) as only a calculation of the amount is required to be made.

8. In this regard, further reference may also be made to the observations in ***Canara Bank Staff Union Mumbai*** (*supra*) wherein the Bombay High Court while dealing with a similar situation held as under:-

“7. XXX XXX XXX XXXX

*If the ratio laid down by the Apex Court is considered it would be clear that once there is an award it will be open to the authority if the amount is pre-determined or ascertained or can be arrived at by an arithmetical calculation or simpliciter by verification, then in such case the only enquiry to be made is, whether it is due to the workmen or not? The order of this Court on remand clearly enjoyed on the authority to determine the amount considering the facts as accepted in the award of the Industrial Tribunal. The learned authority on the one hand proceeded to hold that the application under S. 33-C(1) is not maintainable as there are disputes which can only be answered in an application under S. 33-C(2) whereas on the other hand held considering the award held that the applicants are not entitled to any other benefits except wages. From the record it is clear that the authority has recorded a finding that apart from the payment of the wages the workmen would not be entitled to any other dues in terms of award. To my mind the order is liable to be set aside for failure to exercise jurisdiction in terms of the order of this Court and also the law laid down in the case of *Fabril Gasosa* [1997 (2) L.L.N. 55] (*vide supra*). If the reasons in the award are*

considered with the final order, the conclusion is inescapable that the action by the bank in not regularising, the workers was held not to be legal. In other words the workmen were entitled to be regularised and be regularised from the date of their first appointment in ¾th scale. There is no dispute that from the year 1990 and thereafter the bank itself has treated them as regular employees and given them all consequential benefits to which they were entitled. For the earlier period therefore their entitlement could be verified by mere arithmetical calculations by fixing the basic in the year of regularisation and thereafter considering annual increment. In so far as the earlier period before the regularisation by the bank is concerned the workmen were in service, the records if any would be available with the bank, and in these circumstances the bank ought to have produced the records to show for which days or period they were not entitled to the monies after the workmen had filed the calculations. The contentions advanced on behalf of the respondent-management that the workmen are entitled only for the days they worked is meaningless, in the absence of disputing the correctness of the calculations done by the workmen based on the records with the management had in their possession. The dispute if at all would be from the date of initial appointment to the date of regularisation by the bank. The record if at all was with management. Before the Tribunal evidence was recorded and in Para. 27 of the award, considering the evidence of W.E. Moses the Tribunal observed that they were paid daily and they were not required to sign attendance register or muster-roll. If the management had in their possession any other documents contrary to what was stated by Moses, it should have been the duty of the respondent-management in whose custody such records were, to place them before the authority. The only consequence of such records would be that these petitioners/workmen if they had claimed wages for a day

on which they had not worked, would be deducted from the amount claimed. No such evidence was produced.

All seven workmen had filed independent applications. The management was aware of the calculations shown to them. Merely disputing the calculations to my mind is not sufficient to take the matter out of Section 33 (c) (1). The entire exercise by the authority was totally without jurisdiction. The petitioner no.1 Union who thereafter had filed replies on behalf of the workmen had specifically set out in one of their replies that, all that the workmen were claiming was DA, CCA, HRA and conveyance allowance which they were entitled as regular employees. This could be proved by an arithmetical calculation. The orders of the authority on that count would therefore have to be set aside.”

9. I have also considered the decisions relied upon by the learned Counsel for the petitioner and find that none forwards the petitioner's case. In ***Indian Refrigeration Industries (supra)*** the workman was claiming wages for a period subsequent to the date of the award and, therefore, the Court held that the question of such entitlement could be determined only by way of an application under Section 33C (2) of the ID Act, which is not the position in the present case. Similarly in ***Kishan Chand Saini (supra)*** and ***M/s Hamdard (Wakf) Laboratories (supra)***, the Court was dealing with a situation where the very entitlement of the workman to the amount claimed by him was in dispute, which is not the case herein. The fact situation in ***Hindutan Vegetable Oils Corporation (supra)*** was also different from that of the present case as in that case, the entitlement of the workman to retrenchment compensation and the quantum thereof was disputed; in these circumstances, the Court while directing the Management to pay

the admitted amount to the workmen under the award directed the parties to approach the Labour Court under Section 33C (2) of the ID Act. In the present case, the award is unambiguous and no interpretation thereof is required. The petitioner was only required to verify the calculations furnished by the respondents and therefore, I have no hesitation in holding that the respondent's application under Section 33C (1) was maintainable.

10. Before I conclude, I may also refer to the observations of a Coordinate Bench of this Court in paragraph 40 of *K.V.S.(supra)* on which learned counsel for the petitioner has relied, which I find support the respondents' case instead and read as under:-

“40. I am also of the opinion that Ms. De. is correct in stating that, under the statutory dispensation contained in the Industrial Tribunal Act, 1947, the proper forum to work out the amount payable to the review petitioner would not be the learned Tribunal but would be the Labour Commissioner under Section 33C(1) of the Act. Inasmuch as there is no dispute about entitlement, and the matter is simply one of calculation, applying the principles laid down in Kays Constructions Co. Pvt. Ltd. (supra), this exercise ought to be carried out by the Labour Commissioner.”

11. In the present case, despite repeated opportunities the petitioner failed to provide its calculation qua the amount payable under the award and therefore, the respondent no.1 cannot be faulted for issuing the impugned recovery certificate by accepting the detailed calculations submitted by the respondent nos.2 to 8, which were the only calculations placed before it.

12. For the aforesaid reasons, I find no reason to interfere with the impugned order. The writ petition, being meritless, is dismissed

REKHA PALLI, J.

NOVEMBER 19, 2019

gm

