

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.11042 of 2019 (O&M)
DATE OF DECISION: 04.08.2020

Seema

.....Petitioner

versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and others
.....Respondents

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Kulvir Narwal, Advocate, for the petitioner

Ms. Upasna Dhawan, AAG, Haryana

Mr. Anil Mehta, Advocate, for respondent Nos.2 to 5

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ALKA SARIN, J.:

1. The present civil writ petition has been filed under Articles 226/227 of the Constitution of India making inter-alia the following prayers:

“a) issue a Writ in the nature of mandamus and modifying Annexure P1 and the directing the respondent no.2 to 5 to release the amount of Rs.297761/- to the petitioner alongwith 12% interest from the date the amount fell due along with costs of the present petition.

b) And also to issue Writ in the nature of mandamus directing the respondent no.8 licensing authority to cancel the license of respondent no.6 & 7 and also initiate

proceedings for violation of terms and conditions of license, against respondents 6 & 7 as per law.”

2. As per the averments made in the civil writ petition, the petitioner had filed an application under Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the ‘ID Act’) before the Industrial Tribunal-cum-Labour Court, Rohtak against the present respondent nos.2 to 7 averring that on 10.2.2014 she had been appointed as a Clerk at DC rate at Krishi Vigyan Kendra, Rohtak and that the appointing authority was the Chaudhary Charan Singh Agricultural University, Hissar. She had not been paid salary from 10.2.2014 to 20.9.2016 and that when she pressed for the same her services were terminated on 21.9.2016. A prayer for recovery of Rs.2,97,701/- was made in her application.

3. The present respondent nos.2 to 5 filed a joint written statement averring that the petitioner was not appointed by them directly but her services were hired through an outsourcing agency to whom payment on account of her salary already stood released.

4. The present respondent nos.6 and 7 put in appearance before the Industrial Tribunal-cum-Labour Court, Rohtak. Only the present respondent no.6 filed a written statement denying that he had entered into any contract with the Chaudhary Charan Singh Agricultural University, Hissar and that he had never supplied work force under the outsourcing policy to the said University. No written statement was filed by the present respondent no.7.

5. The petitioner and the present respondent nos.2 to 5 led their evidence before the Industrial Tribunal-cum-Labour Court, Rohtak. After discussing the evidence available on the record, the Industrial Tribunal-cum-Labour Court, Rohtak found that *“from the said piece of evidence it can be inferred that Tejvir Singh and Manoj contractors (respondents no.5 & 6) were the*

service providers and service of applicant was provided to University by them under the outsourcing policy. Both respondents no.5 and 6 were impleaded as party right from the beginning, they duly appeared before this Court but subsequently disappeared and were proceeded against exparte. Though respondent no.5 filed a vague written reply with no details, respondent no.6 even didn't file any. Before starting of evidence of applicant they became absent. Once the University including respondent no.1 to 4 have established that payment for the period starting from February 2014 to 20.9.2016 on account of the salary of applicant was released to the contractor, whether or not the same has been paid to her, it was for respondents no.5 and 6 to prove. As both of them have chosen not to contest the petition, there is no reason to disbelieve the version of the respondents no.1 to 4. As the money has been duly transferred in their bank account being contractors, onus was upon them to prove that they have paid the said amount to the applicant in the shape of her salary". The application was thereupon decided in favour of the petitioner and the present respondent nos.6 and 7 were directed to pay the due amount of Rs.2,97,761/- to the petitioner along with interest @ 6% per annum from the date of filing the application.

6. The present civil writ petition has been filed by the petitioner seeking modification of the impugned award Annexure P-1. Notice of motion was issued. Respondent nos.2 to 5 and 8 have chosen not to file any written statement despite opportunities having been given. Respondent nos.6 and 7 have not been served. Counsel for the petitioner states that the matter can be decided in their absence since the relief in the present petition is being sought only against respondent nos.2 to 5 and 8 who are represented by counsel.

7. The counsel for the petitioner has contended that the Industrial Tribunal-cum-Labour Court, Rohtak has ignored the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, especially Section 21, whereunder the principal employer i.e. the present respondent nos.2 to 5 is

duty bound to make payment of wages in full or the unpaid balance due and recover the same from the contractor. He argued that the Industrial Tribunal-cum-Labour Court, Rohtak erred in not fastening the liability of payment upon the present respondent nos.2 to 5 also. The quantum of interest awarded was argued of being on the lower side and it was prayed that the same be increased to 12% from 6% per annum.

8. Counsel appearing for respondent nos.2 to 5 has argued that since they (respondent nos.2 to 5) had already paid the salary of the petitioner to the contractors viz. respondent nos.6 and 7, as has also been found by the Industrial Tribunal-cum-Labour Court, Rohtak, they could not be directed to pay the same once again to the petitioner by relying upon Section 21(4) of the Contract Labour Act. The counsel for the respondent nos.2 to 5 would further contend that the plea qua the Contract Labor Act was not raised by the petitioner before the Industrial Tribunal-cum-Labour Court, Rohtak. It is further contended that disputed questions of fact have been raised in the present case which cannot be gone into by this Court in proceedings under Articles 226/227 of the Constitution of India. Plea of the petitioner having an alternate remedy has also been raised.

9. I have heard learned counsel for the parties.

10. The present writ petition has been filed with only a single annexure which is the impugned award (Annexure P-1) passed by Industrial Tribunal-cum-Labour Court, Rohtak. No other pleading or evidence is available on the record. The contesting-respondents have also not filed a written statement.

11. At the outset, this Court is satisfied that the Industrial Tribunal-cum-Labour Court, Rohtak while deciding the application under Section 33C(2) of the ID Act exceeded the jurisdiction vested in it. The proceedings under Section 33C(2) of ID Act are in the nature of execution proceedings, such

proceedings pre-suppose some adjudication leading to the determination of a right which has to be enforced or recognition of a right by the employer.

Section 33C(2) of the ID Act reads as under :

“33C. Recovery of money due from an employer

(1) xxx

(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 :

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period he may think fit.”

Thus, the proceedings under Section 33C(2) of the ID Act are in the nature of execution of some existing right but not by way of adjudication and creation of such right. In the present matter, there is no determination of a pre-existing right in favour of the petitioner nor is there any earlier award in her favour. There has been no adjudication which could have been enforced by the petitioner under Section 33C(2) of the ID Act.

12. In the matter of ***MCD vs. Ganesh Razak, (1995) 1 SCC 235***, the Supreme Court held as under:

“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 ***Tara vs. Director, Social Welfare, (1998) 8 SCC 671***, the Labour Court rejected the applications made by the appellants under Section 33C(2) of the ID Act for payment of wages at the rate claimed by the appellants. The Labour Court, placing reliance on the decision of the Supreme Court in *Municipal Corporation of Delhi vs. Ganesh Razak* (supra), held that the applications were not maintainable under Section 33C(2) of the ID Act. While dismissing the appeal by the workers, it was held by the Apex Court:

“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.”

14. Again in ***State of U.P. vs. Brijpal Singh, (2005) 8 SCC 58***, after discussing the ratio laid down in *MCD Vs. Ganesh Razak* (supra), it was held:

“13. 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.”

15. In **D. Krishnan vs. Vellore Coop. Sugar Mill, (2008) 7 SCC 22**, while dismissing the appeal of the workmen, the Supreme Court held:

“12. We have considered the arguments advanced by the learned counsel for the parties. The fact that proceedings

under Section 33-C(2) are in the nature of execution proceedings is in no doubt, and such proceedings presuppose some adjudication leading to the determination of a right, which has to be enforced. Concededly there has been no such adjudication in the present case.....”.

16. In ***Surender Kumar vs. PO Labour Court & Anr., CWP No.6037 of 2011 decided on 28.11.2017***, the Labour Court held that an application under Section 33C(2) of the ID Act is not maintainable on the score that there is no pre-existing right or any legal right. The workman brought the matter to this Court which, relying upon the above decisions by the Supreme Court, dismissed the writ petition. Similar was the situation and outcome in the matter of ***Mange Ram vs. PO Labour Court, 2003(2) SCT 138 : 2006(6) SLR 541***.

17. The *sine qua non* of Section 33C(2) of the ID Act is that the workman should be entitled to receive from the employer any money or benefit and there should be an earlier adjudication in this regard or the right should be recognised by the employer. In the present case, all the essential requirements for passing an award/order under Section 33C(2) of the ID Act are woefully missing. That being so there is no occasion for going into the merits of the case.

18. This Court is conscious of the fact that this ground was neither raised before the Labour Court by the respondents nor has the same been argued before this Court. However, this Court cannot shut its eyes to the settled principles of law.

19. Following the dictum of the law now well settled, this Court has no hesitation to hold that the application of the petitioner filed under Section

33C(2) of the ID Act was itself not maintainable. The claim, which has been made by the petitioner, in the present civil writ petition emanates from the application which she had filed before the Industrial Tribunal-cum-Labour Court, Rohtak under Section 33C(2) of the ID Act, which was not maintainable. Consequently, the present civil writ petition, which seeks a modification of the award passed in the said proceedings, is liable to be dismissed on this short ground alone.

20. As a sequel to the discussion above, the present civil writ petition is dismissed.

**(ALKA SARIN)
JUDGE**

04.08.2020
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NOTE:

**Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO**