



IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 14.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.Nos.215 to 217 of 2017 and
C.M.P. Nos.3532 to 3537 of 2017

M.K.T.Engineering & Construction
78, Bharathidasan Salai,
Kavery Street,
Appar Nagar,
Saidapet,
Chennai - 600 015.

... Appellant in all the appeals

versus

1.G.Purushothaman

... 1st respondent in W.A.
No.215 of 2017

1.M.Thirunavukkarasu

... 1st respondent in W.A.
No.216 of 2017

1.M.Elumalai

... 1st respondent in W.A.
No.217 of 2017

2.The Presiding Officer,
II Additional Labour Court,
Chennai - 600 104.

... 2nd respondent in all the appeals

Prayer in all the appeals: Appeals filed under Clause 15 of Letters Patent against the order dated 23.03.2016 passed in W.P. Nos.10877, 10876, 10878 of 2016. Writ petitions filed under Article 226 of the constitution of India for the issuance of a writ of certiorarified mandamus to call for the entire records of the order of the second respondent, dated.05.05.2015, passed in I.A.No.305, 303 and 304/2014, in C.P.No.356, 355 and 355A of 2011, to quash the same as illegal and consequently, to direct the second respondent to dismiss the said computation petition as not maintainable.

For Appellant : Mr.N.Nithianandam

For R1 in all appeals : No appearance

For R2 : Court



COMMON JUDGMENT

(Judgment of this Court was delivered by T.RAJA,J.)

These writ appeals have been filed against the impugned common order dated 23.03.2016 passed in W.P. Nos.10877, 10876, 10878 of 2016.

2.Mr.N.Nithianandam, learned counsel appearing for the appellant argued that first respondent in all the appeals, who have been employed by the appellant, have filed Computation Petitions in C.P. Nos.355, 355A, 356 of 2011 on the file of the second respondent under Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') to compute the money value under Section 33-C(2) of the Act. Learned counsel appearing for the appellant submitted that the appellant filed detailed counter affidavit in all three petitions raising objections namely, the petitions filed under Section 33-C(2) are neither maintainable in law nor on facts; the claim of the petitioners therein in the Computation Petitions filed under Section 33-C(2) of the Act cannot be adjudicated since the same are not falling within the purview of Section 33-C(2) of the Act; the claim of the petitioners therein that they were workmen of the respondent therein are being denied; and the petitioners therein have not established their pre-existing right to make their claim on the respondent therein in the Computation Petitions. During the pendency of the petitions before the second respondent, respective first respondent have filed three I.A. Nos.303 to 305 of 2014 seeking direction to the appellant to produce appointment order, salary slip and bonus register and leave salary register of the respective first respondent and regulations of the company, which was in the custody of the appellant and in the said I.As, the appellant filed detailed counter affidavit stating that (a)there was no employer - employee relationship between the appellant and the respective first respondent; (b) there was an in-ordinate and un-explained delay of six long years in filing the petitions under Section 33-C(2) of the Act; (c)respective first respondent have not filed any document in support of their employment with the appellant; (d)Computation Petitions filed by respective first respondent under Section 33-C(2) of the Act were barred by limitation; and e)respective first respondent have not established their pre-existing right to make their claim on the appellant in the Computation Petitions. Despite the same, the II Additional Labour Court, Chennai, while entertaining the above I.As, although clearly admitting the fact that the Labour Court cannot go into the question as to whether the respective first respondent are entitled to any benefits and whether they were workmen during the claim period, vide order dated 05.05.2015, partly allowing the applications filed by them, directed the appellant to produce register of particulars of payment of bonus and register of particulars of payment of leave salary. Being aggrieved by the order passed by the II Additional



Labour Court, Chennai, the appellant has come to this Court with W.P. Nos.10876 to 10878 of 2016. This Court, while confirming the orders passed by the II Additional Labour Court, Chennai, disposed of the petitions holding that the Labour Court has got jurisdiction to decide the incidental question as to whether there is any pre-existing right vested with the workmen to claim those monetary benefits during the period when they were employed in service of the petitioner/management. Aggrieved by the same, the appellant is before this Court.

3.Placing before us two judgments, reported in 1995 (1) SCC 235 in the case of Municipal Corporation of Delhi vs. Ganesh Razak and another and in the case of M.Vadivelu vs. Rajkishan and Company and others, against the reasoning given by the Labour Court, as confirmed by the learned Single Judge, learned counsel for the appellant argued that the benefit sought to be enforced under Section 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. Learned counsel for the appellant further clarified that the difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital because the former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not.

4.Drawing our attention to Section 33-C(2) of the Act, learned counsel for the appellant pleaded that 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.

5.Based on the legal provision as mentioned above, it is contended by the learned counsel for the appellant that without a prior adjudication or recognition of the disputed claim of the workmen to be paid at the same rate as the regular employees, proceedings initiated under Section 33-C(2) of the Act are wholly unsustainable in law and this aspect has been completely overlooked by the Labour Court. Therefore, learned counsel for the appellant prays for allowing the appeal.

6.No appearance on behalf of the first respondents, though notices have been served and names have been printed.



7.A perusal of the portion of the Computation Petitions filed by the respective first respondent would show that no detail regarding the employment of the respective first respondent with the appellant is given to establish the relationship of employer and employee. Secondly, there is no mention in the said petitions as to on what date the respective first respondent have joined with the appellant and on what date they were terminated or refused from employment. Thirdly, there was no mention as to whether the respective first respondent were employed as daily wager or monthly salaried. Therefore, the Computation Petitions would clearly show that they are bereft of any particular to invoke Section 33-C(2) of the Act.

8.Although counter affidavits were filed by the appellant raising serious objections with regard to the maintainability of the Computation Petitions stating that the said petitions filed under Section 33-C(2) of the Act were barred by limitation of un-explained and inordinate delay of six long years, it is not known why the Labour Court has not considered that aspect. It is relevant to refer to Section 33-C as under:

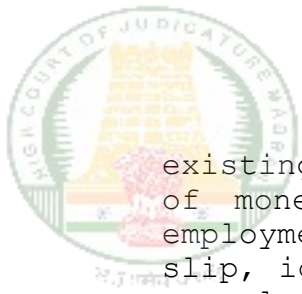
'33-C.Recovery of money due from an employer.

(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:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period. (emphasis supplied)

9.The above provision makes it clear that any application can be made only within one year or little more than a year, whereas in the present case, when there was a huge and un-explained delay of 6 long years in moving a petition before the Labour Court, the Labour Court, having agreed with the appellant that in the application filed under Section 33-C(2) of the Act, cannot go into the question whether the workman is entitled to any benefits and that the workman must have a pre-



existing right to the benefits which can be computed in terms of money and without any iota of evidence to show their employment under the appellant or any appointment order, pay slip, identity card of the first respondents, the Labour Court wrongly directed the appellant to produce register of particulars of payment of bonus and register of particulars of payment of leave salary.

10. This issue has been directly covered by the judgment of the Hon'ble Apex Court in the case of Municipal Corporation of Delhi vs. Ganesh Razak and another reported in 1995 (1) SCC 235. The relevant paragraph is extracted 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.'

11. When it is a well settled legal position that 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 and 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), the claim made in the Computation Petitions, which are filed with a huge and unexplained delay of 6 years, is not based on a prior adjudication made in the petitions.

12. While considering the similar issue, the Delhi High Court in its judgment dated 25.08.2014 in the case of M. Vadivelu vs. Rajkishan & Company and others holding that the Labour Court would not entertain dispute with regard to entitlement or adjudicate the existence of a pre-existing

