



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2021

CORAM

THE HON'BLE MR. JUSTICE P.D.AUDIKESSAVALU

W.P. (MD) No. 18283 of 2013

N.Ramdoess

... Petitioner

-VS-

1.The Presiding Officer,
Labour Court,
District Court Complex,
Melur Road,
Madurai 625020.

2.The Management,
Shri Ganesh Mess,
Anna Nagar, Near Suguna Store,
Madurai 625 020.

... Respondents

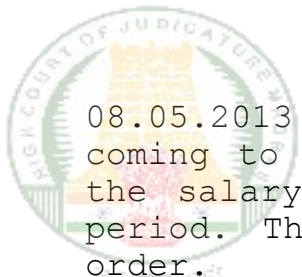
Prayer:- Writ Petition filed under Article 226 of Constitution of India, seeking for a Writ of Certiorari, to call for the records of the First Respondent in C.P. No.10 of 2011 and quash the portion of the order dated 08.05.2013 passed therein as far as it dismiss the claim of the Petitioner.

For Petitioner : Mr. T.Ravichandran
For Second Respondent : Mr. M.Rajaraman

ORDER
(through video conference)

Heard Mr. T.Ravichandran, Learned Counsel for the Petitioner and Mr. M.Rajaraman, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. According to the Petitioner, he had been employed as Supervisor and Supplier in the hotel run by the Second Respondent at Door No. 49, Mela Perumal Mestry Street, Madurai, which was closed on 09.10.2010. The Claim Petition in C.P. No. 10 of 2011 under Section 33-C(2) of the Industrial Disputes Act, 1947, (hereinafter referred to as 'the Act' for short) was filed by the Petitioner before the Labour Court, Madurai (hereinafter referred to as 'the Labour Court' for short) for several reliefs, including computation of wages for the period from January 2007 till 09.10.2010, which was resisted by the Learned Counsel for the Second Respondent by contending that the Petitioner had voluntarily left service, after receiving the entire amount payable to him till then. The Labour Court by an order dated



08.05.2013 dismissed the Claim Petition in C.P. No. 10 of 2011 after coming to the conclusion that the Petitioner failed to prove that the salary had been retained by the employer during the relevant period. This Writ Petition has been filed to challenge the said order.

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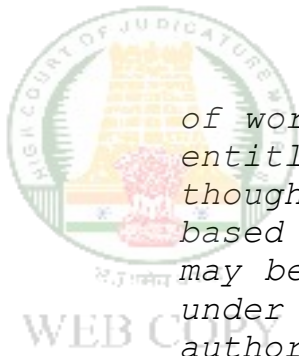
3. The law relating to the nature of claim that could be considered in an application under Section 33-C(2) of the Act, has been examined by the Hon'ble Supreme Court of India in a plethora of decisions. The Constitution Bench of the Hon'ble Supreme Court of India has explained the legal position in **Central Bank of India -vs- P.S. Rajagopalan** (AIR 1964 SC 743) as follows:-

"15.in construing Section 33-C we have to bear in mind two relevant considerations. The construction should not be so broad as to bring within the scope of Section 33-C cases which would fall under Section 10(1). Where industrial disputes arise between employees acting collectively and their employers, they must be adjudicated upon in the manner prescribed by the Act, as for instance, by reference under Section 10(1). These disputes cannot be brought within the purview of Section 33-C. Similarly, having regard to the fact that the policy of the legislature in enacting Section 33-C is to provide a speedy remedy to the individual workmen to enforce or execute their existing rights, it would not be reasonable to exclude from the scope of this section cases of existing rights which are sought to be implemented by individual workmen. In other words, though in determining the scope of Section 33-C we must take care not to exclude cases which legitimately fall within its purview, we must also bear in mind that cases which fall under Section 10(1) of the Act for instance, cannot be brought within the scope of Section 33-C.

16. Let us then revert to the words used in Section 33-C (2) in order to decide what would be its true scope and effect on a fair and reasonable construction. When sub-section (2) refers to any workman entitled to receive from the employer any benefit there specified, does it mean that he must be a workman whose right to receive the said benefit is not disputed by the employer? According to the appellant, the scope of sub-section (2) is similar to that of sub-section (1) and it is pointed out that just as under sub-section (1) any disputed question about the workmen's right to receive the money due under an award cannot be adjudicated upon by the appropriate Government, so under sub-section (2) if a dispute is raised about the workmen's right to receive the benefit



in question, that cannot be determined by the Labour Court. The only point which the Labour Court can determine is one in relation to the computation of the benefit in terms of money. We are not impressed by this argument. In our opinion, on a fair and reasonable construction of sub-section (2) it is clear that if a workman's right to receive the benefit is disputed, that may have to be determined by the Labour Court. Before proceeding to compute the benefit in term of money, the Labour Court inevitably has to deal with the question as to whether the workman has a right to receive that benefit. If the said right is not disputed, nothing more needs to be done and the Labour Court can proceed to compute the value of the benefit in terms of money; but if the said right is disputed, the Labour Court must deal with that question and decide whether the workman has the right to receive the benefit as alleged by him and it is only if the Labour Court answers this point in favour of the workman that the next question of making the necessary computation can arise. It seems to us that the opening clause of sub-section (2) does not admit of the construction for which the appellant contends unless we add some words in that clause. The clause "Where any workman is entitled to receive from the employer any benefit" does not mean "where such workman is admittedly, or admitted to be, entitled to receive such benefit". The appellant's construction would necessarily introduce the addition of the words "admittedly, or admitted to be" in that clause, and that clearly is not permissible. Besides, it seems to us that if the appellant's construction is accepted, it would necessarily mean that it would be at the option of the employer to allow the workman to avail himself of the remedy provided by sub-section (2), because he has merely to raise an objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour Court to entertain the workman's application. The claim under Section 33-C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by sub-section (2). As Maxwell has observed "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution [Maxwell on Interpretation of Statutes p. 350] ". We must accordingly hold that Section 33-C(2) takes within its purview cases



of workmen who claimed that the benefit to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers. Incidentally, it may be relevant to add that it would be somewhat odd that under sub-section (3), the Labour Court should have been authorised to delegate the work of computing the money value of the benefit to the Commissioner if the determination of the said question was the only task assigned to the Labour Court under sub-section (2). On the other hand, sub-section 3 becomes intelligible if it is held that what can be assigned to the Commissioner includes only a part of the assignment of the Labour Court under sub-section (2).

....

18. Besides, there can be no doubt that when the Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the executing court to interpret the decree for the purpose of execution. It is, of course true that the executing court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court; but like the executing court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim under Section 33-C(2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under Section 33-C(2), it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests."

After referring to that decision, the Hon'ble Supreme Court of India in **Central Inland Water Transport Corporation -vs- Workmen** [(1974) 4 SCC 696] has observed as follows:-

"13. In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff's right to relief; (ii) the corresponding liability of the defendant, including, whether the defendant is, at all, liable or not; and (iii) the extent of the defendant's liability, if any. The working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding. Determination No. (iii) referred to above, that is to say, the extent of the defendant's



liability may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. Since a proceeding under Section 33-C(2) is in the nature of an execution proceeding it should follow that an investigation of the nature of determinations (i) and (ii) above is, normally, outside its scope; It is true that in a proceeding under Section 33-C(2), as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But that is merely 'incidental'. To call determinations (i) and (ii) 'incidental' to an execution proceeding would be a perversion, because execution proceedings in which the extent of liability is worked out are just consequential upon the determinations (i) and (ii) and represent the last stage in a process leading to final relief. Therefore, when a claim is made before the Labour Court under Section 33-C(2) that Court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions – say of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as "incidental" to its main business of computation. In such cases determinations (i) and (ii) are not "Incidental" to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal. It was, therefore, held in **State Bank of Bikaner and Jaipur -vs- R.L.Khandelwal** [1968 (1) Lab LJ 589 : (1967-68) 3 FJR 462 : (1968) 38 Com Cas 400] that a workman cannot put forward a claim in an application under Section 33-C(2) in respect of a matter which is not based on an existing right and which can be appropriately the subject-matter of an industrial dispute which requires a reference under Section 10 of the Act."

In **Municipal Corporation of Delhi -vs- Ganesh Razak** [(1995) 1 SCC 235], the three Judge Bench of the Hon'ble Supreme Court of India after referring to the earlier decisions including those mentioned supra, has ruled as follows:-

"12.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."

In **Tara -vs- Director, Social Welfare** [(1998) 8 SCC 671], it has been held by the Hon'ble Supreme Court of India that the question of maintainability of the applications under Section 33-C(2) of the Act was required to be determined at the threshold and the question of examining the employee's claim on merits relating to his status could be gone into thereafter if the application was held to be maintainable under that provision. The issue again came up for consideration before the Hon'ble Supreme Court of India in **State Bank of India -vs- Ram Chandra Dubey** [(2001) 1 SCC 73], where the principles enunciated in the earlier decisions have been summarized as follows:-

"18.Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33-C(2) of the Act. 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. 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. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not...."

The Hon'ble Supreme Court of India in **State of Uttar Pradesh -vs- Brijpal Singh** [(2005) 8 SCC 58] has held as follows:-

"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...."

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Having regard to the principles laid down in the aforesaid binding decisions on the scope of the proceedings under Section 33-C(2) of the Act, the question that arises for determination is whether the Labour Court is justified in refusing to grant salary to the Petitioner for the period from January 2007 to 09.10.2010 as claimed by him?

4. As already noticed, the Petitioner claims to have been employed for the period from January 2007 till the business of the Second Respondent was closed on 09.10.2010, while the Second Respondent contends that the Petitioner voluntarily left service in the year 2009 after receiving the entire amount payable to him. There is apparently a factual dispute as to the period for which the Petitioner worked and also whether he voluntarily left service before the date on which the business of the Second Respondent had been closed, after receiving all his dues till then. Such matters surely do not fall within the parameters referred supra for computation of monetary benefits under Section 33-C(2) of the Act. The Petitioner has not shown any error in the decision-making process of the Labour Court in arriving at the conclusions. In this context, it must be remembered that the Writ Court cannot substitute the impugned decision merely because another view is possible, and reference must be made in that regard to the ruling of the Hon'ble Supreme Court of India in **General Manager, Electrical Rengali Hydro Electric Project, Orissa -vs- Giridhari Sahu** [(2019) 10 SCC 695] where the scope of Writ of Certiorari to interfere on an error of law apparent on the face of record has been explained in the following words:-

"28.As far as the finding of fact which is one within the jurisdiction of the court, it is ordinarily a matter "off bounds" for the writ court. This is for the reason that a body which has jurisdiction to decide the matter has the jurisdiction to decide it correctly or wrongly. It would become a mere error and that too an error of fact. However, gross it may amount to, it does not amount to an error of law...."

In that view of the matter, there does not appear to be any infirmity in the order dated 08.05.2013 in C.P. No. 10 of 2011 passed by the Labour Court warranting interference by this Court in the exercise of discretionary powers of judicial review under Article 226 of the Constitution.



In the result, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CO)

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// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sm/dm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The Presiding Officer,
Labour Court,
District Court Complex,
Melur Road,
Madurai 625020.

COPY TO:-

The Record Keeper,
V.R.Section
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

**W.P. (MD) No. 18283 of 2013
09.07.2021**

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