

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 23025 of 2007

**Delta Limited & Anr.
Vs.
The State of West Bengal & Ors.**

For the Petitioners:	Mr. Partha Bhanja Chowdhury, Adv. Mr. S.K. Singh, Adv. Mr. S.K. Sharma, Adv. Mr. R.K. Dubey, Adv.,
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For the Private Respondent:	Mr. Saibal Mukherjee, Adv.
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For the State:	Mr. Susanta Pal, Adv. Mr. Ananda Dulal Sarkar, Adv.,
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Hearing Concluded on:	09.03.2022
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Date:	17.03.2022
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SUVRA GHOSH, J. :-

1. The contention of the petitioners, in a nutshell, is that the predecessor-in-interest of the private respondent, Md. Sarfuddin Ahmed, since deceased, was an employee under the petitioner no. 1 Company. The said employee was charge sheeted on 11th May, 1973 on allegations of misconduct and

was suspended in contemplation of departmental proceedings against him. Pursuant to departmental proceedings, the employee was dismissed from service by a letter dated 12th October, 1974. During pendency of the inquiry, the employee approached the Civil Court in Title Suit 95 of 1973 against the Company praying for a decree for declaration and injunction against the charge sheet and the suspension order issued by the Company. The suit was decreed exparte by the learned Civil Court by an order dated 8th September, 1981 whereby the employee was granted decree in respect of his seniority, grade of pay and suspension. It was held that the employee was entitled to seniority as per his length of service and the tripartite agreement and also pay protection to the grade he was officiating immediately before his suspension. The suspension was declared illegal, invalid and inoperative and the Company was restrained from initiating any inquiry or proceeding against the employee. The Company filed a Miscellaneous Case before the said Court for setting aside the exparte decree and restoration of the title suit but the same was dismissed for default on 25th March, 1982. The employee, thereafter, approached the Learned Second Labour Court West Bengal in an application under section 33C (2) of the Industrial Disputes Act, 1947 for computation of monetary benefit arising out of the exparte decree. Maintainability of the said application was challenged before the Labour Court by the petitioners and by the order impugned dated 25th June, 2007 the Learned Labour Court rejected the prayer of the petitioners and held that the case was maintainable before the said Court.

2. During pendency of the matter before the Labour Court, the employee Md. Sarfuddin Ahmed expired on 5th September, 2002 and the private respondents being his legal heirs, were substituted in his place.
3. Learned Counsel for the petitioners has taken this Court to section 38 of the Code of Civil Procedure which demonstrates that a decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution. Section 39 lays down circumstances when the decree can be sent for execution to another Court. Learned counsel submits that section 11B of the Industrial Disputes Act, 1947 inserted by way of an amendment applicable to the State of West Bengal demonstrates that a Labour Court shall have the power of a Civil Court to execute its own award as a decree of a Civil Court and also to execute any settlement as defined in clause (p) of section 2 as a decree. Section 7 of the Industrial Disputes Act, 1947 empowers the Labour Court to adjudicate industrial disputes relating to matters specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act. Learned counsel submits that the Labour Court has no jurisdiction to act as an executing Court for execution of the decree granted by the Civil Court, under section 33C (2) of the 1947 Act. The employee ought to have initiated an execution proceeding before the Civil Court which passed the exparte order. The Labour Court cannot encroach upon the jurisdiction of the Civil Court in exercise of power under section 33C (2) of the 1947 Act. Learned counsel has placed reliance on the authorities in J.K. Iron And Steel Co. Ltd., Kanpur v/s. Iron and Steel Mazdoor Union, Kanpur reported

in AIR 1956, Supreme Court 231, Bombay Gas Company, Ltd. v/s. Gopal Bhiva and Others reported in (1963) 2 LLJ 608, Myurdhwaj Coop. Group Housing Society Ltd. v/s. Presiding Officer, Delhi Cooperative Tribunal and Others reported in (1998) 6 Supreme Court Cases 39 and Sandur Manganese and Iron ores Limited v/s. State of Karnataka and Others reported in (2010) 13 Supreme Court Cases 1 in support of his contention.

4. In refuting the contention of the petitioners, learned advocate appearing for the private respondents has taken this Court to section 2k of the Act of 1947 which defines "Industrial Dispute" as any dispute or difference between employers and employers, employers and workmen or workmen and workmen, connected with the employment or non employment or the terms of employment or conditions of labour of any person. Learned counsel submits that a pre-existing right of a workman can be executed under section 33C (2) of the 1947 Act by the Labour Court. The said provision has been invoked after the entitlement of the workman was declared by the Civil Court and under section 33C (2), the Labour Court has the authority to compute the money or benefit payable to the respondents from the employer. Placing reliance on the authority in East India Coal Company, Ltd. (by Chief Mining Engineer), Bararee Colliery, Dhanbad and Rameshwar and others reported in 1968 SCR (1) 140, learned counsel submits that it has been held by the Hon'ble Supreme Court that since proceedings under section 33C (2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the benefit claimed by a workman is in such cases in the position of

an executing Court, the Labour Court, like the executing Court in execution proceedings governed by the Code of Civil Procedure, is competent under section 33C (2) to interpret the award or settlement where the benefit is claimed under such award or settlement. Learned counsel has relied upon authorities in *Apollo Tyres Ltd. v/s. Sebastian* reported in 2003-I-LLJ 608, *Central Bank of India, Ltd., and Others v/s. Rajagopalan (P.S.)* and *Others* reported in 1963-II LLJ 89 and *Workmen of Indian Express Newspaper Private Limited v/s. The Management of Indian Express Private Limited* reported in AIR 1970 Supreme Court 132 which lay down the said proposition of law.

5. Learned counsel for the State respondents submits that a pre-existing right can be executed by the Labour Court under section 33C (2) of the 1947 Act. But a decree of the Civil Court cannot be executed by the Labour Court.
6. It is trite law that when a statute vests certain power in an authority to be exercised in a particular manner, the said authority has to exercise it only in the manner provided in the statute and not in any other manner [*Sandur Manganese and Iron ores Limited (supra)* and *Myurdhwaj Coop. Group Housing Society Ltd. (supra)*]
7. The Title Suit filed by the employee before the Civil Court was decreed *exparte* by an order dated 8th September, 1981 and the employee was granted a decree in respect of his seniority, grade of pay and suspension. The Civil Court held the employee to be entitled to seniority as per his

length of service and the tripartite agreement and also pay protection to the grade he was officiating immediately before his suspension. The suspension was declared illegal, invalid and inoperative and the Company was restrained from initiating any inquiry or proceedings against the employee. The employee approached the Labour Court under section 33C (2) of the Industrial Disputes Act 1947 for computation of monetary benefit arising out of the exparte decree.

8. Section 38 of the Code of Civil Procedure envisages that “a decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.” In the case in hand, the decree was admittedly not sought to be executed by the Civil Court, nor sent to any other Court for execution in terms of section 39 of the Code. Section 11B of the 1947 Act as applicable to the State of West Bengal authorises the Labour Court to execute its own award as a decree of a Civil Court and also to execute any settlement defined in clause (p) of section 2 as a decree. The said provision does not include execution of a decree of a Civil Court by the Labour Court. It is trite law that the Labour Court/Tribunal derives powers from the statute that creates it and has to function within the limits imposed there and to act according to its provisions. [J.K. Iron and Steel Company Limited, Kanpur (supra)].

9. Section 33C (2) of the Act of 1947 is reproduced hereunder:-

“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:]”

10. In the reports relied upon by the parties, the Hon’ble Supreme Court has observed time and again that proceedings under section 33C (2) are analogous to execution proceedings under the Code of Civil Procedure and just as the executing Court can refuse to execute a decree which is shown to be a nullity, the same principle would apply to proceedings under section 33C (2). The law laid down by the Hon’ble Supreme Court is crystal clear. The Labour Court, in dealing with an application under section 33C (2) can compute in terms of money the benefit claimed by the workman and though the function of the Labour Court is akin to that of an executing Court under the Code, the Labour Court does not function as the executing Court under the Code and as such, has no authority to execute a decree granted by a Civil Court. The term “analogous to execution proceedings” cannot be construed as execution proceedings for execution of a decree of the Civil Court. Undoubtedly the Labour Court is well within its authority in dealing with a claim of the workman in terms of any benefit or money

and like the executing Court can interpret the award or settlement on which a workman bases his claim under section 33C (2). It is **like** the executing Court in execution proceedings governed by the Code.

11. The present case is otherwise. Herein, the workman has been granted a decree by the Civil Court and such decree is executable in accordance with section 38 of the Code. It is open to the workman to approach the Civil Court for execution of the decree and the Labour Court has not been vested with the authority to execute a decree of the Civil Court, in exercise of jurisdiction under section 33C (2) of the 1947 Act. The prayer of the private respondent, in substance, being execution of the decree of the Civil Court is de hors the tenet of law laid down under section 38/39 of the Code and as such, the Labour Court cannot, by application of principles of interpretation, cast upon itself the authority to execute such decree.
12. In view of the above, this Court is inclined to hold that the Learned Labour Court has erred in law in interpreting the law laid down under section 33C (2) of the Act of 1947 and as such, has no jurisdiction to entertain the application filed by the private respondents before it.
13. Accordingly, the order impugned dated 25th June, 2007 is set aside/quashed.
14. However, liberty is granted to the private respondent to approach the Civil Court for execution of the decree.
15. W.P.A 23025 of 2007 is allowed.

16. There shall however be no order as to costs.

17. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)