

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	13.06.2022
Pronounced on	05.07.2022

Coram

The Honourable Mr.Justice J.SATHYA NARAYANA PRASAD

W.P.No.33405 of 2004
and W.P.M.P.No.40379 of 2004

1.M/s.Ashok Pharmaceuticals
Rep. by the sole Proprietor,
S.K.Jawaharlal Khatod
No.41, Ormes Road,
Kilpauk, Chennai - 600 010.

2.M/s.Avec Vitamine India
Rep. by its sole Proprietrix,
Mrs.J.Nirmala,
No.41, Ormes Road,
Kilpauk, Chennai - 600 010.

3.M/s.Mengel Laboratories
Rep. by its sole Proprietrix,
Mrs.J.Nirmala,
No.41, Ormes Road,
Kilpauk, Chennai - 600 010.

4.M/s.Ramesh Kumar Finance
Rep. by the Mr.J.Ramesh Kumar,
No.41, Ormes Road,
Kilpauk, Chennai - 600 010.

...Petitioners

Versus

1.The Presiding Officer,
Principal Labour Court,
Chennai - 600 104.

2.V.Doss

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the first respondent in C.P.No.231 of 1996, dated 15.09.2004 and quash the same.

For Petitioners : Mr.R.D.Ashok Kumar
for Mr.S.N.Ravichandran

For Respondent - 1 : Court

For Respondent - 2 : No Appearance

O R D E R

The relief sought by the petitioner in this writ petition is to call for the records of the order passed by the first respondent in C.P.No.231 of 1996, dated 15.09.2004 and quash the same.

2. It is the case that the petitioners 1 to 3 are carrying on the business of manufacturing pharmaceuticals and the fourth petitioner is carrying on the finance business. Similarly, a firm named M/s.Anuradha Enterprises was also involved in the finance business and due to the death of Mrs.Anuradha, the said firm was closed. The first petitioner firm employed the second respondent as a driver in its firm, in the year 1970 and thereafter, terminated him from service on 02.03.1995. Aggrieved over his termination, the second respondent has filed a petition under Section 2A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'ID Act'), before the Labour Officer, seeking to take steps for his reinstatement. While so, the Labour Officer II, Chennai vide proceeding in Na.Ka.No.A/514/95, dated 30.08.1995, informed that the conciliation proceedings which were taken with regard to the reinstatement of the second respondent into service ended in failure.

3. Thereafter, the second respondent has filed a Claim Petition in C.P.No.231 of 1996 before the first respondent Court under Section 33C(2) of the ID Act, claiming a sum of Rs.5,38,500/- towards balance of minimum wages from April 1970 to March 1994. The petitioners and the aforesaid M/s.Anuradha Enterprises were respondents in that Claim Petition.

4. The first petitioner has filed a counter affidavit denying the averments made by the second respondent in the Claim Petition. On 09.07.2002, when the said Claim Petition was taken up for enquiry, none appeared on behalf of the petitioners as well as the said M/s.Anuradha Enterprises and therefore, they were set ex-parte by the first respondent Court. But the said ex-parte order came to the knowledge of the first petitioner firm only on 15.10.2003, when it received the notice dated 25.09.2003, from Labour and Employment Department. After the receipt of the said notice, challenging the ex-parte order dated 09.07.2002 passed by the first respondent Court, the first

petitioner has filed W.P.No.37998 of 2003 before this Court. On 07.07.2004, this Court has set aside the said ex-parte order and remitted the matter back to the first respondent Court for fresh consideration. Particularly, this Court has directed the first respondent Court to consider the matter afresh and pass appropriate orders in accordance with law, within a period of 12 weeks from the date of receipt of a copy of that order.

5. Pursuant to the aforesaid order of this Court, the first respondent Court conducted trial. During the trial, on 02.09.2004 one Mr.D.Vijayakumar (R.W.1) gave evidence on behalf of the petitioners herein. The first petitioner has also filed an Interlocutory Application in I.A.No.444 of 2004, seeking to receive additional counter statement in C.P.No.231 of 1996 and the same was allowed by the first respondent Court vide order dated 30.08.2004. On 10.09.2004, the petitioners and the said M/s.Anuradha Enterprises have also filed their detailed written arguments in C.P.No.231 of 1996. Subsequently, the first respondent Court vide order dated 15.09.2004 has allowed the said C.P.No.231 of 1996 in entirety by directing the respondents (petitioners herein and M/s.Anuradha Enterprises) to pay the claimed amount of Rs.5,38,500/- to the petitioner (second respondent herein). Challenging the order dated 15.09.2004 which was passed in favour of the second respondent, the petitioners herein have filed the present writ petition before this Court.

6. The learned counsel for the petitioners contended that the first respondent Court has no jurisdiction to adjudicate the Claim Petition filed under Section 33(c)(2) of the ID Act by the second respondent, if the claim is involved disputed question of facts. He further contended that the second respondent is not at all a workman under Section 2(S) of the ID Act because he worked as a personal driver to the proprietor/proprietrix. Further, the petitioners were ready and willing to take the second respondent into service but he refused to joint duty. These facts were not taken into consideration by the first respondent Court. On 25.03.1996, the date on which the Claim Petition was filed, the second respondent was not covered under the provision of the Minimum Wages Act, 1948 (hereinafter referred to as 'MW Act'). The Government vide notification in G.O.2(D) No.59, dated 06.11.2001, bringing certain class of employees under the purview of the MW Act. But the said G.O also does not bring the second respondent who was driver under the purview of the MW Act. The provision of MW Act is not at all applicable to the second respondent.

6.1. The learned counsel mainly contended that as per Section 20(1) of the MW Act, every application for claim shall be presented within a period of six months from the date, on

which the minimum wages became payable. In this case, the second respondent was working as a driver in petitioners' firm for a period of 25 years i.e., from 1970 to 1995 and he has filed the subject matter Claim Petition under Section 33(C)(2) of the ID Act, only on 25.03.1996. Though the second respondent is also very well aware that he cannot claim balance of minimum wages for the years 1970 to 1994 under Section 20(1) of the MW Act, he filed the Claim Petition for such claim, that too, after a lapse of 25 years, which is a sheer abuse of process of law.

6.2. The learned counsel further contended that before passing the order, the first respondent Court ought to have considered all the above aspects but without doing so, it has decided the issue in favour of the second respondent for the reason that no objection was raised and no evidence was produced on the side of the petitioners to oppose the claim of the second respondent. The order passed by the first respondent Court in C.P.No.231 of 1996 is unsustainable in law and the same is liable to be quashed.

6.3. The learned counsel submitted that when this Court has dealt with a case of similar nature in W.P.No.1611 of 2015 dated 09.09.2019, passed an order in favour of the petitioner (management) therein. The relevant portion of the said order dated 09.09.2019 is extracted hereunder:

"12. As far as the present writ petition is concerned, the second respondent-workman directly filed a computation petition No.219 of 2010. The Labour Court also adjudicated the issues in the absence of establishing any pre-existing right by the second respondent-workman. Though the Labour Court in paragraph-11 of the order states that the proceedings under Section 33C(2) of the Industrial Disputes Act is in the nature of the execution proceedings and declined to grant interest, the very maintainability has not been decided. Contrarily, the Labour Court proceeded on the footing that the second respondent-workman is entitled for the rest salary as per the Rules and accordingly, he is entitled to get the salary for 187 days at the rate of Rs.328 x 2 and pass an Award, directing the writ petitioner-Corporation to pay a sum of Rs.1,22,672/-.

13. The Labour Court in proceedings under Section 33C(2) of the Industrial Disputes Act, cannot adjudicate the issues on merits, so as to crystallise the rights of the workmen. Such an adjudication must be done in the manner prescribed under the Industrial Disputes Act and therefore, the contention of the learned counsel for the writ petitioner-Corporation that the Labour Court considered the documents as well

as the merits and accordingly granted the relief by computing the rest salary cannot be accepted. If such an adjudication on merits under Section 33C(2) is permitted, then the very spirit and purpose of the adjudication process contemplated under the other provisions of the Industrial Disputes Act, are not only diluted but also defeated. Thus, every provisions of the Industrial Disputes Act has got its own spirit and sanctity.

14. Thus, the petition under Section 33C(2), which is in the nature of execution proceedings, cannot be utilised for the purpose of adjudicating the disputed issues raised between the parties. In such an event, every such disputed facts were raised under the petition under Section 33C(2) and this will create an anomaly and further would be in violation of the very scheme of adjudication contemplated under the Industrial Disputes Act.

15. This being the legal principles to be followed, this Court is of the considered opinion that the very adjudication of the disputed issues made by the Labour Court in the computation petition cannot be accepted and admittedly, the second respondent-workman had not raised any dispute for adjudication under the provisions of the Industrial Disputes Act. Contrarily, the second respondent-workman filed a computation petition No.219 of 2010 and based on the petition, the Labour Court also passed an order, granting the relief of wages."

6.4. Further, the learned counsel has also placed reliance on the following decisions of the Honourable Supreme Court:

(i) Municipal Corporation of Delhi vs. Ganesh Razak and Anr. reported in (1995) 1 SCC 235

(ii) Tara and Ors. vs. Director, Social Welfare and Ors. reported in (1998) 8 SCC 671

(iii) State of Uttar Pradesh and Anr. vs. Brijpal Singh reported in (2005) 8 SCC 58

(iv) M/s.Bombay Chemical Industries vs. Deputy Labour Commissioner & Anr. [Civil Appeal No.813 of 2022 dated 04.02.2022] reported in 2022 LiveLaw (SC) 130

7. The learned counsel who originally appeared on behalf of the second respondent (contesting respondent in this writ petition) has withdrawn his Vakalat and therefore, this Court vide order dated 14.10.2020, directed the Registry to issue notice to the second respondent. As per the direction of this Court, notice was served to the second respondent on 22.03.2022. Despite the service of Court notice to the second respondent and

his name is being printed in the cause list today, none appeared on his behalf.

8. Heard the learned counsel for the petitioners and perused the materials available on record.

9. It is an admitted fact that the second respondent was working as a driver in the petitioners' firm for a period of 25 years i.e., from the year 1970 till his date of termination from service on 02.03.1995. Subsequent to his termination, he has filed a Claim Petition in C.P.No.231 of 1996 before the first respondent Court under Section 33C(2) of the ID Act, claiming a sum of Rs.5,38,500/- towards balance of minimum wages from April 1970 to March 1994. It is pertinent to extract Section 33 (C) (2) of the ID Act hereunder:

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

(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 as he may think fit.]

10. On 15.09.2004, before the first respondent Court, on the side of the petitioner (second respondent herein), petitioner (second respondent herein) examined himself as sole witness viz., P.W.1 and 5 exhibits were marked viz., Ex.P1 to Ex.P5. On the side of the respondents (petitioners herein and M/s.Anuradha Enterprises), Mr.D.Vijayakumar was examined as sole witness viz., R.W.1 and 4 exhibits were marked viz., Ex.R1 to Ex.R2. After hearing both sides and perusing the materials placed before the Court, the first respondent Court erred in observing that the respondents (petitioners herein and M/s.Anuradha Enterprises) have neither raised any objection nor produced any evidence, to the amount sought by the petitioner (second respondent herein) in the Claim Petition and therefore, the petitioner (second respondent herein) is entitled to get a sum of Rs.5,38,500/- as sought by him and the issue is answered accordingly. The first respondent Court allowed the said Claim Petition and directed the respondents (petitioners herein and M/s.Anuradha Enterprises) to pay the aforesaid claimed amount to

the petitioner (second respondent herein).

11. According to the petitioners, the second respondent is not at all a workman since he was working only as a personal driver in their firm and he failed to file his Claim Petition within a period of statutory limitation specified in Section 20 (1) of the MW Act. As per Section 20 of the MW Act, a claim application has to be filed before the concerned authority, within a period of six months from the date, on which the minimum wages became payable. Section 20(1) of the MW Act reads as follows:

"20. Claims - (1) The appropriate Government may, by notification in the Official Gazette, appoint [any Commissioner for Workmen's Compensation or any officer of the Central Government exercising functions as a Labour Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner or any] other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the Authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages [or in respect of the payment of remuneration for days of rest or for work done on such days under clause (b) or clause (c) of sub-section (1) of section 13 or of wages at the overtime rate under section 14,] to employees employed or paid in that area.

Provided that every such application shall be presented within six months from the date on which the minimum wages [or other amount] became payable:"

12. It is to be noted that the second respondent was terminated from service on 02.03.1995 and the Claim Petition was filed by him on 25.03.1996. At the time of filing the Claim Petition, the second respondent was not covered under the provision of MW Act. Even though the second respondent was a driver by profession, the G.O.2(D) No.59, dated 06.11.2001 does not bring him under the purview of the MW Act. This clearly shows that the provision of MW Act is not applicable to the case of the second respondent.

13. The first respondent Court ought not to have entertained the Claim Petition filed by the second respondent on the two main grounds. Firstly, the Claim Petition is not at all maintainable since the second respondent was working as a driver and the driver category does not come under the purview of MW Act and secondly, the second respondent has filed the Claim Petition only after a huge delay of 25 years.

14. The petitioners knowing fully well that as per the

provision of MW Act, the Claim Petition filed by the second respondent under Section 33(C)(2) of ID Act is barred by limitation. Subsequent to the ex-parte order passed by the first respondent Court in C.P.No.231 of 1996, the first petitioner firm knocked the doors of this Court with a writ petition in W.P.No.37998 of 2003 and this Court vide order dated 07.07.2004 disposed of the said writ petition by observing as follows:

"2. In view of the above submission and in the light of the principle as enunciated by this Court in the said decision, the impugned order cannot be legally sustained and the same is set aside. However, the matter is remitted back to the Labour Court to consider the issue afresh in accordance with law and pass appropriate orders. The Labour Court is directed to do the exercise within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed as unnecessary."

15. Despite this Court has set aside the said ex-parte order and remitted the matter back to the first respondent Court for fresh consideration, the first respondent Court sustained the said ex-parte order. The first respondent Court, without addressing the issue of MW Act and its applicability to the case on hand, has allowed the said Claim Petition. This clearly shows the non-application of mind on the part of the first respondent Court.

16. According to Section 33C(1) of the ID Act, where any money is due to a workman from an employer under a settlement or an award or under the provisions, the workman himself, without prejudice to any other mode of recovery, can 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. Similarly, Section 33C(2) of the ID Act states that where any workman is entitled to receive any money or any benefit which is capable of being computed in terms of money from the employer and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, such question may be decided by the Labour Court as may be specified in this behalf by the appropriate Government.

17. As far as this case is concerned, there is no settlement or award to invoke Section 33C(2) of the ID Act. So, the Claim Petition filed under Section 33C(2) of the ID Act by the second respondent is not at all maintainable. The first respondent Court has erred in allowing the Claim Petition of the

second respondent.

18. At this juncture, it is pertinent to refer the following decisions relied by the learned counsel for the petitioners, viz.,

(i) Municipal Corporation of Delhi vs. Ganesh Razak and Anr. reported in (1995) 1 SCC 235, wherein, the Hon'ble Apex Court has held as follows:

"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 these matters, the claim of the respondent-workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of "equal pay for equal work" being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement of the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication

made in the writ petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made under Section 33-C(2) of the Act by these respondents."

(ii) Tara and Ors. vs. Director, Social Welfare and Ors. reported in (1998) 8 SCC 671, in which, the Hon'ble Apex Court has observed as follows:

"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, 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. We find that the Labour Court has recorded some findings which may be relevant for the disputed status of the appellants as anganwadi workers/helpers even though it has rightly reached the conclusion that the applications do not lie under Section 33-C(2) of the Act. It is clear that the question of maintainability of the applications under Section 33-C(2) was required to be determined at the threshold and the question of examining the appellants' claim on merits relating to their status could have been gone into thereafter if the applications were held to be maintainable under Section 33-C(2). In view of the conclusion rightly reached by the Labour Court that the applications were not maintainable under Section 33-C(2), its other findings relating to the status and nature of employment of the anganwadi workers/helpers were wholly uncalled for. All such findings are, therefore, not to be construed as deciding any point relating to the status of the appellants."

(iii) State of Uttar Pradesh and Anr. vs. Brijpal Singh reported in (2005) 8 SCC 58, the Hon'ble Apex Court 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. Therefore, the Labour Court has 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.Shymala 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 C.M.W.P. No. 36406 of 1995 as illegal and uncalled for. We do so accordingly."

(iv) Similarly, in the case of M/s.Bombay Chemical Industries vs. Deputy Labour Commissioner & Anr. [Civil Appeal No.813 of 2022 dated 04.02.2022] reported in 2022 LiveLaw (SC) 130, the Hon'ble Apex Court has observed as below:

"6. As per the settled proposition of law, in an application under

Section 33(C)(2) of the Industrial Disputes Act, the Labour Court has no jurisdiction and cannot adjudicate dispute of entitlement or the basis of the claim of workmen. It can only interpret the award or settlement on which the claim is based. As held by this Court in the case of Ganesh Razak and Anr. (supra), the labour court's jurisdiction under Section 33(C)(2) of the Industrial Disputes Act is like that of an executing court. As per the settled preposition of law without prior adjudication or recognition of the disputed claim of the workmen, proceedings for computation of the arrears of wages and/or difference of wages claimed by the workmen shall not be maintainable under Section 33(C)(2) of the Industrial Disputes Act. (See Municipal Corporation of Delhi Vs. Ganesh Razak and Anr. (1995) 1 SCC 235).

19. From the aforesaid decisions rendered by the Hon'ble Supreme Court, it is crystal clear that

(i) The Labour Court cannot adjudicate the dispute of entitlement or the basis of the claim of workmen and it can only interpret the award of settlement on which the claim is based and its jurisdiction under Section 33C(2) of the ID Act is like that of an executing Court. Further, without prior adjudication or recognition of the disputed claim of the workmen, proceedings for computation of the arrears of wages claimed by them, is not maintainable under Section 33C(2) of the ID Act.

(ii) Where the status and nature of employment of the workmen are disputed, there must be prior adjudication on merits about such status and nature of employment, only then, the application under Section 33C(2) of the ID Act to be moved before the Labour Court. This is the principal condition for applicability of Section 33C(2) of the ID Act.

(iii) Right to the money which is sought to be calculated or right to the benefit which is sought to be computed under Section 33C(2) of the Act must be an existing one, that is already adjudicated upon and must arise in the course of and in relation to the relationship between the workmen and their employer. The difference between a pre-existing right or benefit and the right or benefit, which is considered just and fair is vital. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then, compute the benefits for adjudication on that basis.

20. Considering the facts and circumstances of the case and also, in the light of the ratio laid down by the Honourable Supreme Court in the decisions cited supra, this Court is inclined to allow this writ petition and set aside the order passed by the first respondent Court.

21. Accordingly, this writ petition is allowed and the order passed by the first respondent Court in C.P.No.231 of 1996 dated 15.09.2004 is hereby set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

mrr

To

The Presiding Officer,
Principal Labour Court,
Chennai - 600 104.

+lcc to Mr.S.N.Ravichandran, Advocate, S.R.No.42875

W.P.No.33405 of 2004

SKM(CO)
SB(19/07/2022)