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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.21400 of 2015 and
M.P.No.1 of 2015

1. Union of India,
Rep. By the General Manager,
Southern Railway, Park Town,
Chennai - 600 003.
2. The Divisional Railway Manager,
Chennai Division, Southern Railway,
Park Town, Chennai - 600 003.
3. The Senior Divisional Personnel Officers,
Chennai Division, Southern Railway,
Park Town, Chennai - 600 003. ...Petitioners

-Vs-

1. D.S.M.Agastus Babu,
2. K.Murali
3. The Presiding Officer,
Central Government Industrial Tribunal
Cum Labour Court, Shastri Bhawan,
Chennai. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the entire records of the 3rd respondent made in C.P.No.5 of 2014, dated 02.03.2015 and quash the same.

For Petitioners : Mr.V.Radhakrishnan,
Senior Counsel for
Mr.M.Vijay Anand

For Respondents : M/s.D.S.M.Agastas Babu for R1
M/s.L.Chandrakumar for R2

For Respondents : Tribunal for R3



ORDER

Under Section 33-C(5) of the Industrial Disputes Act of 1947, whenever, a workman is entitled to receive any money or benefit from the employment, which has been computed in terms of money, the concerned Industrial Tribunal would compute the same. The scope of this provision is limited to claims, where the entitlement is already decided under an award or a settlement. In the case of Abdul and others vs. The Management of E.I.D.Parry (I) Ltd., Sugar Factory, Nellikuppam and another in W.P.No.40333 of 2002 dated 03.01.2022, I had held this proposition following the earlier decisions of the Hon'ble Supreme Court in the following manner:-

6.The scope of Section 33-C(2) of the Act that has been dealt in various decisions by the Hon'ble Supreme Court whereby it has been held that the dispute of entitlement or basis of a claim by the workmen, cannot be adjudicated under this provision. In Central Bank of India Vs. P.S.Rajagopalan reported in AIR 1964 SC 743, it was held that the power of the Labour Court under Section 33-C(2) extends to interpretations of the award or settlement on which the workmen's rights like execution of Court's power to interpret the decree for the purpose of execution, where the basis is referable to the awards or settlements. However, it was clarified that such powers of the Labour Court does not extend to determine disputes of entitlement or the basis of the claim, if there is no prior adjudication or recognition of the same by the employer.

7. In Bombay Gas Company Ltd., Vs. Gopal Bhiva reported in AIR 1964 SC 752, the same proposition was reiterated. The aforesaid two decisions were referred by the Hon'ble Supreme Court in Chief Mining Engineer, East India Coal Company Ltd., Vs. Rameswar reported in AIR 1968 SC 218 and held that the right to the benefit which is sought to be computed under Section 33-C(2) must be an existing one, that is to say, already adjudicated upon, or provided for <https://www.mhc.tn.gov.in/judis> or must arise and 9 in the course of and in relation to the relationship between the industrial workmen and the employer. The ratio laid down in all the aforesaid decisions were also relied upon in the



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case of Municipal Corporation of Delhi V. Ganesh Razak and another reported in 1995 (1) Supreme Court Cases 235 and ultimately, the scope of Section 33-C(2) was restricted to exclude the powers of the Court to adjudicate disputed entitlements or claims of the workmen. It was further clarified therein that the Labour Court was only entitled to interpret the award or settlements on which the workmen based their claim. The relevant portion of the order reads 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 5 (1968) 1 LLJ 589 : 38 Comp Cas 400 (SC) 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."

8. In the background of the aforesaid legal propositions, the facts of the present case, as projected before the Labour Court in the proceedings under Section 33-C(2) of the Act, were perused. While the workmen had claimed entitlement to receive the "personal allowance", in view of the orders passed by the Hon'ble Supreme Court in the Special Leave Petition (SLP), the Management



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had denied their entitlement by stating that though the "personal pay" was paid between the period from May 1985 to 1990, in accordance with the directions of the Hon'ble Supreme Court, the same was stopped in the year 1990. The Management had also disputed the claim by stating that the trade union, to which the petitioners herein belonged, was a party in the SLP before the Hon'ble Supreme Court and since they were aware that they were not entitled to receive "personal allowance" continuously, they are not now entitled for such allowance. Their claim for "personal allowance" was also objected on the ground that neither the trade union nor these petitioners had made a claim for "personal allowance" for the past 13 years, which indicates that they were aware of the terms of the settlements signed between the trade union and the Management with regard to wages and conditions of service after 1985, more particularly, when the first petitioner was the signatory to the settlement.

9. The petitioners herein are now effectively trying to interpret the order of the Hon'ble Supreme Court passed in the year 1985 and claim "personal allowance". Since their entitlement has not been adjudicated earlier in any awards nor has been crystallized by the Management and more particularly, when their very entitlement to claim "personal allowance" is denied by the Management, the Labour Court will not have jurisdiction to determine these disputed facts in the proceedings under Section 33-C(2) of the Act. Thus, by applying the ratio laid down by the Hon'ble Supreme Court in all the aforesaid decisions, this Court is of the view that the Labour Court was justified in rejecting the petitioners' claim.

10. It was also contended by the learned counsel for the Management that since the workmen had voluntarily retired pursuant to the Scheme offered by the Management and had accepted all the benefits of such voluntary retirement, there cannot be any scope to construe that there is a settled dispute leading to a claim, which could be raised by the petitioners, who have ceased to become a workmen.



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11. In the case of Everestee Vs. District Labour Officer reported in 1999 (3) LLN 678, a Hon'ble Division Bench of the Kerala High Court had held that a person who has opted for voluntary retirement, cannot be treated as "workmen". Likewise, a Hon'ble Division Bench of this Court in the case of E.I.D. Parry Vs. M.N.Padmanabhan and another reported in 2008 (3) CTC 746 had held that in view of the voluntary retirement, the claimants ceased to be a workmen and therefore, cannot raise a claim. The relevant portion of the order reads as follows:-

"14. In the case on hand, the first respondent, having opted for VRS and after entering into the Settlement having fully understood the terms of Settlement and particularly Clause 9 thereof and also encashing the amount of Settlement arising thereon, claimed further benefits in the name of pension. If the first respondent is permitted to raise such a grievance even after he has opted for Voluntary Retirement Scheme and accepted the amounts paid to him thereunder, the very object and the purpose of introducing the Scheme will be defeated. As the first respondent has already ceased to be a workman and on cessation of the jural relationship and on claiming the entire amount of settlement and receiving the same, there cannot be any scope to construe that there is a dispute still existing to raise a claim under Section 2-A of the Act. Therefore, this Court has no reason to believe that there exists any dispute in this case. However, the learned single Judge, without going into the entire facts and circumstances of the case, has come to the conclusion that pension being an amount which would be payable only to an ex-employee has an intimate link with termination and, therefore, the reference under Section 2-A cannot be rejected, which, in our considered opinion, cannot be sustained."



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12. The learned counsel for the petitioners/workmen placed reliance on the decision of the Hon'ble Supreme Court in the case of A.Satyanarayana Reddy and others Vs. Presiding Officer, Labour Court reported in 2016 (9) SCC 462 and submitted that when a Voluntary Retirement Scheme (VRS) does not cover the past dues of "personal allowance", the workmen <https://www.mhc.tn.gov.in/judis> would be entitled to approach the Labour Court under Section 33-C(2). The same decision was also relied upon by the learned counsel for the Management.

13. The ratio laid down in Satyanarayana Reddy's case (supra), arise from the peculiar facts of that case, which is clearly distinguishable from the facts of the case in hand. In Satyanarayana Reddy's case, the dispute arose when the workmen were transferred from one company to another. Among these transferred employees, some came to be absorbed back, while others were offered "lay-off compensation". When these workmen had expressed their willingness to continue to work, a special compensation package (VRS) was extended to them, in lieu of their employment with the company. The terms of the VRS did not make any provision for "lay-off compensation". It is in this background, the High Court had granted liberty to these workmen to approach the Industrial Tribunal by way of a claim petition under Section 33-C(2) of the Act. The Labour Court dismissed the claims on the ground that since the workmen had received all the benefits under VRS, they ceased to be a workman as defined under Section 2(s) of the Act. The High Court had upheld the findings of the Labour Court and in this background, the matter was dealt by the Hon'ble Supreme Court.

14. While analysing the scope of a petition under Section 33- C(2) of the Act, in the factual matrix of that case, the Hon'ble Supreme Court found that the terms of the VRS did not deal with the past dues of "lay-off compensation" and therefore held that the workers had a legal right to claim the "lay-off compensation" under Section 33-C(2). The relevant portion of the order reads as follows:



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"15. We need not refer to the other clauses as they do not really provide for any kind of benefit but stipulate the various aspects for implementation of VRS and the procedure to be adopted. On a perusal of VRS, it is clear as day that it did not deal with the lay-off compensation.

16. As has been laid down in National Buildings Construction Corporation V. Pritam Singh Gill [1972 (2) SCC 1], a claim pertaining to non-payment of suspension allowance could be agitated under the said provision inspite of the employee being dismissed from service. In A.K.Bindal Vs. Union of India [2003 (5) SCC 163], the two- Judge Bench has held that after acceptance of the scheme and availing of benefits under VRS an employee could not claim higher wages. The controversy was different. If the VRS had mentioned about the lay-off compensation, needless to say, the claim would have been covered and the amount received by the workmen would have been deemed to have been covered by the quantum of lay-off compensation. That is not the factual position. Therefore, the controversy that arose in Pritam Singh Gill and the dispute that emanated in A.K.Bindal are quite different. Hence, we are disposed to think that there exists no conflict between Pritam Singh Gill and A.K.Bindal.

17. We think it appropriate to say that though there is cessation of relationship between the employee and the employer in VRS but if it does not cover the past dues like lay-off compensation, subsistence allowance, etc., the workman would be entitled to approach the Labour Court under Section 33-C(2) of the Act. If it is specifically covered, or the language of VRS would show that it covers the claim under the scheme, no forum will have any jurisdiction."

2 The above said extract is self explanatory. Thus, in a petition under Section 33-C(5), the Industrial Tribunal would not be within its powers to adjudicate on "disputed facts" with regard to the entitlement of the workmen. In the light of the above proposition, the facts of the present case were looked into.



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3 While the respondents 1 and 2 claim entitlement for House Rent Allowance and City Compensation Allowance at 30%, the petitioner Management had denied the same. In spite of such denial, the Industrial Tribunal had chosen to adjudicate the dispute in the application filed under Section 33-C(5) which is impermissible in law. In view of the aforesaid decisions, the only option that would be available for the aggrieved workmen is to raise an Industrial Dispute, touching upon their claim. As such the present award cannot be sustained.

4 In the light of the above observations, the impugned Award made in C.P.No.5 of 2014, dated 02.03.2015 is quashed. The writ petition stands allowed. Consequently connected miscellaneous petitions is closed. In case the respondents 1 & 2 intend to make their claim, liberty is hereby granted to them to raise an Industrial Dispute before the appropriate forum in accordance with law.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

The Presiding Officer,
Central Government Industrial Tribunal
Cum Labour Court, Shastri Bhawan,
Chennai.

+1 CC to Mr.L. Chandrakumar, Advocate sr 6063.
+1 CC to Mr.M.Vijay Anand, Advocate sr 5879.

W.P.No.21400 of 2015 and
M.P.No.1 of 2015

PL(CO)
SP(04/03/2022)