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W.P.Nos.6469, 6474 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.6469, 6474, 6479, 6483, 6486, 6489, 6495, 6497, 6498
6499, 6500, 6504, 6505, 6506, 6510, 6516, 6520,
6525, 6528, 6533 & 6539 of 2019

W.M.P.Nos.7281, 7288, 7293, 7296, 7302, 7301, 7304,
7307, 7308, 7309, 7310, 7311, 7315, 7316,
7324, 7326, 7332, 7336, 7338, 7346 & 7352 of 2019

W.P.No.6469 of 2019:-

M/s.Dodsal Enterprises Pvt.Ltd.
Represented through its Managing Director,
E – 1401 & 1402, E,
Lotus Corporate Park,
Graham Firth Steel Compound,
Jaycoach signal, Western Express
Highway, Goregaon (East),
Mumbai – 400 063.

... Petitioner

Vs.

Sampath Kumar

... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating to the order dated 21.12.2018 passed by the III Additional Labour Court, Chennai, in Claim Petition No:8 of 2016 and to quash the same.



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In all W.P.s':-

For Petitioner : Mr.S.Ravindran
Senior Counsel for
Mr.A.R.Pradeep

For Respondent : Mr.Leelesh Sundaram
and Mr.Rajeswaran for
M/s.Nathan and Associates

COMMON ORDER

The award of the III Additional Labour Court dated 21.12.2018 in Claim Petition Nos.8/2016, 17/2016, 18/2016, 10/2016, 9/2016, 16/2016, 24/2016, 19/2016, 23/2016, 26/2016, 21/2016, 28/2016, 25/2016, 27/2016, 22/2016, 15/2016, 11/2016, 14/2016, 13/2016, 29/2016 and 20/2016 respectively are under challenge in the present Writ Petitions.

2.The petitioner which is a Company filed the Writ Petitions mainly on the ground that the Labour Court passed an award in a Claim Petition under Section 33 (C) (2) of the Industrial Disputes Act, without even considering the pre-existing right which is mandatory for the purpose of entertaining a Claim Petition under Section 33 (C) (2) of the Industrial Disputes Act.

3.The learned Senior Counsel appearing on behalf of the Writ Petitioner contended that the respondent employees admittedly submitted their respective



resignation letters which were accepted by the Management and accordingly, all the benefits due to them were settled. The said documents were filed before the Labour Court by the Management. That apart, the benefits paid by the Management were acknowledged by the employees and receipts were supplied. Those receipts were also filed as documents before the Labour Court. Despite the fact that the employees resigned their job and accepted the benefits due to them, the Labour Court erroneously entertained the Claim Petition under Section 33 (C) (2) of the Industrial Disputes Act, which is not maintainable.

4. In order to substantiate the entertainability of the Claim Petition under Section 33 (C) (2) of the Industrial Disputes Act, the learned Senior counsel drew the attention of this Court with reference to the findings of the Labour Court more specifically regarding the resignation of employees. The Labour Court proceeded under the pretext that the resignation of the petitioners can be taken as a voluntary act yet the Labour Court can equally treat the resignation as with coercion obtained by the Management. Such finding is perverse and not supported by any documents. It is not in dispute that the employees offered their resignation and accordingly, they were relieved from employment. The acceptance of resignation was neither challenged nor disputed. The acknowledgement of the benefits are also not denied by the employees. While so, the Claim Petition cannot be



maintained in respect of any new claim if any made by the employees. In the present case, the petition under Section 33 (C) (2) was filed by the employees to compute the money value towards separation benefits due to them along with the interest. The separation benefits as claimed by the employees are not part of the benefits settled by the Management on acceptance of resignation. Thus, the separation benefits is a new benefit which was claimed by the employees which was not part of the dues to be settled by the Management on the resignation of the employees. Whenever a new claim is made by the employees then an adjudication is mandatory and in the absence of any adjudication or crystallisation of rights, the Claim Petition under Section 33 (C) (2) of the Industrial Disputes Act, is not entertainable.

5. Section 33 (C) (2) contemplates that “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”. Therefore, the entitlement of an employee is the pre-requisite condition for the purpose of entertaining a Claim Petition under Section 33 (C) (2). If there is any dispute regarding the entitlement then an adjudication must be necessary for the purpose of ascertaining the rights of the employees. Therefore, in the present case the resignation is not in dispute and the benefits were settled to the employees, which is also not in dispute. Therefore,



separation benefits claimed by the employees are to be adjudicated with reference to the documents and evidence and the Labour Court has erroneously proceeded on the basis that the right to claim separation benefits were already promised or assured by the Management. There is no proof to establish that the said separation benefits are promised by the Management at the time of accepting the resignation. Therefore, for all purposes the separation benefits are to be construed as a new benefit which was claimed by the petitioners by filing a petition under Section 33 (C) (2) of the Industrial Disputes Act.

6.The principles to be followed in respect of the petitions filed under Section 33 (C) (2) of the Industrial Disputes Act was considered by this Court in the case of ***The Management of Bimetal Bearings Limited Vs. The Presiding Officer, Labour Court, Salem and others*** reported in ***MANU/TN/6959/2019*** and the relevant paragraphs are extracted here:-

24. The adjudication of merits and demerits cannot be undertaken by the Labour Court in a petition filed under [Section 33C\(2\)](#) of the Industrial Disputes Act. The [Section 33C\(2\)](#) stipulates that “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”. Thus, there must be an entitlement and pre-existing right, which is the pre-condition for entertaining a petition under [Section 33C\(2\)](#) of the Industrial Disputes Act. In the absence of any such pre-existing right or entitlement, no petition can be entertained for the purpose of computing the monetary value or the benefits.

In this regard, it is relevant to cite the judgment of the 3 judges of the Supreme Court of India in the case of [State of U.P and Another vs. Brijpal Singh](#) [2005-III-LLJ 1003]. The relevant paragraphs-10 and 12 of the judgment are extracted as under:

“10. It is well settled that the workman can proceed under [Section 33-C\(2\)](#) only after the Tribunal has adjudicated on a complaint under [Section 33-A](#) or on a reference under [Section 10](#) that the order of discharge or dismissal was not justified and has set aside that order and <http://www.judis.nic.in> W.P.No.1085 of 2018 reinstated the workman. This Court in the case of [Punjab Beverages \(P\) Ltd. v. Suresh Chand](#) [(1978) 2 SCC 144 : 1978 SCC (L&S) 165] held that a proceeding under [Section 33-C\(2\)](#) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman is entitled to



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any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. Proceeding further, this Court held that the right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman, and his employer. This Court further held as follows: (SCC p. 150, para 4)

“It is not competent to the Labour Court exercising jurisdiction under [Section 33-C\(2\)](#) to arrogate to itself the functions of an Industrial Tribunal and entertain a claim 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 Act.”

In the case of [Municipal Corpn. of Delhi v. Ganesh Razak](#) [(1995) 1 SCC 235 : 1995 <http://www.judis.nic.in> W.P.No.1085 of 2018 SCC (L&S) 296 : (1995) 29 ATC 93] this Court held as under: (SCC pp. 241-42, paras 12-13)

“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 <http://www.judis.nic.in> W.P.No.1085 of 2018 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



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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 <http://www.judis.nic.in> W.P.No.1085 of 2018 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 to 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."

12. Thus, it is clear from the principle enunciated in the above decisions that the appropriate forum where question of back wages <http://www.judis.nic.in> W.P.No.1085 of 2018



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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 had 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 Shyamla 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 <http://www.judis.nic.in> W.P.No.1085 of 2018 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



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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 CMWP No. 36406 of 1995 as illegal and uncalled for. We do so accordingly.”

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27. Considering the facts and the circumstances, this Court is of the considered opinion that declaring a holiday by the Government under the [Negotiable Instruments Act](#), would not be directly applicable to Private Companies falling under the [Factories Act](#). Thus, it is to be construed that the management granted a concession for the workers of the second shift and third shift, enabling them to avail holiday on 30.07.2015, provided they agree to work on 02.08.2015. It is only an alternate concession provided to the workmen of second shift and third shift. Such a concession can never be construed as a legal right, so as to arrive a conclusion that the workers of the second shift and third shift are entitled for a holiday as per the Government Orders, which was issued under the [Negotiable Instruments Act](#). So also the <http://www.judis.nic.in> W.P.No.1085 of 2018 said concession would not form a pre-existing right for the



purpose of filing a claim petition under [Section 33-C\(2\)](#) of the Industrial Disputes Act, 1947.

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28. A concession is a form of “privilege”. A concession is nothing but a conditional right. A “privilege” or a “concessional right” cannot be interpreted as an absolute right, which alone would constitute a right to file a claim petition under [Section 33-C\(2\)](#) of the Industrial Disputes Act, 1947. The term “right” in Civil Society is defined to mean that “which a person is entitled to have or to do or to receive from others, within the limits prescribed by law”. Thus, such a concession or conditional right offered cannot be construed as an absolute right for the purpose of claiming a pre-existing right, enabling the workers to file the claim petition under [Section 33-C\(2\)](#) of the Industrial Disputes Act, 1947.

7.The findings of the Labour Court reveals that the rights of the employees were not crystallised nor adjudicated. Contrarily, the Labour Court proceeded on the basis that the separation benefits are already conferred on the employees, but there is no document to establish that any such separation benefits are to be granted or promised by the management at the time of accepting the letter of resignation submitted by the respective employees. Thus, the very basis on which the Labour Court proceeded is perverse as the pre-existing right of the employees were not established. In the absence of any such pre-existing right, Claim Petition



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under Section 33 (C) (2) of the Industrial Disputes Act, is not entertainable. In the present case, if at all the petitioners are of the opinion that any such separation benefits are to be granted or agreed by the Management they have to go for an adjudication in the manner contemplated under law. However, the Claim Petition was erroneously entertained and the findings of the Labour Court is not based on any evidence of documents and thus, the Writ Petitions are to be considered. Consequently, the Award of the Labour Court passed in Claim Petition Nos.8/2016, 17/2016, 18/2016, 10/2016, 9/2016, 16/2016, 24/2016, 19/2016, 23/2016, 26/2016, 21/2016, 28/2016, 25/2016, 27/2016, 22/2016, 15/2016, 11/2016, 14/2016, 13/2016, 29/2016 and 20/2016, dated 21.12.2018 are quashed.

8.In the result, Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

12.10.2022

ep/ssr

Index : Yes

Internet : Yes

Speaking order : Yes

To

The III Additional Labour Court,
Chennai.



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