



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. No.5849 of 2015
and MP No.1 of 2015

The Superintending Engineer,
TANGEDCO,
TEDC/Tiruvannamalai,
Tiruvannamalai, 606 604

...Petitioner

Vs.

1.The Presiding Officer,
Additional Labour Court, Vellore,
Vellore District
2.P.Punniakotti
C/o.R. Sundaramoorthy,
60, Shanmugaperuaman Street,
Keerlperumbakkam,
Villupuram

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of certiorari calling for the records in C.P.No.166 of 2008 dated 14.10.2011 passed by the 1st respondent and quash the same.

For Petitioner : Mr.Anand Gopalan for
M/s.T.S.Gopalan & Co.

For Respondents : R1-Tribunal
R2-No Appearance

ORDER

Heard Mr. Anand Gopalan, learned counsel for the petitioner. Though the name of the 2nd respondent is printed in the cause list, there is no appearance. Even on the last hearing on 04.01.2022, there was no appearance on behalf of R2.

2. The claim of the 2nd respondent is that the period between 04.04.1986 to 30.11.1996, under which he was a contract labourer, should be taken into account for the purpose of pensionary benefits. With such a claim, he had filed an application under Section 33-C(2) of the Industrial Disputes



Act, 1947 (in short 'Act') to compute the monetary benefits as arrears of pension amount from the petitioner corporation.

3. Before the Labour Court, the petitioner had denied its liability and subsequently raised objections stating that the period of employment of the 2nd respondent from the date of regularization alone requires to be reckoned for the purpose of calculating the total years of service and since, such a period was less than ten years, he is not entitled to the pensionary benefits. The Labour Court, however, had gone into the liability of the petitioner-corporation to compute the service period by including the period of contract employment of the 2nd respondent.

4. The scope of Section 33-C(2) of the Act limits the powers of the Labour Court in adjudicating disputed claims and such proposition has been time and again considered by the Hon'ble Supreme Court, as well as this Court in various decisions. In a recent decision of this Court in the case of Abdul Jaleel and Others Vs. The Management of E.I.D. Parry (I) Ltd, and Others in W.P.No.40333 of 2002, dated 03.01.2022, such decisions were considered and this Court held that the Labour Court will not have jurisdiction to adjudicate disputed claims in an application filed under Section 33-C(2) of the Act. The relevant portion of the judgment reads as follows:

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



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computed under Section 33-C(2) must be an existing one, that is to say, already adjudicated upon, or provided for or must arise and 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 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 tile 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."

5. The aforesaid extract is self-explanatory. The impugned order of the Labour Court in overruling the management's objection that the period of contract employment, cannot be taken for reckoning the total service period spent, is opposed to the aforesaid decision of the Hon'ble Supreme Court, as well



as this Court. Consequently, the impugned order itself cannot be sustained.

6. In the light of the above discussion, the impugned order dated 14.10.2011 on the file of the Presiding Officer, Additional Labour Court, Vellore is quashed and this writ petition stands allowed. Consequently, the connected miscellaneous petition is closed. No costs.

7. In the light of the decision taken by this Court, the petitioner is at liberty to withdraw the amount deposited by it before the Labour Court on filing of an appropriate application. The Labour Court shall also endeavor to consider such an application, preferably on the same date.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,
Additional Labour Court, Vellore,
Vellore District

+1cc to M/s.T.S.Gopalan & CO, Advocate, S.R.No.2478

W.P. No.5849 of 2015
and MP Nos.1 of 2015

SMI (CO)
SB(09/02/2022)