



\$~20, 22, 23, 25, 27 & 31

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of Decision: 01st June, 2022

20

+ W.P.(C) 8943/2022, CM APPLs. 26872- 26873/2022
MUNICIPAL CORPORATION OF DELHI(ERSTWHILE NORTH
DELHI MUNICIPAL CORPORATION) Petitioner
versus

SH. ISHWAR Respondent

22

+ W.P.(C) 8950/2022, CM APPLs. 26924-26925/2022
MUNICIPAL CORPORATION OF DELHI Petitioner

versus

SH. VICKY Respondent

23

+ W.P.(C) 8980/2022, CM APPL. 26997-26998/2022
MUNICIPAL CORPORATION OF DELHI Petitioner

versus

SH. RATTAN Respondent

25

+ W.P.(C) 8982/2022, CM APPL. 27006-27007/2022
MUNICIPAL CORPORATION OF DELHI Petitioner

versus

SH. MOHAN Respondent

27

+ W.P.(C) 8994/2022, CM APPLs. 27035-27036/2022
MUNICIPAL CORPORATION OF DELHI (ERSTWHILE NORTH
DELHI MUNICIPAL CORPORATION) Petitioner



versus

SH. AJIT Respondent

31
+ W.P.(C) 8997/2022, CM APPL.Nos. 27106/2022 & 27107/2022
MUNICIPAL CORPORATION OF DELHI Petitioner

versus

SH. DARSHAN Respondent

Present: Mr.Sanjeev Sagar with Ms.Nazia Praveen, counsels for the
petitioners in all the matters.
Mr.Sanjoy Ghosh, Sr.Adv. with Mr.V.Sharma, Mr.Mayur
Srivastava, Mr.Nipun Jain and Mr.R.K.Pandit, Advocates for
the respondents in all the matters.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. By way of these writ petitions, the petitioners have challenged the impugned order dated 30.03.2022 and 29.04.2022 whereby vide order dated 30.03.2022 the learned Labour Court allowed the application under Section 11 (3) of the Industrial Disputes Act (hereinafter referred to as 'the Act') and directed Corporation to file reply/objection within 30 days along with the copy of entire personal file/service record of the workman. The grievances of the petitioner in this regard is that this order was filed in absence of any representation from the management/corporation and there was clear violation of principles of natural justice.



2. In the subsequent impugned order dated 29.04.2022, the learned Labour court after taking into consideration the objections raised by the corporation dismissed the same by detailed order.
3. In brief the objections taken by the management-corporation as summarized by the learned Labour Court are as follows:
 - i. Labour Court does not have jurisdiction to entertain application under Section 33-C(2) of ID Act, 1947 as Municipal Corporation of Delhi is covered under the jurisdiction of Central Administrative Tribunal w.e.f. 15.12.2008 in view of **Notification No.P 13030/7/2008-AT, New Delhi dated 01.12.2008** issued by Government of India.
 - ii. Application claiming some amount as entitlement/incentive on the basis of certain Circulars issued by North DMC is not maintainable under Section 33-C(2) of I.D.Act.
 - iii. Application is not maintainable in the absence of compliance of mandatory provisions under CCS/CCA/FRSR Rules read with other Service Rules including clearance from Vigilance Department and mandatory formalities on the part of workman before granting MACP/ACP and other benefits.
 - iv. Claim/application in respect of arrears of regularization is not maintainable in view of Circular No. ADC/DEMS/HQ/NDMC/2021/D-153 dated 03.02.2021 which specifically mentions that arrears will be paid as and when financial condition of the Corporation improves.
 - v. Claim/application is neither verified nor properly signed by the claimant who has not been identified by his/her authorized representative and application is not maintainable in the absence of supporting affidavit. Further, applicant and his authorized representative have failed to establish his/her identity that he/she is a member of the Nagar Nigam Karamchari Sangh, Delhi.



vi. Claimant/workman has not filed a single document regarding regularization of service with North DMC and it is impossible to identify the workman in the absence of self-attested photocopy of ID-Card provided to employees.

vii. Application under reply is premature as applicant neither approached the management for any such claim nor has enclosed any document in support of fake and false allegations of having approached the respondent.

viii. Application is not maintainable under Section 33-C(2) of I.D.Act as power of Labour Court under the Industrial Disputes Act does not extend to determination of dispute or recognition of the basis of claim without prior adjudication or recognition by the employer as held by Hon'ble Supreme Court of India in 'MCD Vs. Ganesh Razak & Ors. 1994 (7) SC 476'.

ix. Relief claimed in the present application is not covered under Section 33-C(2) of ID Act, 1947 as the matter in dispute has not been adjudicated upon by any court of competent jurisdiction and in the absence of prior settlement or award against employer as held by Hon'ble Supreme Court of India in (i) ***M/s Fabril Gasosa Vs. Labour Commissioner & Ors.*** 1997(1) LLJ 872 (SC); (ii) ***MCD Vs. Ganesh Razak & Ors.*** JT 1994 (7) SC 476 AND (iii) ***Tara & Ors. Vs. Director, Social Welfare & Ors.*** 1998 (2) LAJ 632 SC.

4. Learned counsel for the petitioner has submitted that both the impugned orders are liable to be set aside as firstly, the learned Labour Court could not have passed an order under Section 11 (3) of the Act without seeking response from the management corporation and secondly, the learned Labour Court did not deal with all the objections raised by the management corporation as recorded in para 2 of the impugned order and abused the jurisdiction by dismissing the



objections. The primary contention is that the learned Labour Court did not have jurisdiction to entertain the application under Section 33-C (2) of the Act. It has been submitted that in fact, the present dispute should have been referred under Section of 10 of the Act on which an adjudication was required to be made by the appropriate authority.

5. In support of his contentions, learned counsel has relied upon order passed by this Court on 25.05.2022 in CM(M) 490/2022 titled as ***Krishan Kakkar vs. Kiran Chander*** in which it was inter alia held that in any litigation, the choice of the documents which are to be brought on record is the sole prerogative of the party who files the documents and no court can compel a party to file documents on which the party did not choose to rely, save and except in respect of certain eventualities for which provisions are contained in the CPC. Learned counsel for the petitioner has further relied upon the judgment of the Supreme court in ***Tara and others vs. Director, Social Welfare and others***, (1998) 8 SCC 671 in which it was inter alia held that in case of an objection raised as to the maintainability of the application under Section 33-C (2), it is a duty casted upon the Labour Court to determine such objection at the threshold regarding dispute as to the appellants claim on merits relating to their status and only if the application was found to be maintainable, the Labour Court should have proceeded further.
6. Mr.Sanjeev Sagar, learned counsel for the petitioner has further relied upon ***State of U.P. and another vs. Brijpal Singh*** (2005) 8 SCC 58 the workman can proceed under Section 33-C(2) only after the Tribunal has adjudicated on a complaint under Section 33A or on a reference



under Section 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. Learned counsel has relied ***State of U.P. and another vs. Brijpal Singh*** (supra) wherein it was held as under:

“The workman can proceed under Section 33-C(2) only after the Tribunal has adjudicated on a complaint under Section 33A or on a reference under Section 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. A proceeding under Section 33C(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 any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. 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. 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.

The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compare 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 required 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. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The



former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not.”

7. Learned counsel has further relied upon ***Chandra Bhal Mishra vs. State of U.P. and Others*** 2019 SCC OnLine All.4491 wherein an application under Section 33-C (2) was filed by the petitioner claiming that he was entitled to promotion on a higher post from the date on which his juniors had been promoted and further claiming computation of the difference of wages in respect of the promotional post. Learned counsel submits that in this case the Supreme Court after taking account the entire law on this point inter alia has held as under:

26. The legal position which thus emerges is that the benefit which can be enforced under Section 33-C (2) must be a pre-existing benefit or one flowing from pre-existing right, and in an application filed under the said provision, relief can be granted only if the right had been recognized already and the benefits flow from such recognition and not otherwise. The Labour Court's jurisdiction under Section 33-C (2) is only in respect of computation of the monetary benefit which a workman is entitled to receive from the employer and powers can be exercised only in a case where the entitlement to the claim is not disputed. In a case where the claim of the workman involves adjudication of a dispute, the Labour Court cannot assume jurisdiction to first determine the entitlement and then to make the computation.

8. Mr.Sagar has also relied upon the judgment passed by the Supreme Court in M/s ***Bombay Chemical Industries vs. Deputy Labour Commissioner & Anr.*** Civil Appeal No.813 of 2022 dated 04.02.2022 whereby it was inter alia held that the labour court's jurisdiction under Section 33-C (2) of the Act is like of an executing court. Learned counsel submits that in view of the settled position of the law, learned



labour court has certainly exceeded its jurisdiction and first violated the principles of natural justice by calling for the records from the management corporation and then without adjudicating upon all the issues raised by the management corporation, dismissed the objections. Learned counsel has very fairly submitted that as far as the jurisdiction of the court vis-à-vis Central Administrative Tribunal is concerned, he won't press for it in view of the discretion with the workman in view of the several judgments by this court.

9. Learned counsel has further submitted that the findings reached by this Labour court is totally erroneous and liable to be set aside by this court exercising its power under Articles 226 and 227 of the Constitution of India.
10. Learned counsel has submitted that before deciding application under Section 11 (c) of the Act, the learned labour court should have called for the reply from the corporation and only if the management had refused such order could have been passed.
11. Learned counsel has further submitted that going by the bare perusal of Section 33-C (2) of the Act and the claims raised by the workman in the claim petition these were required to be adjudicated upon by the appropriate forum and only thereafter the court would have jurisdiction to deal with the application under Section 33-C (2) of the Act. Learned counsel has invited the attention of the court to the claim petition filed by the workman and has stated that as per averments made in the claim petition, the claims raised by the workman were yet to be adjudicated upon. It has further been submitted that the objections were dismissed by the learned Labour court on the merits after examining the records



whereas these should have been decided by the Labour Court at the threshold.

12. Mr.Sanjoy Ghose, learned Senior counsel assisted by Mr.V.Sharma has submitted that the order passed by the labour court is very reasoned and there is no illegality and perversity in the impugned orders. It has been submitted that the learned Tribunal has gone into the facts of the case and has correctly followed the propositions of law. Learned senior counsel submits that in the Industrial Disputes Act there are three important provisions, which are Sections 10, 33-C (1) and 33-C (2). It has been submitted that under Section 10 reference is made by administrative authority for adjudication to the tribunal/Labour Court. Under Section 33-C (1) of the Act, the execution proceedings are instituted before an administrative authority for implementation of the award. Section 33-C (2) is separate mechanism provided to the workman for the speedy enforcement of his rights/entitlements. Learned counsel submits that all the judgments cited by the learned counsel for the petitioner are distinguishable on the facts and circumstances of the case. It has been submitted that under Section 11 (3) (b) of the ID Act, the Tribunal has a power for compelling the production of documents and materials, and the labour court has correctly exercised its power and order for production of the documents. In respect of the jurisdiction of the Court under Section 33-C (2) of the Act, learned counsel has submitted that this was discussed in detail by this Court and has relied upon by the Tribunal also in ***Jeet Lal Sharma vs. Presiding Officer, Labour Court-IV*** and Ors. 84 (2000) DLT 706 wherein it was inter alia held as under:



“15. The point which is emphasised is that entitlement to receive money i.e. pre-existing right can be based on (1) adjudication (2) settlement (3) service conditions. If the right to get a particular benefit is there, the application u/s. 33-C(2) would be maintainable and jurisdiction of Labour Court will not be barred merely because employer has denied the same.

16. What is the meaning of the expression "entitlement to receive". No doubt it is referable to pre-existing right. However where the workman claims a benefit flowing from a pre-existing right and approaches the Labour Court u/s. 33-C(2) for computation of the right in term of money and the employer disputes the existences of the right, the Labour Court will have the jurisdiction to determine the question, whether the right exists and if the existence of right is established than to proceed to compute the benefit flowing there from in terms of money or on its decisions recovery proceedings can start (New Taj Mahal Cafe Private Limited versus Labour Court reported in 1970 (2) LLN 51 and East India Coal Company Limited (supra). In deciding the maintainability of the application u/s. 33-C(2) what is to be looked at is the claims set up in the application and not what the other side contends in its reply. The fact that the employer by his plea raises some dispute, does not mean that jurisdiction of Labour Court to deal with the question is taken away.”

13. Mr.Sanjoy Ghose has further invited the attention of the court to the judgment passed by the constitutional bench in the ***Central Bank of India Ltd. vs. P.S.Rajagopalan and Ors.*** AIR 1964 SC 743. Learned senior counsel submits that this judgment has rightly been relied upon by the labour court.
14. Mr.Ghosh has further relied upon the judgment passed by the Supreme court in the ***Cooper Engineering Limited vs. P.P.Mundhe*** AIR 1975SCC1900 wherein it was inter alia held as under:

“We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the



Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.”

15. It has been submitted that in the writ jurisdiction of this Court, an order of the labour court can be set aside only if there is some illegality, perversity or manifest error in the order of the court.
16. I have considered the submissions of both the parties.
17. I consider that at the outset the corporation as a public body should exercise utmost and restrain and caution while instituting litigations in the court. The courts are already over-burdened. In the present case the application filed under Section 33-C (2) of the Act is yet to be decided by the labour court. The labour court is only proceeding towards adjudication of this application and is yet to reach to the conclusion that whether there is an entitlement of the workmen or is entitled to any relief under Section 33-C (2) of the Act. The objections raised by the corporation over the order of production of the documents, is also strange. The corporation which is a public body should come forward and aid and assist the court in the dispensation of justice. The Industrial Disputes Act is a welfare legislation, the purpose of which is to assist the labour/workmen to get their disputes settled as expeditiously as possible. The employers and particularly, the Government rather should be more responsible in such litigations. This court would not hesitate in saying that an individual workman cannot have the capacity or might to fight the hefty corporations. The



learned labour court had merely called for the records and after seeing them merely stated that the objections which have been raised by the corporation are not maintainable.

18. Going by the judgment in ***P.S.Rajagopalan*** (*supra*), it has been stated in a very categorical term that the word ‘entitlement’ cannot be read as ‘admitted to be entitled’. Therefore, this court without going further into the merits of the case as it may prejudice the corporation in the final decision of the application under Section 33-C (2) of the Act would stop here saying that such writ petitions could have been avoided till the matters are finally decided by the courts below. The corporation could have waited for the final adjudication of the matter.
19. With the above observations, all writ petitions along with pending applications stand dismissed. However, the petitioner corporation shall have the liberty to challenge the final order if they are aggrieved of the same. The learned Labour Court is well advised to consider all the objections if left unattended in these proceedings while deciding the application under Section 33-C (2) of the Act. It is clarified that this court has not expressed any opinion on the merits of the case.

न्यायमेव जयते

DINESH KUMAR SHARMA, J

JUNE 1, 2022/rb