

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

27 WRIT PETITION NO.993 OF 2023

SANTOSH SONU JADHAV
VERSUS
ULKATAI DILIP RANE DIED AND OTHERS

Mr. Girish N. Kulkarni (Mardikar), Advocate for the Petitioner.

CORAM : SHARMILA U. DESHMUKH, J.
DATED : JANUARY 31, 2023.

PER COURT :

1. Heard.
2. Petitioner's application under Section 33 (C)(2) of the Industrial Disputes Act, 1947 ("the Act" for short) came to be rejected by order of Labour Court dated 12th October, 2022.
3. Learned counsel for the Petitioner submits that the Petitioner was working as Sales Representative with one Jalgaon Chemicals Private Limited (JCPL) Jalgaon and the application under Section 33 (c) (2) of the Act was preferred seeking recovery of Rs.9,88,196/- towards gratuity, leave encashment, bonus, arrears of wages, travelling allowances, difference of wages alongwith the interest at the rate of 24% p.a. He would urge that in view of the communication dated 27th April, 2011, JCPL has admitted pending dues towards arrears as regards salary and travelling allowances bills are concerned, and the said communication which was

accepted during evidence was not considered by the trial Court.

4. I have considered the submissions of the learned counsel for the petitioner.

5. Application under Section 33 (c) (2) of the Act came to be filed by the Petitioner without impleading the JCPL which is the employer company. The proceedings are instituted as against the directors of the JCPL. The claim of the Petitioner, if any, is as against the company, which is a distinct legal entity and without impleading the company as party to the proceedings, the application itself was not maintainable. That apart, the Petitioner is claiming arrears under various heads of gratuity, leave encashment and bonus etc and has failed to demonstrate any pre-existing right. It is settled position that the proceeding under Section 33 (c) (2) of the Act, is in nature of execution proceedings and pre-existing right must be demonstrated in order to claim the relief.

6. In the present case, the Petitioner has failed to demonstrate any pre-existing right in respect of the amounts which have been claimed under the various heads.

7. Considering the nature of proceedings and the fact that the employer company was not made a party, the complaint itself was not maintainable. For the reasons above, I am not inclined to interfere with the impugned order. In the complaint, the Petitioner had also claimed the amount of gratuity which is required to be claimed under the Payment of Gratuity Act.

8. Liberty to the Petitioner to make the necessary application under the Payment of Gratuity Act before the Competent Authority, which will consider it on its merit and uninfluenced by the dismissal of the complaint filed under Section 33 (c) (2) of the Act.

9. Writ Petition stands dismissed.

(SHARMILA U. DESHMUKH, J.)