

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 4489 of 2022

Desein Private Limited, New Delhi

Versus

Bhairab Dutt Joshi

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Chetan S. Dhore, Advocate and Shri Varun Gupta,
Advocate for the petitioner.

Shri Saurabh Singha, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 7th JUNE, 2023.

Heard.

2. In this writ petition, the judgment and order dated 28th August, 2021 passed by the First Labour Court, Nagpur in I.D.Application No. 1/2019 allowing the application filed under Section 33-C(2) of the Industrial Disputes Act, 1947 (in short hereinafter referred as “ID, 1947”) for recovery of legal dues, filed by the respondent to the tune of Rs.69,728/- along with interest, is under challenge.

3. It is the case of the respondent that petitioner is a company registered under the Companies Act and engaged in work of operation and maintenance

of 2 x 15 MW Captive Power Plant at Nagpur Maharashtra. The respondent was the employee of the petitioner and working as Engineer (DG) since February, 2017 on monthly salary of Rs.28,000/-. His service came to be terminated without following due process of law w.e.f. 25th September, 2017.

4. It is the further case of the respondent that though the petitioner assured vide letter dated 20th September, 2017 that as a part of full and final settlement the petitioner will pay salary upto 27th September, 2017 and in addition the benefits applicable to the gratuity, leave salary, bonus, LTA and notice pay within one month. The petitioner failed to make payment of legal dues and therefore the application under Section 33-C(2) of I.D. Act, 1947.

5. It is also the case of the respondent that before approaching to the Labour Court under Section 33-C(2) of the I.D. Act, 1947, the respondent approached to the Labour Commissioner by making a representation dated 9th March, 2018. However, the petitioner did not appear before the Labour Commissioner. So also, the petitioner did not appear before the Labour Court and hence the Labour Court proceeded exparte against the petitioner and passed the impugned judgment and order dated 28th August, 2021

allowing the application under Section 33-C(2) of the I.D.Act, 1947 and directing the petitioner to pay Rs.69,728/- along with interest 10% from the month of October, 2017 till its realization. The said judgment and order is the subject matter of the present writ petition.

6. I have heard learned counsel for the respective parties.

7. Shri Dhore, learned counsel for the petitioner submits that the learned Labour Court has grossly committed error in holding that the respondent is entitled to the arrears of wages and benefits to the tune of Rs.69,728/-. It is submitted that the respondent has failed to lead any evidence to prove that he worked for 240 days in a preceding year.

8. Learned counsel for the petitioner further argues that the learned Labour Court has failed to compute the amount. It is submitted that though Labour Court proceeded exparte against the petitioner, however, it is the bounden duty of the Labour Court to first compute the amount then pass the order.

9. On the other hand Shri Singha, learned counsel for the respondent no.1 strongly opposed the present writ petition and submits that the petitioner has failed to appear before the Labour Commissioner as well

as the Labour Court. It is submitted that in absence of the petitioner, the learned Labour Court has rightly determined and directed to pay the amount of Rs.69,728/- along with interest to the respondent. It is submitted that no error or legal infirmity has been committed by the Labour Court in allowing the application under Section 33-C(2) of the I.D.Act. Hence, he prays for dismissal of the present petition.

10. In the light of rival contentions of the parties, I have perused the record and impugned judgment and order.

11. After going through the judgment and order it leads no doubt that the learned Labour Court has not computed the amount for which the respondent is entitled for, as per the scope of Section 33-C(2) of I.D.Act which is in nature of execution. Even in absence of the petitioner, the Labour Court was duty bound to determine the amount payable to the respondent, more particularly when there is no mentioned about the amount in the letter issued by the petitioner on 29th September, 2017 assuring to the respondent as respect to payment of the salary upto 27th September, 2017 in addition to pay benefits of gratuity, leave salary, bonus, LTA as a full and final settlement.

12. In the circumstances, as the learned Labour Court has failed to exercise its jurisdiction in a proper manner, I am of the opinion that the matter needs to be remanded back to the Labour Court.

13. However, from the record, it is evident that the petitioner has failed to appear before the Labour Commissioner as well as before the Labour Court and directly filed the present petition challenging the impugned judgment and order.

14. In the circumstances, I am of the opinion that the matter needs to be remanded back to the Labour Court subject to the payment of costs to be paid by the petitioner. Accordingly, I pass the following order.

- i. The writ petition is partly allowed;
- ii. The impugned judgment and order dated 28th August, 2021 passed by the learned Labour Court, Nagpur in I.D.No. 1 of 2019 is hereby quashed and set aside and the matter is remanded back to the Labour Court for afresh consideration after granting opportunity to both the parties subject to payment of costs of Rs.5,000/-.
- iii. The costs shall be paid to the respondent within four weeks and acknowledgment of the same shall be filed within five weeks from today.

- iv. The Labour Court shall decide the application within three months from today.
- v. Both the parties have undertaken to co-operate the Labour Court within stipulated period.

[ANIL S. KILOR, J.]