



W.P.No.22214 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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ORDER RESERVED ON: 14.08.2023
ORDER PRONOUNCED ON: 12.10.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.22214 of 2010

T.Chitra

...Petitioner

Vs.

1.The Presiding Officer,
III Additional Labour Court,
Chennai-600 104.

2.Hindustan Teleprinters Ltd.,
(Now Known as HTL Ltd.)
Represented by its Managing Director,
Guindy, Chennai-600 032.
...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, calling for the records from the files of the 1st Respondent in C.P.No.561 of 2002 and quash its impugned Award dated 26.04.2010 insofar as the 1st Respondent has dismissed the Claim Petition filed by the Petitioner.

For Petitioner : Mr.K.M.Ramesh,
Senior Counsel for Mr.K.G.Vipra Narayanan
For Respondents : R-1 – Court
R-2 – M/s. B.Vishnu Chelliya



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ORDER

Writ Petition is filed challenging the Award in C.P.No.561/2002 dated 26.04.2010 wherein the claim petition filed under Section 33-C(2) of the I.D. Act by the petitioner was rejected.

2. The core issue to be considered is whether the claim petition under Section 33(C)(2) of the I.D Act for arrears of revised wages in the absence of prior adjudication or recognition of claim is maintainable.

3. The petitioner initially joined as a Graduate Apprentice and was later appointed as an Engineer on completion of probation. According to the petitioner there was wage revision in the 2nd respondent's company which was implemented in her favour. The petitioner for personal reasons resigned her job on 19.08.2000, and eventhough the CDA rules did not require service of notice on resignation, she nevertheless paid Rs.36,345/- towards three months notice. In spite of receipt of the said amount, the 2nd respondent delayed the payment of her terminal benefits. While so, the petitioner demanded the arrears of revised wage



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for the period from 01.01.1997 to 05.06.2000, which the 2nd respondent rejected vide order dated 09.02.2002. The petitioner thereafter gave a representation to the 2nd respondent on 27.10.2001 seeking arrears of revised wages. As the 2nd respondent did not respond, the petitioner filed C.P demanding Rs.1,12,739/- along with interest at the rate of 18% per annum and the same was dismissed by the Labour Court by the impugned order. The petitioner therefore filed the above writ petition challenging the same.

4. Before the Labour Court, the petitioner examined herself as PW1 and marked Ex.P1 to Ex.P27 and the respondent examined one witness and marked Ex.R1 to Ex.R11.

5. The Labour Court held that, though the claim of the petitioner was just and fair, the same could not be entertained under Section 33 (C) (2), as the petitioner was not a workman. Aggrieved by the Award passed by the Labour Court the petitioner has filed the above writ petition.



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6. Both the learned counsels relied on several Judgments in support of their respective cases which will be considered in the course of the Judgment.

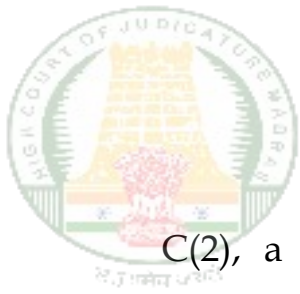
7. The learned counsel for the petitioner submitted that the Labour Court ought to have seen that the designation of a person was irrelevant for determining whether he was a workman or not, but it was the nature of duties discharged that determines the status. The learned counsel further submitted that the Labour Court referred to all irrelevant factors to conclude that the petitioner was not a 'workman'. The learned counsel relied heavily on the Judgment of the Hon'ble Supreme Court in the case of *Anand Bazar Patrika (P) Ltd. vs. Workmen* reported in 1970 (3) SCC 248 and submitted that the main and principal duties carried out by the employee would determine whether he was discharging supervisory duties or was carrying on mere clerical work. The learned counsel relied on the other Judgments to support his contention, that as the nature of duties of the petitioner were not supervisory in nature, the rejection of the petitioner's claim that she was a workman solely on the basis of the



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designation of the petitioner as Software executive by the Labour Court was erroneous.

8. The learned counsel for the 2nd respondent on the other hand submitted that the Labour Court had given a factual finding on the status of the petitioner, and therefore unless and until the finding was challenged as perverse and illegal, the pure question of fact could not be interfered with. The learned counsel further submitted that there was a serious dispute as to the entitlement of the petitioner to arrears of revised wages. The entitlement of the petitioner to the amount claimed at Rs.1,12,739/- was questioned on the basis of Ex.P2 the circular dated 12.07.2000, which was applicable to executive's only. Under Clause 2.2, sub clause (D) of the circular, the benefit of revised pay were not available to officers who had left the services of the company on resignation without notice where bond liability was not discharged. The learned counsel submitted that, once the application of the circular under which the claim was made was itself in dispute, the Labour Court was justified in not entertaining the claim petition. Under Section 33-



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C(2), a claim arising out of a settlement or award could only be entertained. The Labour Court had no jurisdiction to adjudicate the dispute as to entitlement of the claim under Section 33-C(2).

9. I have heard both the learned counsels and have perused the materials placed on record.

10. The petitioner claims that she falls under the definition of the term 'workman' on the basis of the nature of works dispensed with by her. But the respondent disputes the same. The learned counsel for the petitioner relied on the following Judgments *viz.*, 1964 3 SCR 140 : AIR 1964 SC 743, 1973 (19) SCC 248, 1982 (2) LLN 251 (Mad), 1980 (2) LLN 184 (Mad), 1994 (2) LLN 450 (SC), 1985 (2) LLN 270 (SC) in support of his contention that the Labour Court erred in thinking that the petitioner was not a workman and hence could not maintain the petition under Section 33-C(2) of the Act.



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11. The learned counsel for the respondent on the other hand relied on the following Judgments viz., 1993 (2) LLN 367, MANU/SC/0292/1974 : AIR 1974 SC 1604, MANU/SC/0532/1995 : 1995 (1) SCC 235, 2022 (5) SCC 629, MANU/TN/2761/2023.

12. In almost all the Judgments relied on by the learned counsel for the petitioner, the question whether the employee was a workman or not, arose out of a dispute raised on the illegal termination of the services of the employee. In none of the cases, the status of the employee as a workman or not was raised in a claim petition under Section 33-C(2) of the I.D. Act.

13. In my view, there is no quarrel on the legal propositions enunciated in the Judgments relied on by the learned counsel for the petitioner for determining the status of an employee as a workman. The question is whether the status of the workman can be decided in a petition under Section 33 (C) (2). In my view the Labour Court ought not to have decided the issue as it is beyond the ambit of Section 33 (C) (2).



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Therefore the contention of the petitioner that the Labour Court ought to have held that the petitioner was a workman cannot be countenanced.

Assuming for a moment, that the petitioner is a workman the further question that arises is whether the claim of the petitioner which was seriously disputed by the respondent could be adjudicated under Section 33-C(2). Whereas the petitioner claims that once her resignation was accepted by the respondent, Sub-clause (D) of clause 2.2 was not attracted and hence her claim ought to have been allowed. The respondent on the other hand states that while accepting the resignation of the petitioner vide memorandum dated 09.02.2001, it was made clear that the resignation was accepted as a special case and was subject to CDA Rules and disentitlement of wage revision arrears. According to the respondent the petitioner accepted the said memorandum without any demur and therefore the petitioner could not claim arrears of revised wages by filing the C.P. under Section 33 (C)(2). In my view as the respondent disputes the very basis of the claim or entitlement of the petitioner the same cannot be adjudicated under Section 33-C(2).



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14. It is trite that, the Labour Court while exercising power under Section 33-C(2) of the I.D Act acts as a Executing Court and hence the power of the Labour Court under Section 33-C(2) is restricted to the interpretation of the award or settlement in case of ambiguity, for the purpose of enforcement or implementation. The Labour Court while exercising jurisdiction under Section 33-C(2) of the Act, cannot adjudicate on disputed claims of the employee but, can only implement or enforce the claims of which there was prior adjudication or recognition of the same by the employer. In this regard, the Judgment of the Hon'ble Supreme Court in the case of *Municipal Corporation of Delhi vs. Ganesh Razak and Another* reported in 1995 (1) SCC 235 can be usefully referred. Para 12 of the Judgment is 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 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



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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 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."

15. The same legal proposition is reiterated in the Judgment of the Hon'ble Supreme court in the case of *Bombay Chemical Industries Vs. Deputy Labour Commissioner* reported in MANU/SC/0150/2022 : 2022 (5) SCC 629, paragraph No.6 is extracted hereunder:-

"...Therefore, once there was a serious dispute that respondent No. 2 had worked as an employee of the appellant and that there was a very serious dispute raised by the appellant that respondent No. 2 was not in employment as a salesman as claimed by second respondent, thereafter, it was not open for the labour Court to entertain disputed questions and adjudicate upon the employer-employee relationship between the appellant and respondent No. 2. As per settled proposition of law, in an application under Section 33 (C) (2) of the Industrial Disputes



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Act, the labour court has no jurisdiction and cannot adjudicate dispute of entitlement or the basis of the claim of workmen...."

16. The Hon'ble Division Bench of this Court in *Writ Appeal No. 932 of 2022* decided on 13.04.2023 in the case of *The Management of Jafra Insoles India Limited vs. The Presiding Officer, Principal Labour Court and Ors.* following the aforesaid Judgment of the Hon'ble Supreme court held that the petitioner's petition under Section 33(C)(2) of the I.D. Act was maintainable, provided that there was an accrued right. If there was any dispute of fact, which was not incidental to the computation petition, the only remedy was to raise an Industrial Dispute.

In the light of the facts of the present case and in the light of the law laid down in the aforesaid Judgments. I am of the view that the Award of the Labour Court calls for no interference and hence the writ petition is dismissed. There shall be no order as to costs.

12.10.2023

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No

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To

1.The Presiding Officer,
III Additional Labour Court,
Chennai-600 104.

2.The Managing Director,
Hindustan Teleprinters Ltd.,
Guindy, Chennai-600 032.



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N.MALA,J.

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PRE-DELIVERED ON

12.10.2023