



W.P.No.26233 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.26233 of 2017
and
WMP.No.27886 of 2017

The Managing Director,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Illam, Anna Salai,
Chennai - 600 002.

...Petitioner

Vs.

Thiru A.Vijayan (*Deceased*)

1. Revathy
2. V.Kavitha
3. J.Suvitha
4. Babu

5. The Presiding Officer,
II Additional Labour Court,
City Civil Court Annexure Buildings,
High Court Compound, Chennai – 600 104.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records pertaining to the order passed in C.P.No.1290 of 2007 dated 08.06.2017 on the file of the 5th respondent herein and quash the same.



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For Petitioner : Mr.M.Chidambaram

For Respondents : No Appearance, for R2 to R4

ORDER

This Writ petition has been filed seeking quashment of the order of the 5th respondent dated 08.06.2017 passed in C.P.No.1290 of 2007.

2. The case of the petitioner is that one Late.Vijayan, husband of the 1st respondent and father of the respondents 2 to 4 herein, was appointed as driver in the petitioner corporation on 12.08.1978 and he subsequently retired from service on 30.04.1999 under the Voluntary Retirement Scheme. While so, after a lapse of 8 years, claiming that he has completed 25 years of service in the petitioner corporation and he is eligible for pension, the legal heirs of the said Vijayam filed a computation petition under Section 33-C(2) of the Industrial Disputes Act, 1947 (in short 'ID Act') in C.P.No.1290 of 2007 before the 5th respondent, seeking payment of pension to the tune of Rs.3,86,848/- for the period from May 1999 to September 2007. After contest, the 5th respondent, vide present impugned award,



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allowed the said petition and directed the petitioner corporation to pay a sum of Rs.3,86,848/- to the respondents 1 to 4 with 6% interest.

Challenging the same, the petitioner is before this Court.

3. Learned counsel for the petitioner submitted that as per the Government order bearing G.O.Ms.No.135 dated 15.12.2000 and the E.P.F. Trust Rule 16(a)(ii), *the employee should have a minimum required service of 20 years and should have attained the age of 50 years at the time of his voluntary retirement to qualify to get pension under the voluntary retirement scheme*. In the present case, the said Vijayan having joined the services of the petitioner corporation on 12.08.1978 and having retired from service as early as on on 30.04.1999, had rendered only 19 years 2 months and 8 days of qualifying service and had attained the age of 47 years alone and he has not satisfied the conditions stated in both the Government order and the provisions of the E.P.F. Trust Rule, he is not entitled for pension. However, the 5th respondent, without considering any of the above said facts, had passed the present impugned order directing the petitioner corporation to pay a sum of Rs.3,86,848/- to the respondents 1 to 4 with 6% interest, which is wholly unsustainable. He further relied upon the decision



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of the Hon'ble Division Bench of this Court made in W.A.No.1065 of 2022

to hold that, workman can proceed under Section 33-C(2) of the ID Act only after adjudication of the complaint under Section 33-A or on a reference under Section 10 and cannot invoke the jurisdiction under Section 33-C(2) for establishing his right in those proceedings or without showing pre-existing right to seek computation of the benefits. Accordingly, he prayed for appropriate orders.

4. Though notice was served and the names of the respondents 1 to 4 were printed in the cause list, none appeared on behalf of the respondents 1 to 4. However, since the petition is of the year 2017, considering the long pendency of this Writ petition, this Court is inclined to dispose of the present petition based on the materials available on record.

5. Admittedly, the said Vijayan joined the services of the petitioner corporation on 12.08.1978 and he subsequently retired from service under the Voluntary Retirement Scheme on 30.04.1999 and the computation petition under Section 33-C(2) of the ID Act in C.P.No.1290 of 2007 came to be filed before the 5th respondent seeking payment of pension to the tune



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of Rs.3,86,848/- only in the year 2007, after a lapse of 8 years from the date of retirement, as if he completed 21 years of service, in which, the 5th respondent passed the present impugned award directing the petitioner corporation to pay a sum of Rs.3,86,848/- to the respondents 1 to 4 with 6% interest.

6. A perusal of the decision of the Hon'ble Division Bench of this Court made in W.A.No.1065 of 2022 relied upon by the learned counsel for the petitioner makes it clear that, *workman can proceed under Section 33-C(2) of the ID Act only after adjudication of the complaint under Section 33-A or on a reference under Section 10 and cannot invoke the jurisdiction under Section 33-C(2) for establishing his right in those proceedings or without showing pre-existing right to seek computation of the benefits*. For better appreciation, the relevant portion is extracted hereunder:

“7. The learned Single Judge has referred the judgment of the Apex Court in the case of ***State of UP and another v. Brijpal Singh, 2005~III~LLJ 1003***. Paragraphs 10 and 12 of the said judgment are relevant and quoted hereunder for ready reference:



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“10. It is well settled that the workman can proceed under Section 33~C(2) only after the Tribunal has adjudicated on a complaint under Section 33~A 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. This Court in the case of Punjab Beverages (P) Ltd. v. Suresh Chand [(1978) 2 SCC 144 : 1978 SCC (L&S) 165] held that a proceeding under Section 33~C(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. Proceeding further, this Court held that 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. This Court further held as follows: (SCC p. 150, para 4)

“?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.?”

In the case of Municipal Corpn. of Delhi v. Ganesh Razak [(1995) 1 SCC 235 : 1995 SCC (L&S) 296 : (1995) 29 ATC 93] this Court held as under: (SCC pp. 241~42, paras 12~13)



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?”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 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.

13. In these matters, the claim of the respondent workmen who were all daily~rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen-s claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of ?equal pay for equal work? being disputed, without an



adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33~C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents- claim is not based on a prior adjudication made in the writ petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made under Section 33~C(2) of the Act by these respondents.?”

.....

12. Thus, it is clear from the principle enunciated in the above decisions that the appropriate forum where question of back wages could be decided is only in a proceeding before a forum to whom a reference under Section 10 of the Act is made. Thereafter, the Labour Court, in the instant case, cannot arrogate to itself the functions of an Industrial Tribunal and entertain the claim made by the respondent herein which is not based on an existing right but which may appropriately



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be made the subject-matter of an industrial dispute in a reference under Section 10 of the ID Act. Therefore, the Labour Court had no jurisdiction to adjudicate the claim made by the respondent herein under Section 33~C(2) of the ID Act in an undetermined claim and until such adjudication is made by the appropriate forum, the respondent workman cannot ask the Labour Court in an application under Section 33~C(2) of the ID Act to disregard his dismissal as wrongful and on that basis to compute his wages. It is, therefore, impossible for us to accept the arguments of Mrs Shyamla Pappu that the respondent workman can file application under Section 33~C(2) for determination and payment of wages on the basis that he continues to be in service pursuant to the said order passed by the High Court in Writ Petition No. 15172 of 1987 dated 28~10~ 1987. The argument by the learned counsel for the workman has no force and is unacceptable. The Labour Court, in our opinion, has erred in allowing the application filed under Section 33~C(2) of the ID Act and ordering payment of not only the salary but also bonus to the workman although he has not attended the office of the appellants after the stay order obtained by him. The Labour Court has committed a manifest error of law in passing the order in question which was rightly impugned before the High Court and erroneously dismissed by the High Court. The High Court has also equally committed a manifest error in not considering the scope of Section 33~C(2) of the ID Act. We, therefore, have no hesitation in setting aside the order passed by the Labour Court in Misc. Case No.11 of 1993 dated 23~8~1995 and the order dated 9~1~2002 passed by the High Court in CMWP No. 36406 of 1995 as illegal and uncalled for. We do so accordingly.?



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8. The Apex Court, while considering the scope of different provisions of the Act of 1947, held that the workman can proceed under Section 33~C(2) only after adjudication of the complaint under Section 33~A or on a reference under Section 10, and cannot invoke the jurisdiction under Section 33~C(2) for establishing his right in those proceedings or without showing pre~existing right to seek computation of the benefits.

9. In view of the above, the argument of learned counsel for the appellant/writ petitioner that he was entitled to pensionary benefits despite a serious dispute raised by the respondent Management and an order for denial could not have been adjudicated on an application under Section 33~C(2) of the Act of 1947.”

7. G.O.No.135 leaning on the E.P.F. Trust Rule 16(a)(ii), stipulates that an *employee should have a minimum required service of 20 years and should have attained the age of 50 years at the time of his voluntary retirement to qualify to get pension under the voluntary retirement scheme.* Relevant provision of the E.P.F Trust rules, which are necessary for deciding the issue is extracted hereunder:



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“16. MONTHLY MEMBER'S PENSION

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a) A member shall be entitled to-

i) Superannuation Pension, if he has rendered a qualifying service of 10 years or more and retires on attaining the age of 58 years or the retirement age that may be fixed by the employer.

ii) Voluntary Retirement Pension, if he has rendered a qualifying service of 20 years or more and attained the age of 50 years”

8. Even a bare perusal of the material documents placed on record reveal that the said Vijayan had completed only 19 years 2 months and 8 days of service and not 20 years of qualifying service and was only aged about 47 years at the time of retirement and not 50 years and thereby it is clear that he has not satisfied the condition stated in both G.O.Ms.No.135 and the E.P.F. Trust rules.

9. Further, the 5th respondent labour court cannot entertain the disputed question of facts under Section 33-C(2) of the ID Act and it can adjudicate the matter only when there is any pre-existing right to seek computation of the benefits. In the present case, as there is no pre-existing



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rights, the impugned award dated 08.06.2017 passed by the 5th respondent, directing the petitioner corporation to pay a sum of Rs.3,86,848/- to the respondents 1 to 4 with 6% interest, by allowing the computation petition filed under Section 33-C(2) is wholly unsustainable and the same is contrary to the decision of the Hon'ble Division Bench of this Court made in W.A.No.1065 of 2022

10. In view of the above, applying the ratio laid down by the Hon'ble Division Bench of this Court made in W.A.No.1065 of 2022, this Writ petition stands allowed. No costs. Consequently, connected Miscellaneous petition is closed.

27.09.2023

skt

NCC : Yes / No
Speaking Order : Yes / No
Index : Yes / No

To

The Presiding Officer,
II Additional Labour Court,
City Civil Court Annexure Buildings, High Court Compound,

12/14



Chennai – 600 104.

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M.DHANDAPANI., J.

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