

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-18551-2003 (O&M)
Date of Decision: 28.11.2023

GURDAS MAL AND ANOTHER

...Petitioner

Versus

PRESIDING OFFICER, LABOUR COURT, GURDASPUR AND
OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Prateek Sodhi, Advocate
for the petitioner.

Mr. Vipin Pal Yadav, Addl. A.G., Punjab
for the respondents.

HARSH BUNGER, J. (ORAL)

1. Petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of *certiorari* for quashing of order dated 12.05.2003 (Annexure P-7) passed by the learned Labour Court, Gurdaspur (here-in-after referred to as 'the Labour Court'); whereby, the separate applications filed by the petitioners herein under Section 33-C(2) of the Industrial Disputes Act, 1947 (in short 'the 1947 Act') have been dismissed by a common order.

2. Briefly, the petitioners, herein filed two separate applications under Section 33-C(2) of the 1947 Act before the Labour Court, Gurdaspur, claiming that they have been paid less salary and that they were entitled to new pay scales revised by the Punjab Government w.e.f. 01.01.1986 and 01.01.1996. The afore-said amount was claimed along with interest @ 12% and therefore, quantified the amount claimed as Rs.3,11,272/-.

3. The afore-said claim of the petitioners herein, was contested by respondents No.2 to 4 (here-in-after referred to as 'the respondents-Management') by raising preliminary objection that there exist no right to sustain the claims made in the applications as the status and nature of employment of the petitioners was disputed and there was no prior adjudication by any competent Court in their favour.

4. On the basis of the pleadings of the parties, the learned Labour Court below framed the following issues :-

“1. Whether the applications are not maintainable as allegation in the p.o. of w/s?

2. Whether the applicants are entitled to the amounts claimed ?

3. Relief.”

5. After considering the material/evidence available on the record, the learned Labour Court below rejected the claim of the petitioners.

6. Being dis-satisfied with the afore-said order, the petitioners have filed the instant writ petition before this Court.

7. Learned counsel for the petitioners has submitted that the learned Labour Court below has erred in law and facts in rejecting the claim of the petitioners. It is submitted that the petitioners were working in the Municipal Council, Pathankot as Gangmen. It is further submitted that though they were performing the duties of a Fitter for the last more than 12-13 years; however, the salary being paid to them was that of Gangmen. It is, therefore, submitted that the petitioners were entitled to the difference of salary as of being paid to the Fitter and the one which was being paid to the petitioners as that of Gangmen. It is submitted that the petitioners were also entitled to the revised pay scale which was not being granted to them;

therefore, the learned Labour Court below should have allowed the claim of the petitioners under Section 33-C(2) of the 1947 Act.

8. Per contra, learned State counsel appearing for respondents No.2 to 4 has opposed the claim of the petitioners by submitting that the learned Labour Court has passed the well-reasoned and justified order, which does not call for any interference by this Court. It is submitted that the petitioners had no pre-existing right so as to claim the amount as mentioned in the claim statements under Section 33-C(2) of the 1947 Act. It was further submitted that since the claim of the petitioners was not accorded approval by the Government; therefore, they had no pre-existing right in their favour to claim the wages attached to the higher post and even the status and nature of employment of the petitioners was disputed. Accordingly, dismissal of the writ petition was made.

9. I have heard learned counsel for the respective parties and perused the paper-book with their able assistance.

10. As regards the scope and ambit of labour Court's jurisdiction under Section 33(C)(2) of the Industrial Disputes Act, 1947; gainful reference can be made to a few judicial pronouncements rendered by Hon'ble Supreme Court.

In ***Municipal Corporation of Delhi v. Ganesh Razak and Anr.***, (1995) 1 SCC 235, Hon'ble Apex Court held as under:

"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 the proceeding under Section 33C(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 33C(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 33C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution."

In *Tara v. Director, Social Welfare*, AIR 1999 SC 1508,

Hon'ble Supreme Court held the claim under Section 33C(2) of the Industrial Disputes Act is not maintainable where the status and nature of employment of the claimant is itself disputed. It was held that unless there is a prior adjudication on merits of the status which is the foundation for making the claim for wages at the specified rates, the question of moving an application under Section 33C(2) for computation of the wages does not arise. It is also observed that the question of maintainability of the applications under Section 33C(2) was required to be determined at the threshold.

In *State of U.P. v. Brijpal Singh*, 2005(4) SCT 413, Hon'ble

Supreme Court observed as under: -

"9. It is well settled that the workman can proceed under Section 33C(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. This court in the case of Punjab

Beverages Pvt. Ltd. v. Suresh Chand, 1978(2) SCC 144 held that 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. 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 :-

"It is not competent to the Labour Court exercising jurisdiction under Section 33C(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 **State Bank of India v. Ram Chandra Dubey and others, 2001(1) SCT 637 (SC)** , Hon'ble Apex Court held as under :

"...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 be made the subject matter of an industrial dispute in a

reference under Section 10 of the I.D. Act. Therefore, the Labour Court has no jurisdiction to adjudicate the claim made by the respondent herein under Section 33C(2) of the I.D. 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 33C(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 33C(2) of I.D. 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 33C(2) of the I.D. Act. We, therefore, have no hesitation in setting aside the order passed by the Labour Court in Misc. Case No. 11 of 1983 dated 23.8.1995 and the order dated 9.1.2002 passed by the High Court in C.M.W.P. No. 36406 of 1995 as illegal and uncalled for. We do so accordingly...”

In *M/s Bombay Chemical Industries v. Deputy Labour Commissioner, 2022(1) SCT 650*, Hon'ble Supreme Court observed as under: -

“...At the outset it is required to be noted that respondent No.2 herein filed an application before the Labour Court under Section 33(C)(2) of the Industrial Disputes Act,

*demanding difference of wages from 01.04.2006 to 31.03.2012. It was thus the case on behalf of respondent No.2 that he was working with the appellant as a salesman. However, the appellant had taken a categorical stand that respondent No.2 was never engaged by the appellant. It was specifically the case on behalf of the appellant that respondent No.2 had never worked in the establishment in the post of salesman. Therefore, once there was a serious dispute that respondent No.2 had worked as an employee of the appellant and there was a very serious dispute raised by the appellant that respondent No.2 was not in employment as a salesman as claimed by respondent No.2, 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 the settled proposition of law, in an application under Section 33(C)(2) of the Industrial Disputes Act, the Labour Court has no jurisdiction and cannot adjudicate dispute of entitlement or the basis of the claim of workmen. It can only interpret the award or settlement on which the claim is based. As held by this Court in the case of Ganesh Razak and Anr. (supra), **the labour court's jurisdiction under Section 33(C)(2) of the Industrial Disputes Act is like that of an executing court. As per the settled proposition of law without prior adjudication or recognition of the disputed claim of the workmen, proceedings for computation of the arrears of wages and/or difference of wages claimed by the workmen shall not be maintainable under Section 33(C)(2) of the Industrial Disputes Act. (See Municipal Corporation of Delhi v. Ganesh Razak and Anr. (1995) 1 SCC 235).***

In the case of Kankuben (supra), it is observed and held that whenever a workman is entitled to receive from his

employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33C (2) of the ID Act. It is further observed that the benefit sought to be enforced under Section 33C (2) of the ID Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. 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 33C (2) of the ID Act while the latter does not.

7. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, when there was no prior adjudication on the issue whether respondent No.2 herein was in employment as a salesman as claimed by respondent No.2 herein and there was a serious dispute raised that respondent No.2 was never in employment as a salesman and the documents relied upon by respondent No.2 were seriously disputed by the appellant and it was the case on behalf of the appellant that those documents are forged and/or false, thereafter the Labour Court ought not to have proceeded further with the application under Section 33(C)(2) of the Industrial Disputes Act. The Labour Court ought to have relegated respondent No.2 to initiate appropriate proceedings by way of reference and get his right crystalized and/or adjudicate upon. Therefore, the order passed by the Labour Court was beyond the jurisdiction conferred under Section 33(C)(2) of the Industrial Disputes Act. The High Court has not appreciated the aforesaid facts and has confirmed the same without adverting to the scope and ambit of the

jurisdiction of the Labour Court under Section 33(C)(2) of the Industrial Disputes Act...”

11. Coming to the case in hand, the learned Labour Court below has returned the following findings :-

“10. I have gone through the evidence on record have also heard the ld. ARS of the parties. From the record, firstly I find that no details have been given on which ground the applicants wants difference of pay from the respondents. There is nothing in the claim applications except the averment that the applicants are entitled to receive from the said employer the monetary be merits mentioned in the annexure. In annexures, simply difference of pay has been written. There is nothing on the record/in the annexure how this difference of pay came whether the applicants are claiming the balance on the basis of decision of the Lok Adalat of the Hon’ble High Court or on the basis of doing duty as Fitter etc. Therefore, the claim of the applicants concerned are vague.

11. Next I find that the copy of order of the LokAdalat of the Hon’ble High Court is placed on the record and both the parties admit the order passed by the LokAdalat. The perusal of the order shows that the LokAdalat has simply held that the applicants will be treated/considered to the post of B. Gd. Plumbers/Fitters in accordance with seniority. They were no where promoted as fitter by the Lok Adalat. The respondents have placed the copy of the order affixing seniority by the respondent committee which is Ex.R-3 and vide this detail order and the seniority has not been given to the applicants. The respondent also placed the copy of the resolution No.240 Ex. R-4 which shows that final seniority list has been prepared by the M.C. Pathankot after hearing the objection. Ex. R-5 is the copy of resolution passed by

D.D.L.G. Amritsar vide which the resolution passed by the respondents committee No.326, 330 and 332 dt. 31.5.93 were cancelled which includes the resolution of the M.C for recommendations. It is settled law that the Labor Court is not to determine the rights between the parties. It has to compute the benefits on the pre-determined right of the parties through award/settlement etc. in the present case, the rights of the parties are disputed one. These are not admitted by the respondents. Nor there is prior adjudication. It is also settled law that the court in an application u/s 33 C (2) of the applicants cannot be determined the right of equal pay equal work and otherwise also there is no cogent evidence on the record to show that they were working as fitters. Ex.R-6 does not show any order that the applicants were deputed to do the duty of Fitters and there is nothing on the record to distinguish between duties of Gangman and Fitter.

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22. *Therefore, from the above discussion, I find that the applicants have no pre-existing right to claim the amounts and they are not entitled to the claims u/s 33(2) of the I.D. Act and the applications are not maintainable. So both these issues are decided accordingly against the applicants and in favour of the respondents.*

Issue No.3 (Relief)

23. *In the result, in view of my findings on the above issues, the applicants fail and the applications stand dismissed.”*

12. A perusal of the above extracted findings returned by the learned Labour Court below would indicate that before the Labour Court, the petitioners had not indicated the grounds on which they were claiming difference of pay from respondents No.2 to 4, herein. Therefore, it was observed by the learned Labour Court below that the claim of the petitioners

was vague. The learned Labour Court has further observed that there was no order to show that the petitioners were deputed to do the duty of Fitters and neither there was any material to distinguish between the duties of Gangman and Fitter. It was observed by the learned Labour Court below that the rights of the parties were disputed by the respondents and since, there was no prior adjudication; therefore, the claim of the petitioners could not be determined.

13. When the above extracted findings returned by the learned Labour Court below are tested on the anvil of legal position indicated above, the findings returned by the learned Labour Court cannot not be faulted with. Once, there was no pre-existing right to claim the amount as claimed by the petitioners in their application under Section 33-C(2) of the 1947 Act, no relief could have been granted to them.

14. In view of the above, I do not find any illegality of perversity in the impugned order dated 12.05.2003 (Annexure P-7) passed by the learned Labour Court below. Resultantly, the instant petition fails and the writ petition is hereby dismissed.

15. All pending application/s, if any, shall also stand closed.

November 28, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No