

2023:PHHC:166310

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

CWP-10655-2022 (O&M)
Date of Decision: 26.07.2023

Harinder Pal Singh

..... Petitioner

Versus

Punjab Mandi Board Bhawan and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Ravi Gakhar, Advocate
for the petitioner.

HARSH BUNGER J.

CM-3918-CWP-2023:

Present application is filed for placing on record documents,
being Annexures P-2 to Annexure P-12.

For the reasons mentioned in the application, the documents
(Annexures P-2 to Annexure P-12) are taken on record, subject to all just
exceptions.

Application is accordingly disposed of.

CWP-10655-2022:

1. Petitioner (Harinder Pal Singh) has filed the instant writ petition
under Articles 226/227 of the Constitution of India seeking setting aside of
impugned order dated 21.02.2022 (Annexure P-1) passed by the Presiding

Officer, Industrial Tribunal, Patiala (hereinafter to be referred as 'the Tribunal'), whereby the application filed by petitioner under Section 33-C (2) of the Industrial Disputes Act, 1947 (hereinafter to be referred as 'the 1947 Act') seeking recovery of an amount of Rs.2,35,650/- from the respondent-Department (Punjab Mandi Board) had been dismissed.

2. Briefly, petitioner filed an application under Section 33-C (2) of the 1947 Act claiming an amount of Rs.2,35,650/- from the respondent-Department along with interest at the rate of 18% per annum on the plea that he joined as a Junior Engineer in the respondent-Department and his services were regularized on 10.09.1992; and thereafter, he retired on 31.10.2015 from the Office of Executive Engineer, Punjab Mandi Board, Sangrur as Assistant Engineer. Petitioner claimed that the payments were made late to him; and the details thereof were attached as 'Annexure-A' with the application. It was claimed by petitioner that he had completed 16 years of regular service as Junior Engineer on 10.09.2008, however, the benefit of Career Progression Scheme was not granted to him till his retirement, i.e. up to 31.10.2015; and later on, the same was granted to him on 24.08.2016, and that too without the benefit of one increment, which was also granted late. Petitioner further claimed that the annual increment was granted to him on 04.11.2016, which was due on 01.09.2012, however, interest had not been paid to him. Petitioner also claimed interest on delayed payments from October, 2016 to August, 2017. Accordingly, an amount of Rs.2,35,650/- was claimed by the petitioner.

3. The aforesaid claim of petitioner was contested by the respondent-Department, wherein it was admitted that petitioner had joined as Junior Engineer in the Punjab Mandi Board and his services were regularized on 10.09.1992; and thereafter, he retired on 31.10.2015;

however, the respondent-Department denied the averment of petitioner that he had been given late payments. As regards the plea of petitioner that the benefit of Career Progression Scheme was not granted to him till his retirement, it was stated that petitioner had not qualified the departmental examination till the year 2012, and accordingly, the benefit was not granted at that time. It was stated by the respondent-Department that petitioner was given the benefit of 9 years and 14 years of service under the Assured Career Progression Scheme, however subsequently, the said Scheme was withdrawn, and thereafter, petitioner was granted the benefit of 10 years and 20 years of service vide Office Order dated 16.05.2013. It was further stated by the respondent-Department that petitioner had passed the departmental examination in the year 2012 and he gave a representation only on 06.06.2016, which was considered, and the benefit of 16 years of service was granted to him vide Office Order dated 24.08.2016. The plea of petitioner that the annual increment was not granted to him as well as the claim of interest by the petitioner was denied by the respondent-Department.

4. From the pleadings of parties, Tribunal below framed the following issues:-

- “(i) Whether the petitioner is entitled to interest on the delayed payment from October 2016 to August 2017? OPW*
- (ii) Whether the present applicant is not maintainable? OPM*
- (iii) Relief.”*

5. Thereafter, both the parties led evidence in support of their case. Petitioner examined himself as WW-1. On the other hand, the respondent-Department examined Sh. Navdeep Gupta, Handwriting and Finger Prints Expert as MW-1 and Sh. Ashwani Kumar, Divisional Account with the Division Officer Civil of Punjab Mandi Board, Sangrur as MW-2.

6. After considering the material/evidence available on record,

Tribunal below dismissed the claim application of petitioner vide impugned order dated 21.02.2022 (Annexure P-1).

7. In the aforementioned circumstances, petitioner filed the instant writ petition before this Court.

8. Learned counsel for the petitioner submits that Tribunal has erred in law and fact in passing the impugned order dated 21.02.2022 (Annexure P-1) by not determining the factual aspects of the matter. Learned counsel for the petitioner, while reiterating the averments made in the application, filed by petitioner, under Section 33-C (2) of the 1947 Act and as recorded in the impugned order (Annexure P-1), further submits that Tribunal below has failed to apply its judicious mind to the case in hand and has wrongly passed the impugned order; accordingly, the same is liable to be set aside.

9. I have heard learned counsel for the petitioner and perused the paper book with his able assistance.

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

11. 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."

12. In ***"Tara v. Director, Social Welfare"***, AIR 1999 SC 1508, Hon'ble Supreme Court held that the claim under Section 33-C (2) of the 1947 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 33-C (2) of the 1947 Act for computation of the wages does not arise. It is also observed that the question of maintainability of the applications under Section 33-C (2) *ibid* was required to be determined at the threshold.

13. 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."

14. 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...

15. 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 advertting to the scope and ambit of the jurisdiction of the Labour Court under Section 33(C)(2) of the Industrial Disputes Act...”

16. Coming to the case in hand, the petitioner is primarily seeking interest on the delayed payments of increments whereas respondent-Department had contested the claim by disputing the date of entitlement of the increment. As regards the claim of petitioner that he was not extended

the benefit of Career Progression Scheme, the same had duly been replied to and explained by the respondent-Department. In fact the cross-examination of petitioner before Tribunal below has demolished his own claim. The relevant extract of the cross-examination of the petitioner reads as under:-

“..... It is correct that I was retired from service on 31-10-2015. It is wrong to suggest that I have not received payments of all the pensionary benefits within the statutory period. It is wrong to suggest that I have received all the payments in the month of November 2015. It is correct that I had complete 16 years of my service in the year 2008. It is wrong to suggest that I have not cleared my departmental examination till the year 2012. It is further incorrect to suggest that I was not giving benefits at that time. I have seen office letter which is Ex.M-1. I was given the benefit of 09 and 14 years of service under assured career progression scheme vide office No.19(2008) dt:21-01-2008. It is correct that I have seen Ex.M-2, due to receipt of Ex.M-2 instructions of withdrawal of this benefit (Scheme) from the government, it was withdrawn later on vide Ex.M-2 vide office order No.260(2011) dt:03-10-2011. It is wrong to suggest that I was granted the benefit of 10 years and 20 years of service vide office order No.C-353(2013) dt:16-05-2013, copy of which is Ex.M-3. It is correct that I had passed the departmental examination in the year 2012. It is wrong to suggest that I did not give any representation to avail the benefits under any schemes to the respondent. It is correct that I gave representation on 06-06-2016. Volunteer said that I also moved various representation prior to. It is wrong to suggest that I did not gave the representations during the period 2012 to 2016. I cannot produce the copies of representations today. It is correct that I gave the representation on 06-06-2016 and my representation was considered by the department and benefits of 16 years service was granted to me accordingly vide office letter No.C-682(2016) dt:24-08-2016, copy of same is Ex.M-4. It is wrong to suggest that I was granted the annual

increment on time and no delay was made by the department. It is correct that I am claiming the interest in the present claim application only. I cannot produce the rules and regulation under which I am claiming in the present claim application. Volunteer said same are lying with the department. It is incorrect to suggest that there are no rules and regulations of the respondent board to pay the interest. I have seen Ex.W-1, Ex.W-2 and authority letter all are bears my signatures. I also identify my signatures on my examination in chief dt:16-08-2018. It is incorrect to suggest that I have sanctioning leaves to the workers working under me on Mark-1 to Mark-7 at points A to G respectively. It is wrong to suggest that I have deposed falsely.”

17. The Tribunal below upon considering the material/evidence available on record, returned the following findings:-

“(i) The claimant in the present claim application has claimed interest on the delayed payment of increment. However, admittedly the increment was paid in the year 2016. During cross examination the applicant has admitted that “It is correct that I had passed the departmental examination in the year 2012.” and that “It is correct that I gave representation on 06-06-2016 and my representation was considered by the department and benefits of 16 years service was granted to me accordingly vide office letter No.C-682(2016) dt.24-08-2016, copy of same is Ex.M-4.”

The claimant is seeking interest on the delayed payment of increment whereas respondent has contested this claim on the ground of date of entitlement of the increment. Such disputed question of the date of grant of increment is beyond the purview of the proceedings under Section 33-C (2) of the I.D. Act, 1947. Under Section 33-C (2) proceedings are of execution nature and claim can be made on existing right. The timing and the date of right of increment has been disputed.

(ii) In the application under Section 33-C (2) of the I.D.A.,1947 for recovery of the money due from an employer, the

proceedings are of execution nature.

(iii) Further the argument raised on behalf of the respondent that the claimant was appointed as Assistant Engineer and holding the charge of Sub Divisional Officer, Punjab Mandi Board, Sangrur and was working in the managerial and supervisory capacity, is sustainable. The respondents have examined MW1 Handwriting Expert to prove the signatures of the claimant on the documents which prove that the claimant was working in the managerial capacity.”

On the basis of aforesaid findings, the learned Tribunal below held as follows:-

“9. In view the discussion above, this Tribunal concludes that since the claim made in the present application is on the basis of the right which itself is dispute by the respondent he is not entitled to any relief from the respondent. The present claim application is not maintainable. Accordingly, issue No.1 is decided against the applicant and issue No.2 is decided in favour of the respondent.

RELIEF

10. In the light of findings noted above, the present claim application is hereby dismissed.”

18. Considering the totality of circumstances in view of legal position indicated in foregoing paras, I am of the considered view that once the very basis of claim and entitlement of petitioner to the benefit claimed is disputed by respondent-Department and there being no earlier adjudication or recognition thereof by employer and the dispute relating to entitlement being not incidental to benefit claimed, therefore the same was clearly outside the scope of Section 33-C (2) of the 1947 Act. Accordingly, there is no scope for any interference in impugned order dated 21.02.2022 (Annexure P-1) passed by Tribunal below. Resultantly, the instant writ

petition fails and the same is accordingly dismissed.

19. All pending application(s), if any, shall also stand closed.

26.07.2023

Apurva

(HARSH BUNGER)

JUDGE

- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No