

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

CWP-11190-2023 (O&M)
Date of Decision: 01.12.2023

HARDEV SINGH

...Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL PATIALA,
TEHSIL AND DISTRICT PATIALA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Kulwinder Singh, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Hardev Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking quashing of order dated 17.05.2022 (Annexure P-4) passed by the learned Presiding Officer, Industrial Tribunal, Patiala (for short 'the Tribunal'); whereby, the application under Section 33-C(2) of the Industrial Disputes Act, 1947 (herein-after referred to as 'the 1947 Act') filed by him, was dismissed.

2. Briefly, the petitioner filed an application under Section 33-C(2) of the 1947 Act, on the plea that he was appointed by respondents No.2 and 3, herein as Technician vide ID No.50406 on 10.01.2015 for repairing the technical defect in dish TV manufactured by respondent No.3, herein on the salary of Rs.20,000/- per month plus TA and DA etc. Petitioner claimed that he has not been paid the salary plus TA and DA etc. from January 2018 to March 2018, which comes to about Rs.75,000/-. Petitioner further claimed that he had booked orders for

converting the connections from cable TV to HD TV connections and he booked approximately ten connections per month and the company paid Rs.75/- per connection and total amount of Rs.20,250/- approximately was due for 27 months. Petitioner also claimed that he was entitled to Rs.2200/- per month regarding the best services given by him, which comes to about Rs.59,400/- for last 27 months. Petitioner claimed that respondent No.2, herein (Ishman Enterprises) had not paid any amount regarding his services. Accordingly, the petitioner claimed an amount of Rs.1,39,650/- along with interest.

3. The afore-said claim of the petitioner was contested by respondent No.2, herein (M/s Ishman Enterprises) by submitting that the petitioner never remained an employee with them and it never paid any salary to him. It was also denied that respondent No.2 had issued any technician ID to the petitioner. It was categorically stated that since the petitioner has never remained an employee with respondent No.2, herein; accordingly, there was no question of any salary plus TA and DA etc.

Another plea objecting to jurisdiction of the Court to decide the application was also raised.

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

“1. Whether the applicant is entitled to receive the amount from the respondent as mentioned in the application ? OPA

2. Whether present claim application is not maintainable ? OPR

3. Relief.”

5. In order to prove his case, the petitioner examined one

Harinder Singh as WW1 and further examined himself as WW-2.

WW1 : Harinder Singh S/o Sh. Saroop Singh R/o Shiv Mandir Wali Gali, Amargarh, District Sangrur, tendered following documents :

<i>Document</i>	<i>Detail</i>
<i>Ex. W1/A</i>	<i>Affidavit</i>

WW2: Petitioner/Workman (Hardev Singh) tendered following documents :-

<i>Document</i>	<i>Detail</i>
<i>Ex. W2/A</i>	<i>Affidavit</i>
<i>Mark-A</i>	<i>Photocopy of Identity Card</i>
<i>Ex. W3</i>	<i>Photocopy of legal notice dt. 27-04-2018</i>
<i>Ex. W4</i>	<i>Postal receipts</i>
<i>Mark-B, Mark-C</i>	<i>Photocopies of Technician App</i>
<i>Mark-D to Mark-H</i>	<i>Photocopies of the complaints</i>

On the other hand, respondent No.2 herein examined Rajwant Kaur (Proprietor of respondent No.2) as MW1 and tendered following document :-

<i>Document</i>	<i>Detail</i>
<i>Ex. MW1/A</i>	<i>Affidavit</i>

6. Upon considering the evidence/material available on the record, the learned Tribunal below has dismissed the application of the petitioner by observing that apart from his solitary self-serving statement, he had placed on record the documents Mark `A` to Mark `H` and upon considering the

said documents, it has been observed that the same are not sufficient to prove his appointment or engagement or to prove any terms of employment substantiating the existing right of the petitioner for the claim made in the application. It has been observed that the employment of the petitioner had been totally denied and petitioner had admitted in his cross-examination that he had not attached any joining letter with the Court file nor enclosed any salary statement with the Court file. Petitioner admitted that he had not brought any original ID card neither this ID card is in his possession. Petitioner voluntarily said that ID card was taken back by the respondent No.2. As regards Mark-B, the petitioner stated that it was taken from the phone App. and as regards Mark-D and Mark-E, petitioner admitted that the same do not show that these messages were sent by respondent No.2. Petitioner had not placed any salary receiving receipt on the file. Petitioner stated that the name of the phone App is Technician App. which is made by Dish TV. Petitioner also stated that Mark-B doesn't show his photograph and neither it shows father name of Hardev Singh. Petitioner had also not placed on file any document regarding his attendance and he had not placed any record regarding the facts which were mentioned in his affidavit Ex.W2/A in para No.4 as well as No.5.

7. Considering the afore-said material/evidence, the Tribunal below has recorded a finding that since the employment of the petitioner was disputed and the application under Section 33-C(2) of the 1947 Act, being for recovery of money due from an employer and the proceedings being of execution nature; therefore, the claimant is entitled to make claim of pre-existing right. It was held by the Tribunal that since the petitioner had failed to establish the existing right to claim the dues as mentioned in the

application; accordingly, the same was not maintainable and the application was dismissed.

8. As regards the 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 preposition 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...”

9. When the facts of this case and also the finding returned by the Tribunal below are tested on the anvil of judicial pronouncements referred above, it is observed that neither before the Tribunal below nor before this Court, the petitioner has been able to show, by way of any document/evidence, that there exist relationship of employee and employer between him and respondent No.2 and/or respondent No.3, herein. Further, the petitioner has also failed to establish any pre-existing right to claim the amount mentioned in the claim application under Section 33-C(2) of the 1947 Act, therefore, no relief could have been granted to him.

10. In view of the above, I do not find any illegality or perversity in the impugned order dated 17.05.2022 (Annexure P-4) passed by the learned Tribunal below, which may call for any interference by this Court in exercise of its jurisdiction. Consequently, the instant writ petition fails and

the same is hereby dismissed.

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

December 01, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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