

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-10579-2013 (O&M)
Date of Decision: 16.08.2023

Rajinder Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Ms. Sonia G.Singh, Advocate
for the petitioner.

Mr. Vishnav Gandhi, DAG, Punjab.

Mr. Anupam Bhardwaj, Advocate
for respondent No.2.

HARSH BUNGER J.

1. Petitioner (Rajinder Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking setting aside/modification of award dated 17.09.2012 (Annexure P-1) passed by the Presiding Officer (District Judge), Industrial Tribunal, Jalandhar (hereinafter referred to as 'the Tribunal'), whereby the petitioner has only been granted an amount of Rs.34,542/-, as arrears of wages, w.e.f. 01.05.1998 to 31.03.2001 and 01.04.2001 to 31.03.2004.

2. Briefly, petitioner filed two applications under Section 33-C (2)

of the Industrial Disputes Act, 1947 (hereinafter to be referred as 'the 1947 Act') on the plea that he was working as Peon-cum-Chowkidar since 25.12.1979 and his salary for the period w.e.f. 01.05.1998 to 31.03.2001 has not been paid. In the first application, petitioner claimed an amount of Rs.1,28,105/- and in the second application, he claimed an amount of Rs.1,38,024/-

3. The aforesaid claims of petitioner were contested by the respondent-Society by submitting that the petitioner was governed by the Punjab State Co-operative Agricultural Service Society Service Rules, 1997 (hereinafter to be referred as 'the 1997 Rules') and remedy lies under the said Act. It was further stated that petitioner had already received salary for the period w.e.f. April, 1998 to July, 1998, and thereafter, the respondent-Society ran into losses and there were no funds to disburse the salary, accordingly the petitioner gave in writing that the amount of his salary be shown as 'Amanat' in the account; and subsequently, the salary was paid from the Amanat account, as under:-

- “ a) Amount of Rs.8,000/- was paid on 28.10.99.*
- b) Amount of Rs.11,000/- was paid on 5.11.99.*
- c) Amount of Rs.4,000/- was paid on 6.12.99.*
- d) Amount of Rs.4,000/- was paid on 24.2.2000.*
- e) Amount of Rs.5,000/- was paid on 28.6.2000.*
- f) Amount of Rs.5,000/- was paid on 12.7.2000.*
- g) Amount of Rs.5,400/- was paid on 1.1.2001.”*

It was stated by the respondent-Society that petitioner had duly executed receipts in favour of the Society. It was further stated that retirement age of petitioner was 62 years and upon attaining the same, he was not entitled to any salary. The rate of salary of petitioner was also denied by the respondent-Society.

In the second application, filed by the petitioner, also, the rate

of his salary was denied by the respondent-Society and it was further stated that he had already been paid an amount of Rs.1,39,122/-, out of which, an amount of Rs.98,048/- was received as salary against the due receipts and another sum of Rs.41,074/- was received by the petitioner by the respondent-Society against valid receipts. It was stated that retirement age of Chowkidar is 60 years, however, petitioner worked up to 28.02.2005 and received excess salary, accordingly it was stated that petitioner was entitled to only the balance amount of Rs.32,130/-.

5. From pleadings of the parties, following issues were framed by the Tribunal:-

“(i) Whether the application is not maintainable in view of the preliminary objections of written statement?

(ii) Whether the applicant is entitled for the alleged amount claimed in the application?

(iii) Relief.

(iv) Whether the applicant is entitled to the benefit on the claimed application? If so, to what amount? OPA

(v) Whether the application is barred by the provisions of Pb. State Co-operative Agricultural Society Service Rule, 1997? OPR ”

6. It has come on record that the petitioner had admitted the fact that he had received certain payments. Accordingly vide impugned award, the Tribunal observed that there was no dispute regarding payments received by the petitioner, however, the dispute was regarding the rate of salary to the effect that as to whether the salary was payable at the rate of Rs.2,412/- or the increased salary, as claimed by the petitioner. Accordingly, the Tribunal returned the following findings:-

“.... In the proceeding U/S 33-C (2) of Industrial Dispute Act, the industrial Tribunal cannot decide the existing right and then compute the amount. The proceedings U/S 33-C (2) are of nature of execution. After taking into account the entirety of

the evidence on file and rules discussed about, I am of the view that it is for the applicant to prove that he was appointed on regular basis in the prescribed scale as mentioned in the above noted rules. It is proved that he was getting consolidated salary of Rs.2412/- pm. Even if by error, he has been disbursed salary for some period at the rate of Rs.3744/- p.m. by computing his salary on the basis of grade, even then, his salary cannot be computed in the present application on the basis of scale claimed by him. Therefore, his salary is to be computed at the rate of Rs.2412/- p.m. Now the applicant has already received salary till July, 1998. From August, 1998 till February, 2005, for which he actually worked, he is entitled to the salary of Rs.2412/- p.m. salary from 1.5.98 to 31.3.01 i.e. for 35 months comes to Rs.84420/- in the first application and for the period 1.4.2001 to 31.3.2004 i.e. 36 months, it come to Rs.86832/- in the second application, total amounting to Rs.171252/-. The applicant is admitted to have received Rs.7236 + Rs.88400 and Rs.41074/- are paid as per receipts Ex.M22 to M32, total Rs.136710/-, the balance comes to Rs.34542/- which be paid within 3 months, failing which, it be paid with 6% p.a. interest. Recovery of salary does not lie under the Co-operative Act as claimed by the respondent. The present application is maintainable before this Tribunal. All the issues are accordingly decided in favour of the applicant and against the management to the extent recorded above.

Relief.

9. In view of my findings recorded above, the present application is allowed. The respondents are directed to pay Rs.34542/- to the applicant within 3 months, failing which, it be paid with 6% p.m. interest. Copy of order be placed on the connected file. File be consigned.”

7. Being aggrieved against the aforesaid award dated 17.09.2012 (Annexure P-1), petitioner filed the instant writ petition before this Court.

8. Learned counsel for the petitioner submits that the Tribunal has erred in law and fact in granting only a meagre amount of Rs.34,542/- to the

petitioner, although his entitlement was much higher. Learned counsel contends that the concerned grades were applicable to the petitioner as the same were applicable to all the employees of the Societies in terms of the 1997 Rules, which came into force on 09.10.1997, however, the dispute of petitioner's salary started in 1998. It is submitted by learned counsel for the petitioner that as per the 1997 Rules, the scale of Peon-cum-Chowkidar is 2520-100-3220-110-3660-120-4140 with a minimum start of Rs.2,620/-. It is contended that the Tribunal has wrongly observed that petitioner was unable to prove the fact that he was granted the scale. Learned counsel submits that petitioner was a regular employee, and therefore, he was entitled to the claimed amount, being calculated as per the scale.

With the aforesaid submissions, learned counsel for the petitioner has prayed for setting aside/modifying award dated 17.09.2012 (Annexure P-1), to the extent that claimed amount has not been granted to the petitioner.

9. Per contra, learned counsel for respondent No.2-Society has opposed the prayer made on behalf of the petitioner by submitting that Tribunal has passed a well reasoned and justified order, which is based upon the peculiar facts and circumstances of this case as well as the material available on record; and the same does not call for any interference by this Court. Accordingly, prayer has been made for dismissal of the instant writ petition.

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

11. As regards the 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.

12. 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."

13. 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.

14. 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."

15. 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...”

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

17. In the instant case, petitioner has claimed the disputed amount primarily on account of increased salary on the basis of pay scales whereas it has come on record that the petitioner was getting consolidated salary of Rs.2,412/- per month. Accordingly, the claimed amount by the petitioner has been disputed.

18. Keeping in view the aforementioned legal position, it is observed from the findings of Labour Court that the rights of petitioner were not crystallised nor adjudicated. The Labour Court has observed that in the absence of any such pre-existing right, the claim petition under Section 33-C (2) of the 1947 Act, is not entertainable. Learned counsel for the petitioner has failed to dislodge the aforesaid finding returned by the Labour Court below. Petitioner has not placed on record anything in support of his claim that he was entitled to higher salary or at least a higher pay scale; and in its absence, he could not have been granted any relief. Moreover, once the very basis on which the petitioner has framed his claim is disputed then in my considered view, the same would not fall for adjudication within the provisions of Section 33-C (2) of the 1947 Act. In fact after considering the material/evidence available on record, it was found as a matter of fact that the petitioner was entitled to an amount of Rs.34,542/-, which was accordingly ordered to be paid to him vide the impugned order.

19. Keeping in view the aforesaid circumstances, I do not find any

merit in the instant writ petition and the same is accordingly dismissed.

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

16.08.2023

Apurva

(HARSH BUNGER)
JUDGE

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