

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

CWP-23541-2015 (O&M)
Date of Decision: 26.07.2023

SIDHESWAR PRASHAD

...Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, BATHINDA,
DISTRICT BATHINDA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Harinder Sharma, Advocate
for the petitioner.

Mr. S.S. Behl, Advocate
for the respondents.

HARSH BUNGER, J. (ORAL)

1. Prayer in the instant writ petition is for issuance of a writ in the nature of *certiorari* for quashing the order dated 06.03.2013 (Annexure P-8) passed by the Industrial Tribunal, Bathinda on an application filed by the petitioner under Section 33-C(2) of the Industrial Disputes Act, 1947 (here-in-after referred to as 'the 1947 Act').

A further prayer has been made by the petitioner for directing respondents No.2 to 4 to pay him a sum of Rs.1,69,105/- along with interest @ 18% per annum from the date it became due to him till final realization.

2. Briefly, it is the case of the petitioner that he was engaged as an Ancillary Labourer with respondents No.2 to 4, herein on 07.12.1995 and he

is stated to have worked with them upto 31.03.2003. Petitioner claimed that he had worked for about 2305 days at different wage rates as under :-

1. 07.12.1995 to 31.12.1997 (755 days) @ Rs.53/- per day.
2. 01.01.1998 to 31.12.1998 (365 days) @ Rs.64/- per day.
3. 01.01.1999 to 31.12.2000 (730 days) @ Rs.77/- per day.
4. 01.01.2001 to 31.12.2001 (365 days) @ Rs.89/- per day.
5. 01.01.2002 to 31.03.2002 (90 days) @ Rs.97/- per day.

Petitioner claims that he had not been paid even a single penny by respondents No.2 to 4 herein, which is a clear case of unfair labour practice and exploitation.

3. It appears that the petitioner served a legal notice dated 30.11.2000 (Annexure P-1) upon respondents No.2 to 4 herein to claim his wages; however, since no action was taken thereupon, the petitioner approached this Court by way of filing **CWP-1552-2001**, which was disposed on **01.02.2001** by directing respondent No.2 to consider and take action on the afore-said legal notice of the petitioner by passing a speaking order.

4. It is borne out from the petition that the petitioner filed a Contempt Petition (COCP No.1082 of 2001), in response to which, a reply was filed by respondent-FCI; wherein a letter dated 22.10.2001 (Annexure R-1) was attached, indicating that the claim of the petitioner for payment of wages was rejected. In view of the said letter dated 22.10.2001, the contempt petition was dismissed with liberty to the petitioner to challenge the said letter/order dated 22.10.2001 before the appropriate Forum.

5. In the afore-mentioned circumstances, it is submitted that the petitioner filed an application under Section 33-C(2) of the 1947 Act.

6. It appears that in response to the application under Section 33-C(2) of the 1947 Act, filed by the petitioner, respondents No.2 to

4 herein appeared before the Tribunal below and controverted the stand of the petitioner, *inter alia*, on the ground that there was no relationship of master and servant between the parties and even the working of the petitioner as Ancillary Labourer was denied.

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

- “1. Whether there existed relationship of employer and employee between the parties ?
2. If issue No.1 is proved in favour of the applicant, whether he is entitled to any amount from the respondent ? (OPA)
3. Whether application is not maintainable? (OPR)
4. Relief.”

8. The petitioner-workman, to prove his case, stepped into the witness box as AW-1 and tendered documents Ex.A-1 to Ex.A-3 as well as documents Ex. Mark-A1 to Mark-A6. During cross examination of RW-1 Dhaninder Singh Thakur, he has placed on record documents Ex.W-1 and Ex. W-2. Thereafter, the petitioner-workman closed his evidence.

9. On the other hand, the respondents have examined one Dhaninder Singh Thakur as RW-1, who has furnished his sworn affidavit as Ex.RW-1/A. He has also adduced documents Ex.R-1 to Ex. R-5. Thereafter, the respondents evidence was closed.

10. The Tribunal below, upon considering the material/evidence available on the record, rejected the claim of the petitioner.

11. In the afore-mentioned circumstances, the petitioner has filed the instant writ petition before this Court.

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

13. As regards the scope and ambit, 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...”

14. In the instant case, the Tribunal below, while rejecting the claim of the petitioner, has returned the following findings :-

“10. I have considered the evidence produced on record by both the parties as well as arguments advanced before me. Sidheswar Parshad applicant claimed himself as Ancillary Labour/worker with the respondent and he stated that he worked from 07.12.1995 to 31.03.2002. Therefore, he is entitled to claim wages for the said period. Applicant was required to establish the relationship of employer and employee to establish his claim for wages. Sidheswar Parshad stepped into the witness box as AW-1 and during his cross examination, he conceded that District Officer FCI, Ferozepur sanctioned the name of the 62 Ancillary workers and in the said list, his name was not there. He admitted that three members committee was constituted, consisting of Teja Singh. The deposing witness further admitted that he was never given

any appointment letter nor he has challenged the list of Ancillary worker. From the cross examination, it is crystal clear that applicant himself is aware of the fact that his name was not approved for the list of Ancillary Worker/Labour. Once his name is not approved of, he cannot claim wages alongwith Ancillary worker. There is copy of order passed in contempt petition No.1082 of 2001 titled as Sidheshwar Parshad Vs. R.K. Singla, District Manager, Food Corporation of India, Ferozepur and others dated 26.09.2002 Ex. A-3. As per this order, applicant was given liberty to challenge the order Ex. R-1 but at the same time, Contempt application was dismissed by holding that application has become infructuous and the same was, accordingly, dismissed. There is nothing on record to show that applicant has challenged the Order Ex.R-1, which is referred in the order passed in contempt application Ex.A-3. The respondents have not disputed that list of 68 workers was sent to the District Office of FCI but out of which, only list of 62 workers was approved of and the name of the present applicant along with others was rejected specifically. The said letter produced on file is Ex. W-2. Once name of the applicant has been rejected, he cannot claim wages as Ancillary labour along with approved list of Ancillary workers. Keeping in view these facts, I do not find merits in the claim application filed by the applicant. He has failed to establish relationship of employee and employer with the respondent to claim wages as detailed in his application. Issues No.1 and 2 are decided against the applicant and issue No.3 is decided in favour of the respondent.

Relief:

11. In view of my findings on the above said issues, I do not find merit in the application filed by the applicant and the same is accordingly, dismissed with costs.”

15. A perusal of the above extracted findings would indicate that the petitioner had failed to prove the relationship of servant and master between him and the respondent-Management.

16. When the facts of this case and also the findings 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 the respondent-Management. Further, the petitioner has also failed to establish any pre-existing right to claim the amount mentioned by him in his claim application under Section 33-C(2) of the 1947 Act. Once the very basis of the claim or the entitlement of the petitioner is disputed and there being no earlier adjudication or recognition thereof by employer, the dispute relating to entitlement being not incidental to the benefit claimed, therefore, the claim espoused by the petitioner was clearly outside the scope of proceedings under Section 33-C(2) of the 1947 Act.

17. In view of the above, I do not find any illegality or perversity in the impugned order dated 06.03.2013 (Annexure P-8) 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.

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

July 26, 2023

gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No