

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

CWP-18203-2023 (O&M)
Date of Decision: 21.08.2023

ROOP SINGH

...Petitioner

Versus

PRESIDING OFFICER, GOVERNMENT INDUSTRIAL TRIBUNAL,
PATIALA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Labh Singh Sandhu, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Roop Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of *certiorari/mandamus* for setting aside the Award dated 22.04.2022 (Annexure P-8) passed by the learned Presiding Officer, Industrial Tribunal, Patiala; whereby his application under Section 33(C)(2) of the Industrial Disputes Act, 1947 (here-in-after called as 'the 1947 Act') has been dismissed as not maintainable.

A further prayer has been made for directing respondents No.2 and 3, herein to pay wages to the petitioner equivalent to which was paid to his junior namely, Puran Chand.

2. Briefly, the petitioner filed an application under Section 33(C)(2) of the Act, 1947 before the Industrial Tribunal, Patiala (for short 'the Tribunal'); wherein it was pleaded that he joined the respondent/department (Markfed) on 29.10.1973 and retired on 31.10.2016 from the post of Dusting Operator after completing 43 years of continuous

service. Petitioner claimed that his juniors namely, Puran Chand and Sukhdev Singh were getting higher wages since January 1996 to October 2014 as amount of Rs.2640/- per month. Petitioner further claimed that he was entitled to arrears of difference of wages for the period from 01.01.1996 to 31.10.2014 @ Rs.2640/- p.m., which comes to Rs.5,96,640/-. Petitioner further claimed that he had completed 28 years continuous service in the year 2001 and therefore, he was entitled to 28 years' service benefits but the department had not given him the said benefits. Hence, he was entitled to arrears of 28 years' service benefits as amount of Rs.90,906/-. Accordingly, the petitioner claimed an amount of Rs.6,87,546/- along with interest @ 24% per annum.

3. The afore-said claim of the petitioner was contested by the respondents-department; wherein *inter alia* preliminary objection was taken that the application was not maintainable. It was stated that the petitioner had made a false claim on the basis of wrong facts and he was not entitled for any amount. It was stated that the petitioner had already been paid the amount which was attached with the services of the worker and nothing was due against them.

4. On the merits of the claim, it was stated by the respondents-department that the petitioner had joined the service on 29.10.1973. The date of retirement of the petitioner on 31.03.2016 as Dusting Operator was not disputed. It was denied that the juniors to the petitioner namely, Puran Chand and Sukhdev Singh were getting higher wages since January 1996 to October 2014. The claim of the petitioner that he had completed 28 years of service in the year, 2001 was not disputed; however, it was denied that the petitioner was entitled to arrears of 28 years of service benefits.

Accordingly, the claim of the petitioner was denied and prayer for dismissal of application filed under Section 33(C)(2) of the Act, 1947 was made.

5. After considering the pleadings as well as the material/evidence available on the record, the Industrial Tribunal below rejected the claim of the petitioner by holding as under :-

“5. Apart from his selfserving solitary deposition, no other corroborative material has been placed on record. During the cross examination dt.24-09-2019, the claimant has admitted that “I have joined Markfed as Machine Attendant for the first time on 29-10-1973. I have not annexed any appointment letter with my claim.” The claimant further deposed in the cross examination that “I can produce the documents regarding my document as a machine attendant. Puran Chand and Sukhdev Singh also joined as Machine attendant.” The claimant has also deposed in the cross examination that “It is correct that in my claim petition I have mentioned that I joined the respondent on 29.10.1973 and retired from the services on 31.10.2016 as a dusting Operator. It is correct that I have not mentioned in my claim petition what was the post of Puran Chand and Sukhdev Singh. It is correct that the employee cadre is different one. It is also correct that the basic pay of another cadre is differ from and varied accordingly. I do not know what was my basic pay and scale of my pay at the time of my joining. My service was not maintained in the office.” The claimant during cross examination dt. 01-11-2019 deposed that “I cannot tell the joining date of Sukhdev Singh and Puran Singh. I have seen the Court file today there is no such letter ever written by me to the department.”

MW1 during cross examination has deposed that “It is correct that as per the seniority list Ex.MI

Sukhdev Singh and Puran Chand are junior to the applicant however Puran Chand and Sukhdev Singh are worked in separate cadre than the applicant.” MW1 has further deposed in the cross examination that “It is wrong to suggest that juniors are getting more salary than the applicant. It is wrong to suggest that Puran Singh and Sukhdev Singh are junior to the applicant. It is wrong to suggest that the cadre of the applicant is the same of Puran Singh and Sukhdev Singh. It is correct that from time to time the promotion was given by the department to the applicant. It is wrong that the applicant is entitled for amount as mentioned in the claim application.”

6. *On behalf of the respondent Ex.M2 seniority list has been placed on record which has two different segments, one is “Tentive Senioirity List of Matric/Undermatric Peon-cum-Chowkidar/Chowkidar/Helper and Dusting Operator working in Common Cadre Side and posted in the Branch Offices, D.M. Offices and H.O.” and the second is “Tentive Seniority List of Markfed Cotton Ginning and Pressing Factories (since closed) Officers/officials as per recorded available in H.O. (as on 15-07-2005)”. The name of the applicant is mentioned in the first segment whereas the name of Puran Chand and Sukhdev Singh is mentioned in the second segment. Ex.M4 has been placed on record on behalf of the respondents. The same is reappointment order dt. 01-06-1981 wherein the claimant has been reappointed as Dusting Operator.*

The pleadings and contentions of the respondent as well as material on record leads to the requirement of prior adjudication regarding the entitlement of the claimant for the claim made. The adjudication of such entitlement is beyond the scope of present proceedings under Section 33-C(2) of the I.D.A.,

1947. 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. The applicant/claimant is entitled to make claim of pre-existing right.

7. It is settled position of law that under Section 33-C(2) of the I.D. Act, 1947 only existing right can be claimed and right which required prior adjudication cannot be the subject matter under Section 33-C(2) of the I.D., Act, 1947. While defining the scope of application under Section 33-C(2) of the I.D.A., 1947 Hon'ble Apex Court in **Tara & others Vs. Director, Social Welfare & Ors. AIR 1999 SC 1508**, has held that "the status and nature of employment of the appellants is itself disputed and 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) for computation of the wages does not arise." In this very judgment **Municipal Corporation of Delhi Vs. Razak 1995 SCC(1) 235** has been referred wherein it is held that "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 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by tile 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 33-C(2) like that of the Executing Court's power to interpret the decree for the purposes of its execution."

8. Apart from the above, the present claim application has been moved in the year 2018 whereas as

per the pleadings, the claimant has retired in the year 2016. No sufficient reason has been given to explain the delay. Although it is settled law that the limitation Act is not applicable to the proceedings under the I.D. Act, 1947, however, the claimant in a given set of circumstances is required to give some cogent or sufficient explanation for the delay which the claimant has failed to render in the present case.

9. *In view the discussion above, this Tribunal concludes that the applicant has failed to establish the existing right to claim the dues as mentioned in the claim application. The applicant 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...”*

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

7. Learned counsel for the petitioner contends that the learned Tribunal below has erred in law and facts in dismissing the claim of the petitioner by holding that the claim application was not maintainable as the petitioner had failed to establish the existing right to claim the dues as mentioned in the claim application. Learned counsel for the petitioner further submits that in fact, the petitioner had filed the case for his pre-existing rights i.e. difference of wages and arrears for the work done during the service period, which is his pre-existing right; moreso, when there was no denial that the petitioner is not an employee of the respondent-department. Learned counsel for the petitioner further contends that there is

sufficient material on record to show that the petitioner had a pre-existing right to the amount claimed; however, the learned Tribunal below has wrongly rejected the claim of the petitioner by relying upon the judgments, which were not applicable to the case in hand. Accordingly, it was contended that the writ petition be allowed and the impugned order be set aside by issuing a further direction to the respondents to pay the wages to the petitioner equivalent to what was paid to his junior namely, Puran Chand.

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

9. Upon perusal of the paper-book, it is apparent from the cross-examination of petitioner-Roop Singh that in the claim petition, he had not mentioned as to what was the post of S/Shri Puran Chand and Sukhdev Singh. Petitioner further admitted in his cross-examination that the employee cadre is different and also admitted that the basic pay of another cadre is different and varied. The petitioner was not aware about his basic/scale of his pay at the time of his joining and neither, he was aware as to whether any seniority list is there in the department or not.

10. On the other hand, a perusal of the statement of the department witness namely, Amrit Kaur, working as Senior Assistant, Markfed Sangrur would clearly suggest that as per the seniority list (Exhibit M-1), S/Shri Puran Chand and Sukhdev Singh are juniors to the petitioner; however, they are working in separate cadre than the petitioner. It has further come on record that the petitioner was not promoted by the department due to his break in service.

11. The afore-stated facts have been duly considered by the learned Tribunal below and upon considering the attending facts and circumstances

of the case, the learned Tribunal below has returned a finding that the pleadings and contentions of the respondent-department as well as the material on record, leads to the requirement of prior adjudication regarding the entitlement of the petitioner for the claim made.

12. 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...”

13. When the findings of the learned Tribunal below are considered in the light of aforesaid legal position, it would manifest that the rights of the petitioner were not crystallized nor adjudicated. The learned Tribunal below has observed that in the absence of any pre-existing right, the claim petition under Section 33(C)(2) of the 1947 Act, is not entertainable. The learned counsel for the petitioner has failed to dislodge the aforesaid finding returned by the learned Tribunal below. Thus, once the petitioner had failed to establish any pre-existing right, accordingly no relief could have been granted to the petitioner in proceedings under Section 33(C)(2) of the Act, 1947.

14. Furthermore, in para 18 of the instant writ petition, the petitioner has made the following averment: -

“18. That in the present case, claim of the petitioner is already recognized as petitioner is claiming his promotional benefit which was granted to his junior but not granted to him. Respondents no.2 and 3 in their reply admitted the fact that all promotion benefits are already granted, therefore, claim of promotional benefit is already recognized and Court has to decide whether promotional benefit was given to the petitioner or not.”

15. I have considered the above extracted averments made by the petitioner; however, in my considered view, the same does not merit consideration in view of settled proposition of law that promotion is not a matter of right but right to consider for promotion is the legal right of the employee.

16. Therefore, I do not find any illegality or perversity in the impugned order dated 22.04.2022 (Annexure P-8) passed by the learned Tribunal below. Consequently, the instant writ petition is hereby dismissed.

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

August 21, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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