

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

(1)

LPA-1245-2018 (O&M)

Bhupendera Cement Workers Union

.....Appellant(s)

Versus

State of Haryana & others

.....Respondent(s)

(2)

LPA-1297-2018 (O&M)

Mallah Quarry Workers Union

.....Appellant(s)

Versus

Union of India & others

.....Respondent(s)

Reserved on : 20.02.2023

Pronounced on : 26.04.2023

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr.Abhilaksh Grover, Advocate, for the appellant(s).

Mr.Arun Gosain, Senior Govt. Counsel
for respondent No.1-UOI in LPA-1297-2018.

Mr.M.L.Sarin, Sr.Advocate
with Ms.Hemani Sarin, Advocate, for respondent Nos.3 & 4.

G.S. Sandhawalia, J.:-

The present judgment shall dispose of 2 appeals, bearing LPA-1245 & 1297-2018 which have been preferred against the common judgment of the learned Single Judge in two writ petitions bearing CWP-2838-2013 titled *Bupendera Cement Worker's Union, Surajpur Vs. Sate of Haryana & others* and CWP-11762-2013 titled *Mallah Quarry Worker's Union, Mallah Vs. Union of India & others*.

2. While giving reasons for the first case and disposing of the second case in the same terms, the learned Single Judge found that the

matter had already been decided on 20.08.2022 by a Division Bench of this Court and therefore, the claim for issuance of recovery certificate for a sum of Rs.40,67,24,833.37 upto 10.01.2012 and with further interest as per the subsequent report of the Deputy Labour Commissioner dated 25.01.2012 (Annexure P-10) was uncalled for. It was noticed that no appeal was filed against the said order and a complaint was filed regarding the non-implementation of settlement but had been rejected on 05.05.2006 (Annexure R-3/1) giving the petitioners the right of remedy under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short, the 'Act'). The said claim was also further rejected on 28.09.2012 (Annexure P-16) which was a reasoned order passed by the Labour Commissioner-cum-Special Secretary to the Government of Haryana, which was the main subject matter of challenge. The objection of the respondent-Management that the trade union registration had been cancelled on 22.06.2016 and therefore, the writ petition which had been filed earlier in 2013 was not maintainable, was rejected. The argument raised that a 15% discount had been done on half yearly basis chart and was not as per the settlement of the scheme of 11.04.1997 but it was part of the settlement of 21.06.1997, was noticed to be an issue which had been raised after considerable delay as the cause of action had accrued in the year 1997 and the dispute had again been raised in the year 2006. It was also noticed that the petitioners were misleading the Court regarding the issue of discounting on half yearly basis which was part and parcel of the settlement arrived at in the year 1997 and resultantly, it was held that the Labour Court could not interfere once there was a judicial pronouncement already which is binding on both the parties.

3. Counsel for the appellant-Union in both the cases, Mr. Grover has primarily argued that the order passed by the State Government on 28.09.2012 had given them liberty to file a claim before the Labour Court under Section 33-C(2) of the Act which right has been rejected by the learned Single Judge and limited his argument to that extent that the right could not be curtailed and therefore, prayed for liberty to be given to pursue the said benefit.

4. Senior Counsel for the respondent-Management, on the other hand, submitted that there were two separate disputes though one of the dispute was of Mallah Quarry Workers wherein the Appropriate Government would be the Central Government and a separate decision had been taken and different litigation initiated. For the plant in question, the Appropriate Government was the State Government and the writ petition had been initiated by the Bhupendera Cement Workers Union and decided by the Division Bench on merits on 20.08.2002. The matter had been wrongly clubbed together and decided. It is however contended that the claim having been finalized way-back in the year 1997, only by filing repeated representations, the same could not be revived at the instance of a certain set of workers. The plant had been closed long back and even the cancellation of the registration had been ordered and the writ petition is thus, without any locus-standi once all the other workers of the Union had accepted the settlement and at the behest of certain elements, the matter was sought to be kept alive.

5. Since the judgment is common and the employer is also common, we propose to decide the issue together while delineating the facts separately as the litigation had been at different levels before the two

Appropriate Governments. The common issue however is that after having accepted the settlement, can the Union insist in prolonging the dispute after not preferring their remedies within appropriate time before the said Forum and at this belated stage, seek their necessary relief of continuing with the said claim which in our considered opinion is not permissible for the reasons given below after discussing the factual aspects.

Mallah Quarry Workers :

6. A perusal of the paperbook of CWP-11762-2013 filed by the Mallah Quarry Workers Union would go on to show that the challenge was to the order dated 12/15.04.2013 (Annexure P-24) therein which had been passed by the Regional Labour Commissioner (Central) Chandigarh vide which the claim for recovery was prayed under Section 33-C(1) of the Act. A perusal of the said order would go on to show that in the application dated 26.12.2012 (Annexure P-15) prayer had made for issuance of recovery certificate of Rs.2,76,06,424.90 along with interest from 01.07.1997 till realization from the employees of M/s Associated Cement Company Ltd. (for short, the 'ACC Cement'). The same was rejected on the ground that it had not been computed from the authority as per Section 33-C(2) of the Act. Liberty was given to file an application before the Presiding Officer, Central Government, Industrial Tribunal, Chandigarh and thereafter, file an application for recovery.

7. A perusal of the application (Annexure P-15) would show that on account of the claim payable to 111 workers of the said Union on the basis of a settlement dated 20.06.1997 and on account of the Management releasing less amount as per the calculation chart appended, the claim was that wages of only 5 years had been paid instead of the

projected 10 years. A perusal of the said application would go on to show that there was an earlier reference to demand notices dated 05.08.2008 (Annexure P-7), 23.08.2008 (Annexure P-8), 20.03.2009 (Annexure P-9) and 22.03.2010 (Annexure P-10). A perusal of the said notices would go on to show that the Union was agitating for its industrial dispute which it had raised in the demand notice which had been initiated on 22.11.2007(Annexure P-6). A perusal of the same would further go on to show that it was alleged that the office bearers of the Union had been allured to enter into a Memorandum of Settlement and fraudulently paid the monthly pension in lump sum by making 15% discounting on half yearly basis which ultimately resulted into net loss of 50% of the compensation benefits to the workers.

8. Resultantly, challenge was raised to the said settlement that the same had been procured with collusion of the other Worker's Union and office bearers of the Company and therefore, the same was alleged to be terminated as per the notice dated 05.05.2007 and therefore, the demand had been raised on the ground that a recurring cause of action was there and financial loss had been caused. There was a total silence regarding the earlier writ petition filed bearing CWP-7055-1999 on the said demand notice wherein the Co-ordinate Bench on 06.09.1999 had passed the following order:

“The grievance of the petitioner is that the settlement dated 20.6.1997 arrived at between the workers' Union and the management under Section 12(3) of the Industrial Disputes Act has not been fully implemented by the management. According to the petitioner Union, the management is required to pay back wages for a period of 10 years whereas those wages have been paid only for a period of 5 years. If, according to the petitioner,

full payment has not been made to the workers in accordance with the settlement, it is open to the Union to have the same implemented either under Section 33C(1) or Section 33C(2) of the Industrial Disputes Act. The present writ petition, in the circumstances, is misconceived and the same is dismissed.”

9. Apparently, the matter was taken up by filing a application dated 22.11.2007 as per Annexure P-6 under Section 33-C(2) of the Act before the Assistant Labour Commissioner but which was to be decided by the Labour Court being an industrial dispute. Eventually, vide order dated 16.04.2008 (Annexure P-12), the Assistant Labour Commissioner, Chandigarh on behalf of the Union of India, had rejected the same by passing the following order:

“To

Sh.Ranjeet Kumar, President

Mallah Quarry Workers Union,

VPO Mallah Quarry, Tehsil Kalka Distt.Panchkula

Haryana-134102

Sub: Individual complaint of Mallah Quarry Workers Union,
VPO Mallah.

Dear Sir,

Kindly refer to your individual complaint received in this office on 27.12.08 on the subject mentioned above. In this connection, the matter was taken up with the management of ACC Limited, vide this office of letter of even number dt.21.2.08 and copy endorsed to you on the subject mentioned above. In this connection, I am to inform you that the management of ACC Limited have submitted their reply to this office on 7.3.08 informing that the contents of demand notice are totally false and misleading the past workers. They have further informed that the matter is older than ten years, hence nothing is warranted in this regard.

In view of above your instant matter is being closed at this end. Copy of reply submitted by the management of ACC Limited is enclosed for your reference.”

10. The said order was never challenged at any level and thereafter, an application under Section 33-C(1) of the Act was filed on 26.12.2012 (Annexure P-15) wherein the impugned order dated 12/15.04.2013 (Annexure P-24) came to be passed by the Regional Labour Commissioner (Central), which reads as under:

“Please refer to your application dated 26.12.12 for recovery under Section 33© (1) from the Employer M/s ACC Ltd. On perusal of the application, it is observed that the amount which is requested for recovery has not been computed from the Authority as per section 33© (2) of the Industrial Dispute Act, 1947.

You are therefore requested to file an application before Presiding Officer, Central Govt. Industrial Tribunal, Chandigarh for computation of amount under Section 33© (2) and thereafter file an application in this office for recovery as per orders of the CGIT, Chandigarh.”

11. Instead of challenging the order dated 16.04.2008 (Annexure P-12), the petitioners preferred to file a writ petition taking the plea that the order dated 06.09.1999 had been passed in their favour and the Management had reduced 50% of the legal claim of the workers and their case fell within the ambit of Section 33-C(1) of the Act and the Central Government had to make the calculations as they had only been paid for 5 years.

12. The stand of the Management was that the Union had seized to exist after 1997 and the Union had accepted the 15% discounting formula as there was an early separation scheme dated 11.04.1997 which was more beneficial and had been accepted by the different Union. The settlement had been arrived at on 20.06.1997 (Annexure P-3) which was accepted by the petitioner-Union who had opted for the lump sum

payment as demanded which was minus the interest element. Reliance

was placed upon the factum that the matter had already been rejected on 16.04.2008 and the stand that the Union had unilaterally terminated the settlement which had been long implemented and the claim had already been rejected. The entire amount had already been paid to the workers and none of the workers had raised any objection. The Central Government had allowed the closure of the quarry which was supplying the raw material to the manufacturing unit and therefore, had granted permission for closure w.e.f. 01.09.1997 wherein it had been recorded that the said scheme which had been entered into was more beneficial than the retrenchment compensation under the Act.

13. It was further averred that both the cement plants known as Bhupendera Cement Plant at Surajpur and the Mallah Quarry had seized to exist since 1997 after obtaining necessary permissions from the Appropriate Governments. Therefore, the dispute had rightly been not referred to for adjudication against the closed units which had been raised after more than 13 years. Reliance was also placed upon the order dated 20.08.2002 passed in a connected matter which we will refer to subsequently wherein 15% discounting aspect was also upheld by another Co-ordinate Bench of this Court as the matter was decided on merits in the case of Bhupendera Cement Workers Union itself.

Facts of CWP-2838-2013

14. The Bhupendera Cement Workers Union challenged the order dated 28.09.2012 whereby the claim for issuance of a recovery certificate under Section 33-C(1) of the Act was declined which was claimed to be to the tune of Rs.40,67,24,833.37 upto 10.01.2012 while placing reliance upon the report of the Deputy Labour Commissioner dated 25.01.2012. A

perusal of the impugned order passed by the State Government would go on to show that reliance was placed upon the order passed in CWP-19327-1998 on 20.08.2002 and it was noticed that on 10.09.2010 (Annexure P-4), the claim dated 22.11.2007 (Annexure R-3/3) for raising a industrial dispute on the ground that the settlement dated 23.06.1997 was illegal and mala fide on account of 15% discounting done on half yearly basis was not binding upon the rights of the workmen. The plea had been taken that it resulted in a net loss of 50% of the compensation benefits which had not been accepted by the Workers Union and that the Memorandum of Settlement was terminated, was rejected that the units stood closed. Liberty was given to file a claim before the Labour Court under Section 33-C(2) of the Act regarding the amount paid. Relevant part of the order dated 10.09.2010 reads as under:

“I have been directed regarding the above mentioned subject to inform you that government has not considered your demand notice dated 22.11.2007 worth referring to the court for the following reasons.

Raising of a demand notice against a closed institution after so many years is wrong. Therefore, while rejecting the same you are advised that the workers can file their claim in the Labour Court under Section 33-C(2) regarding the amount paid to them.”

15. Similarly, on 24.03.2011 (Annexure P-5), the Appropriate Government had taken the following decision that the settlement could not be revoked by any party nor a demand notice could be raised against a closed unit:

“I have been directed regarding the above mentioned subject to inform you that government has not considered your demand notice dated 22.11.2007 worth referring to the court for the following reasons.

Raising of a demand notice against a closed institution after so many years is wrong. Therefore, while rejecting the same you are advised that the workers can file their claim in the Labour Court under Section 33-C(2) regarding the amount paid to them.

Your review petition dated 17/1/2011 has been perused. The reason of rejecting the demand notice is correct. However, it is clarified here that the settlement dated 21/6/1997 was final settlement, after that the unit was closed. Such settlement can neither be revoked by any party nor any demand notice can be raised against the closed unit.”

16. Resultantly, on 28.09.2012, while noting that an order had also been passed in Mallah Quarry Workers Union on 06.09.1999 by this Court and by order dated 24.03.2011 (Annexure P-5), it was noticed that review petition had been filed and the Principal Secretary, Government of Haryana had directed the Deputy Labour Commissioner to give due hearing to the Management and representative of the Union. Resultantly, the said officer had not considered the earlier orders of this Court and recommended for issuance of the recovery certificate without giving opportunity of hearing to the Management. It was accordingly held that the Deputy Labour Commissioner on 25.01.2012 had ignored the findings of this Court and the demand was in contravention of the settlement and the orders passed by this Court and that recovery certificate could only be issued if there was any money due to the workmen under Section 33-C(2) of the Act and the matter would have to be decided by the Labour Court. Resultantly, it was held that the settlement arrived at on 21.06.1997 was final and had been upheld by this Court and the petitioners had no cause of action.

17. The order passed in the earlier round of litigation would go on to show that in CWP-19327-1998 was a combined litigation by the

Joint Committee, the Bhupindera Cement Workers Union, Surajpur and the Mallah Quarry Workers. The Co-ordinate Bench had rejected their claim of 15% discounting by noticing that it was being paid in a lump sum and therefore, there was no merit in the writ petition wherein payment of rightful dues of the workmen and full implementation of the settlement dated 21.06.1997 had been prayed for. Same reads as under:

“Shri Beni Prasad, President of Joint Committee of B.C.W. Surajpur and Mallah Quarry Workers along with two others has filed present petition under Article 226 of the Constitution of India seeking issuance of a writ in the nature of mandamus directing respondents 5 to 7 i.e. The Associated Cement Companies Limited and others to implement settlements dated 21.6.1997 (Annexure P-4) signed and entered into for the benefit of hundreds' of workers said to have been rendered unemployed due to closure of Associated Cement Co. Ltd.

There is no need to give detailed facts, as enumerated in the writ petition, as all that has been canvassed before this Court is that even though the litigating parties i.e. petitioners' union and respondents 5 to 7 had entered into a binding settlement under the provisions of the Industrial Disputes Act, 1947, the same is not being implemented. Settlement arrived at between the parties is Annexure P-4 dated 21.6.1997.

Clause of settlement, which, as stated, has not been complied with or implemented by respondents 5 to 7, reads thus: “The 'Early Separation Scheme' announced by the Management on 11th April, 1997; is accepted by the Union in its totality except that the monthly pension will be paid in lump sum by 15% discounting on half yearly basis as per the statement enclosed hereto and marked as Annexure “2”.

Mr. Mittal, learned senior counsel representing the petitioners vehemently contends that the only interpretation of clause, reproduced above, am be that the Early Separation Scheme was totally accepted except that there cannot be 15% discounting on half yearly basis. In other words, the workmen of the

petitioners' Union have to be paid in lump sum spread over two times in a year without any discounting.

This contention and which is, as mentioned above, the only contention, in the context of this case, has necessarily to be repelled. It is conceded position that prior to the Settlement (Annexure P-4), an Early Separation Scheme came into being, which is annexed as Annexure – 1 to the settlement, on 11.4.1997. Clause dealing with the pension reads thus:-

MONTHLY PENSION:

(b) The employees willing to retire under the Scheme, who have completed 50 years of age as on the date of separation will be entitled to get a monthly pension equivalent to Basic Pay, Personal Pay, wherever applicable and Dearness Allowance last drawn by them, till their age of attaining superannuation i.e. age of 60 years.

(b) Employees not attaining the age of 50 years shall get, a monthly pension equivalent to Basic Pay, Personal Pay, wherever applicable and Dearness Allowance last drawn by them at the time of separation for ten years only and in addition will also get an additional amount as ex-gratia lump sum payment as mentioned below at the time of separation.

Age	Proposed Additional Ex-gratia lump sum.
Year	Payment (in Rs.)
40-49	25,000/-
Below 40 yrs.	40,000/-

It is absolutely clear that in the original scheme known as “Early Separation Scheme”, there was no provision of paying pension in lump sum for a period of six months. Pension was payable every month. There was a change in the matter of payment of pension when the settlement was finally arrived at. If clause 5 of Annexure P-4 is read in the context, as referred to above, the only meaning that can be given to it is that if the employees are to get lump sum pension for a period of six months, there has to be reduction of 15%. That apart, what further clinches the issue is that discounting of half-yearly basis has to be as per the statement enclosed and marked as Annexure-2. Annexure-2 is also, therefore, a part of the terms of settlement (Annexure P-4). The reading of the same would clearly manifest that if the employees were to get lump sum pension for a period of six

months, there has to be reduction of 15%. That being so, the only contention raised by Mr. Mittal needs to be repelled.

It is significant to mention here that similar Civil Writ Petition bearing No. 7055 of 1999 on behalf of respondent No.8, namely Mallah Quarry Workers' Union for the same very relief based upon similar settlement (Annexure P-5) has since already been dismissed by the Court on 6.9.1999.

Finding no merits in this petition, the same is dismissed, leaving, however, the parties to bear their own costs.”

18. A perusal of the said order would thus crystallize the fact that both the Unions had time and again challenging the early separation scheme which had been accepted by the then workmen and which had been repelled at that point of time.

Reasons for rejection by us:

19. The above sequence of events would go on to show that at the first instance, the Mallah Quarry Workers had raised the claim that the scheme had not been implemented immediately 2 years after the settlement and the closure in the year 1997 approaching this Court in CWP-7055-1999 titled *Mallah Quarry Workers Union Vs. State of Haryana & others*. They only agitated for their grievances 10 years thereafter on 05.05.2007 and 22.11.2007 before the Assistant Labour Commissioner under Section 33-C(2) without having any commuted amount in hand. The provisions of Sections 33-C(1) and 33-C(2) read as under:

“33C. Recovery of money due from an employer.- (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of ⁴ Chapter VA or Chapter VB] the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any

other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government; within a period not exceeding three months]:

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]

20. A perusal of Sections 33-C(1) would go on to show that the first proviso provides that any such application which is to be made to the Appropriate Government, the same has to be given within one year from the date the money became due to the workman from the employer. The second proviso gives leverage to the Government that the application may

be entertained after the expiry of the said period if it is satisfied that there was sufficient cause for not making the application within the prescribed period.

21. As noticed, the sequence of events in Mallah Quarry Workers, no such application was preferred and only a demand was raised after 8 years from the decision of this Court on 06.09.1999, on 05.05.2007. A perusal of the said demand notice would go on to show that the claim was that 15% discounting on half yearly basis ultimately resulted into net loss of 50% of the compensation benefits to the workers which had never been accepted by the Workers Union. Similarly the claim was that settlement was liable to be revoked and had rightly been done so. Resultantly, order dated 16.04.2008 was passed by the Assistant Labour Commissioner, Chandigarh on behalf of Union of India as reproduced in para No.9 above that the matter was 10 years old and no action could be taken on it. The same is not subject matter of challenge. The same had been followed up by a demand notice dated 22.11.2007 which was by the Bhupendera Cement Workers Union making the same allegations which had been rejected by the State Government on 10.09.2020 which order is not subject matter of challenge. The workers were advised to file a claim under Section 33-C(2) of the Act which was never resorted to. Rather by making repeated representations, the order was passed by the then Financial Commissioner (Labour & Employment) on 23.06.2011 (Annexure R-3/6) without hearing the Management that the Deputy Labour Commissioner would give due hearing to the Management and the representative of the Union, while making the calculations under Section 33-C(1) of the Act. The said order dated 23.06.2011 reads as under:

“Shri Rattan Bhushan Garg, Joint Secretary-cum-Advisor, Bupinder Cement Workers Union alongwith General Secretary, Shri Ramesh Kumar and other workers are present. On the last date of hearing given by me in the presence of Jt. L C. and amount of Rs.14,82,70,930/- payable to 615 workers by the management. As per the agreement, workers were to be paid wages for ten years and the management paid wages only for five years. They also referred to one case decided by the Labour Commissioner in January 2011 vide which the claim of workers was made recoverable under section 33-C(1) of the Industrial Disputes Act. They were heard today in the presence of Joint Labour Commissioner. Their main contention is that action in this case should be taken as per settlement dated 21-06-1997 signed by both the parties in the presence of the then Labour Commissioner and further that action should be taken under section 33-C(1) rather than under section 33-C(2) of the Industrial Disputes Act, 1947. This option was given to them by Hon’ble High Court also vide order dated 6-9-1999. The representatives of the union said that over the years, they have not been given proper hearing in this case. When the department started action under section 33© (1) earlier, though the management was afforded opportunity of being heard on 9-10-2009 by LOCO, they did not invite the representatives of the Union. Department’s proposal to take action under section 33(c) (2) was approved by the then Labour and Employment Minister at page 39 noting. Accordingly, representatives of the union were informed vide letter dated 10-09-2010.

Not satisfied with the above action, the representatives of the Union again submitted a representation, in the context of which the proceedings were held today, as narrated above. In these circumstances, the Government may consider Union’s request to take action under section 33 © (1) of the Industrial Disputes Act. If approved, the Competent Authority (DLC) may be directed to give due hearing to the management and the representatives of the union while making calculations under section 33 © (1) of the Industrial Disputes Act 1947.

For the orders of MLE.”

22. On the basis of the said recommendations, the Deputy Labour Commissioner apparently without hearing the Management, passed an order on 25.01.2012 (Annexure P-10) which can be termed as a non-speaking order and even the State Government has not placed reliance upon it whereby it had accepted the calculations given by the Union and quantified the amount on the basis of which the writ petition had been filed. The said order can be patently called a non-speaking order which also does not take into consideration the fact that two Division Benches of this Court had already decided the issue. The relevant part of the order reads as under:

“3. The Financial Commissioner Labour Department vide order dated 23/6/2011, which was approved by the Hon’ble Labour Minister, Government of Haryana that in the order dated 6/9/1999, the Hon’ble Punjab & Haryana High Court had observed that the management as per the settlement has to give salary of 10 years as per the settlement dated 21/6/1997, but the workers had been paid salary of 5 years only and in order to recover the balance amount and for implementation of the settlement, it directed the Union to move under Section 33-C(1) and Section 33-C(2) of the Industrial Disputes Act, 1947. The Financial Commissioner, Labour Department keeping in view the order of the Deputy Labour Commissioner, Head Office and of Joint Labour Commissioner-I, Head Office as well as the order of the Hon’ble Punjab & Haryana High Court directed me to enquire into the amount payable to the workers under Section 33-C(1) of the Industrial Disputes Act, 1947, in view of the settlement of 21/6/1997 and for issuance of the recovery certificate. He has not asked to decide any dispute. In this regard in the letters issued by the Head Office by time to time and I called both the parties for settlement talks/enquiry. In this regard, the union in its counter comments attached the certificate of the Chartered Accountant giving detailed calculation that as per the settlement of 21/6/1997, 615 workers who had been terminated were entitled to a total sum of Rs.302350781.59

(rupees thirty crores eighty three lacs fifty thousand seven hundred and eighty one and fifty nine-paisa). Whereas the company paid a sum of Rs.1541605.83 (rupees fifteen crores forty one lacs six hundred and five and eighty three paisa) and the balance amount of the workers comes to Rs.148235176.12 (Rupees fourteen crores eight two lacs thirty five thousand one hundred seventy six and twelve paisa). I have seen the calculations given by the Union and have also perused the various vouchers (the Union has prepared this detail on the basis of the Company's cash payment vouchers and final payment receipts, which has been obtained by the Union from the Labour Department, Chandigarh under Right to Information Act, 2005). I accept the same is correct and the balance amount of the workers is Rs.148235176.12 (Rupees fourteen crores eight two lacs thirty five thousand one hundred seventy six and twelve paisa). The interest at the rate of 12% on the same from 1/7/1997 to 10/1/2012 comes to Rs.406724833.37 (rupees forty crores sixty seven lacs twenty four thousand eight hundred and thirty three and thirty seven paisa). I fully understand the same and recommend issuance of recovery certificate for a sum of Rs.148235176.12 (Rupees fourteen crores eight two lacs thirty five thousand one hundred seventy six and twelve paisa).

Therefore, in this case the total balance amount of the workers comes to Rs.148235176.12 (Rupees fourteen crores eight two lacs thirty five thousand one hundred seventy six and twelve paisa) and simple interest at the rate of 12% from 1/7/1997 to 10/1/2012 comes to Rs.406724833.37 (rupees forty crores sixty seven lacs twenty four thousand eight hundred and thirty three and thirty seven paisa). I fully agree with the same and recommend issuance of a recovery certificate of the same.”

23. The State, in its reply, is also very categorical that the competent authority was the Labour Commissioner-cum-Special Secretary and the basis of the settlement and the standard discount procedure was not considered by the said officer. Relevant part of the reply reads as under:

“9. That in reply to para 9 of the writ petition, it is submitted that the Deputy Labour Commissioner, Panchkula, without considering the finality of dispute between the parties upto the Hon’ble High Court, wrongly recommended for issuance of recovery certificate against the management vide his letter dated 25.1.2012 (Annexure P-10) without making any calculations at his own level. The petitioner has admitted that the management did not produce any calculation before the Deputy Labour Commissioner meaning thereby that the investigation/report was incomplete. The fact remains that even in the calculation before the Deputy Labour Commissioner, Panchkula, the discounting formula for advance payments as per standard discounting procedure was not considered. Hence, the very basis of the settlement and the mode of payment thereunder was never taken up and therefore, the same cannot form a cause of action now.

10. That contents of para 10 of the writ petition are misleading and hence denied. The facts have been presented in a misleading manner. The competent authority to decide applications and issue recovery certificate under section 33-C(1) is the Labour Commissioner-cum-Special Secretary. Though due consideration was given to the application of the petitioner the matter was heard at the level of Financial Commissioner and a report was sought from the field officer of the rank of the Deputy Labour Commissioner, Panchkula but the final consideration of facts of the matter, to hear the parties and to finally issue or not to issue a recovery certificate under section 33-C(1) of the Industrial Disputes Act, 1947 is the quasi judicial discretion of the Labour Commissioner, Haryana. The averments of the petitioner are false and misleading regarding the calculations presented in the hearing. As a matter of fact, the calculations for two/three workers were made by the management and explained in the proceedings; and the petitioner was asked to contradict the calculations. The petitioner requested for a date to bring their own Chartered Accountant who had prepared their claims or who can contradict the calculations submitted by the management. However, on the next date, the petitioner did not bring any reply or a qualified person to contradict the calculation and came up with a new plea that the settlement was wrong in view of law laid down by the

Hon'ble Court M.C.Mehta's case. The crux of the stand taken by the petitioner is that they are bent upon going back on the settlement dated 21.6.1997 after taking the full and final payments under it which is not permissible under law; they have no right to reject the discounting clause agreed in the settlement and the standard formula for advance payment which is a essential part of the settlement particularly after accepting the payment in accordance with it."

24. Resultantly, reliance upon the said report which was passed without even hearing the Management could be termed as a non-speaking order and suffers from the vice of any reasons which are mandatory once the valuable rights of the parties are involved as laid down in **Kranti Associates Private Limited Vs. Masood Ahmed Khan, (2010) 9 SCC 496**. In the meantime, on the application filed under Section 33-C(1) of the Act on behalf of Mallah Quarry Workers Union, Panchkula, there was another rejection on 12/15.04.2023 by the Regional Labour Commissioner which order has been reproduced in para No.10 above and the ground taken was that there was no computation from the authorities as per Section 33-C(2) of the Act and therefore, liberty was given to file an application before the Presiding Officer (Central Government), Industrial Tribunal, Chandigarh which was never resorted to and the writ petition was filed. The Union has not challenged the rejection order firstly passed in the case of Mallah Quarry Workers dated 16.04.2008 (Annexure P-12) and 15.04.2013 (Annexure P-24) by the Assistant Labour Commissioner of the Central Government and the Regional Labour Commissioner which orders have thus become final. Secondly, the orders were passed on 10.09.2010 and 24.03.2011 by the State Government rejecting their claim in similar circumstances which was also not objected to. The matter on merits had been decided against them in the year 2002 on a joint petition

filed and therefore, their claim at this stage to get the issue again decided under Section 33-C(2) of the Act would not be maintainable as the judgment of the Division Bench would be binding upon them. Their claim to challenge the settlement which had been arrived at after a period of over a decade of filing repeated representations and raising an issue that the settlement had been terminated would also not give them a right to raise the bogie and linger the dispute over a unit which is long closed and the claims having been accepted by the then Union. In such circumstances, we are of the considered opinion that the workmen had entered into the settlement with open eyes and accepted the same and after having accepted the amount in lump sum, they cannot turn around and now claim that the settlement was bad.

25. While examining the provisions of Section 33-C(2) of the Act, the Apex Court in **Punjab Beverages Pvt. Ltd. Vs. Suresh Chand, 1978 (2) SCC 144** held that proceedings are in the nature of execution proceedings and the Labour Court would have to calculate the amount due to the workman from the employer which is capable of being computed in terms of money and the right must be an existing one already adjudicated upon. In **Municipal Corporation of Delhi Vs. Ganesh Razak & another, 1995(1) SCC 235** and **State Bank of India Vs. Ram Chandra Dubey & others, 2001 (1) SCC 73**, same principle was laid down. The Three Judge Bench in **State of U.P. & another Vs. Brijpal Singh, 2005(8) SCC 58** has 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 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\(2\)](#) of the I.D. Act to disregard his dismissal as wrongful and on that basis to compute his wages. It is, therefore, impossible for us to accept the arguments of Mrs. Shymala Pappu that the respondent-workman can file 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 the 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 1993 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.”

26. The said view was further followed in **U.P.State Road Transport Corporation Vs. Birendra Bhandari, 2007 (1) RSJ 1** and in **D.Krishnan & another Vs. Special Officer, Vellore Coop.S.M. & another, 2008 (8) SCR 1239**. The issue in the later case was regarding

the overtime for a specific number of hours and a similar employee had

got the benefit from the Labour Court. Separate application was filed under Section 33-C(2) of the Act for the same benefit claiming the overtime wages and an award came to be passed granting the said relief on the application moved. The learned Single Judge had also upheld the said award which was then interfered by the Division Bench of the High Court which held that in the absence of any pre-existing right, the proceedings under Section 33-C(2) of the Act were not maintainable. The said appeals were dismissed by the Apex Court by reiterating the law which has been noticed above.

27. The Apex Court in **HEC Voluntary Retired Employees Welfare Society & another Vs. Heavy Engineering Corporation Ltd. & others, (2006) 3 SCC 708** held that an offer for voluntary retirement was purely a voluntary contract entered into between the employer and the employee and having accepted the same one could not wriggle out of the same as it is proceeded by financial planning. The claim for the benefit of the revised voluntary scheme was rejected on the ground that the employer arranges its financial plan accordingly.

28. We are thus of the considered opinion that having accepted the said early separation scheme, the alleged Union cannot be permitted to wriggle out of the same at they had raised a challenge at a belated stage by filing repeated representations. The claim under Section 33-C(2) of the Act in the facts and circumstances can be computed in terms of money, has not been decided by the Labour Court, was sought to be raked up by filing a writ petition which had ultimately been decided against the petitioners themselves in a joint petition filed on 20.08.2012. Therefore, now the argument raised that they should be allowed to raise the issue

again is untenable. The purpose of the Act is to settle the dispute at the earliest and to bring industrial peace and not to create industrial and financial uncertainty by claiming fanciful amounts after the workers have legally accepted the amount.

29. Accordingly, we are of the considered opinion that there is no merit in the present set of appeals as the learned Single Judge was well justified in coming to the conclusion that the matter stood adjudicated upon by the Division Bench and it was not open to the writ petitioners to raise the issue time and again as apparently no fresh cause of action arose. Resultantly, in view of the above discussion, both the appeals are hereby dismissed. All pending application(s), if any, also stands disposed of, accordingly.

(G.S. SANDHAWALIA)
JUDGE

26th April, 2023
Sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned : Yes
Whether Reportable : Yes