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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 18.05.2023

+ W.P.(C) 3646/2022, CM APPL. 10812/2022 (stay), CM APPL. 10813/2022 (LLOD) & CM APPL. 1655/2023 (release of amount)
IRCON INTERNATIONAL LIMITED Petitioner

Through: Mr.Suman K. Doval & Mr.Hari Krishan Pandey, Advs.

versus

ASHIT SAHA Respondent

Through: Ms.Purti Marwah, Mr.Harsh Vardhan, Mr.Neeraj Kumar, Mr.Ashutosh Pandey & Mr.Shaksham Gupta, Advs.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition, preferred by the management, under Article 226 and Article 227 of the Constitution of India seeks to assail the award dated 23.11.2021 passed by the learned Labour Court in LC No.922/2016. Vide the impugned award, the learned Labour Court has directed the petitioner to pay to the respondent a sum of Rs.20,00,000/- towards the amount payable to him in satisfaction of the award dated 10.12.1999, which award has attained finality.

2. The brief undisputed factual matrix as emerging from the record is that the respondent, who was working as a French Translator with the petitioner from 05.02.1982, was retrenched on 31.07.1990. Being aggrieved

by his retrenchment, which he perceived to be illegal, the respondent raised an industrial dispute which was referred for adjudication to the Labour Court on 08.01.1993. Based on the evidence led by the parties, the learned Labour Court passed an award on 10.12.1999 holding therein that the retrenchment of the respondent from service was illegal and unjustified. The respondent was consequently directed to be reinstated with continuity of service and full back wages, which amount was to be paid by adjusting the amount already paid to him in terms of the interim award dated 12.05.1994. The award dated 10.12.1999 was unsuccessfully challenged by the petitioner before this Court and thereafter before the Apex Court not only by way of a Special Leave Petition but also by way of a review petition before this Court.

3. It is only after the dismissal of its review petition that the petitioner proceeded to reinstate the respondent on 12.09.2011 and paid some amount towards his back wages. However, being unsatisfied with the amount paid to him, the respondent made representations to the petitioner for release of the balance amount payable to him in terms of the award. As these representations remained unanswered, the respondent on 15.02.2014, preferred an application under Section 33C (2) of the Industrial Disputes Act (the Act), claiming therein the increments and revision of pay for the period he stood illegally retrenched. It was pleaded that once the petitioner was directed to reinstate him not only with continuity of service but also with full back wages, the natural consequence thereof was that the respondent was entitled to receive full back wages for the period he remained out of service by including the benefits of all periodic increments and pay revision as extended to his contemporaries, who continued to be in service. Along with his application, the respondent also filed a detailed computation before the

learned Labour Court according to which the balance amount payable to him was Rs. 21,55,631/-.

4. In its reply submitted before the learned Labour Court, the petitioner took a plea that a sum of Rs.59,01,214/- having been paid to the respondent towards his back wages, no further amounts were payable to him as he was not entitled to receive the benefits of the increments for the period he remained out of service. It was further urged that since the award had not quantified the amount payable to the respondent, an application under Section 33C (2) of the Act was not maintainable. It was also urged that the application, having been filed after more than 14 years of the date of the passing of the award and two and a half years from the date of his reinstatement, the same was barred by limitation and liable to be dismissed on this ground alone. It was, therefore, urged that no further amounts were payable to the respondent who had already been reinstated in service. The petitioner, however, did not dispute the fact that if the benefits of the increments were to be granted to him, the amount as claimed by the respondent would be payable to him.

5. Upon consideration of the rival submissions of the parties, the learned Labour Court rejected all objections of the petitioner and vide its impugned award dated 23.11.2021, directed the petitioner to pay a sum of Rs.20,00,000/- to the respondent towards his balance unpaid wages.

6. Being aggrieved, the petitioner has approached this Court by way of the present petition.

7. Before this Court, learned counsel for the petitioner has primarily reiterated the same submissions as were made before the learned Labour Court. He has, therefore, contended that the learned Labour Court failed to

appreciate that the award dated 10.12.1999 did not grant any consequential benefits to the respondents but limited the relief to continuity of service and full back wages. By placing reliance on two decisions of the hon'ble Apex Court in *APSRTC vs. S. Narsagaud* (2003) 2 SCC 212 and *Deepali Gundu Surwase vs Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and ors* (2013) 10 SCC 324, he has vehemently urged that there is a difference between grant of consequential benefits and continuity of service to a workman. In the present case, since the respondent was granted only continuity of service and not consequential benefits, he has rightly not been extended the benefits of the increments. He has also placed reliance on the decision of a Division Bench of this Court in *Mahabir Prasad vs Delhi Transport Corporation* 2014 SCC OnLine Del 3757 and the decision of a Coordinate Bench of this Court in *W.P.(C) 10809/2020* titled *M/S Garrison Engineer (Central) Delhi Cantt vs M J Prasad and ors.* to contend that nothing further is payable to the respondent as he has already received a huge amount towards back wages.

8. He further submits that the learned Labour Court also failed to appreciate that the jurisdiction under Section 33C (2) of the Act is limited and an award thereunder can only be passed when the amount payable under the award is pre-determined. He finally submits that Section 33C(2) provides only a period of three months after the passing of the award for approaching the Labour Court to seek any relief payable to the workman under the award. The respondent, having approached the learned Labour Court after two and a half years from the date of his reinstatement, the application under Section 33C(2) of the Act being barred by limitation was liable to be rejected. He, therefore, prays that the petition be allowed and the

impugned award be set aside.

9. On the other hand, Ms.Marwah, learned counsel for the respondent seeks to defend the impugned award by contending that even though the respondent was entitled to receive a sum of Rs.21,55,631/- from the petitioner towards his unpaid back wages, the learned Labour Court has directed the petitioner to pay only a sum of Rs. 20,00,000/- and therefore infact it is the respondent who is aggrieved with this direction in the award. She further submits that once the petitioner was directed to grant continuity of service to the respondent, it was evident that all due increments had to be granted to him in time and thereafter the back wages were to be computed by taking into account these increments. Once the respondent is to be treated as having been in service all throughout, the petitioner cannot deny the benefits of increments, which were extended to all his contemporaries.

10. She further submits that the petitioner's plea that the application, as preferred by the respondent before the Labour Court, was not maintainable under Section 33C(2), is wholly misconceived. By placing reliance on the decision of this Court dated 19.11.2019 tiled in **WPC(C) 12376/2018** titled **Delhi Society for Prevention of Cruelty to Animal vs Joint Labour Commissioner and Ors**, she submits that an application under Section 33C(2) would be maintainable in a situation where the workman claims an amount or benefit under the award, the quantum of which amount is yet to be computed. Furthermore, in the present case, there is no dispute regarding the quantum as the petitioner never disputed the detailed calculations submitted by the respondent before the labour Court but merely took the plea that he was not entitled to receive the benefit of increments for the period during which he remained out of service.

11. Finally, she submits that even the petitioner's plea that there was delay on the part of the respondent in approaching the learned Labour Court by way of the application is meritless. The respondent having been reinstated only on 12.09.2011, had made repeated representations to the petitioner and it is only when these remained unanswered that he was compelled to approach the learned Labour Court. By placing reliance on the decision of a Division Bench of this Court in **LPA 148/2017** titled **Atul Kanti Tripathi vs Kuber Media Ltd**, she contends that the period of two and a half years in moving the application under Section 33C(2) could not be said to be barred by limitation or hit by any delay or laches. She therefore prays that the writ petition be dismissed.

12. Having considered the submissions of learned counsel for the parties and perused the record, I find absolutely no merit in the petition despite the able assistance extended by Mr. Suman Doval. In order to appreciate the rival submissions of the parties, it would be apposite to note the relevant findings of the learned Labour Court in respect of all the three pleas raised by the petitioner, which as noted hereinabove are identical to those raised before the learned Labour Court.

13. I may therefore first note the findings of the learned Labour Court on the first issue as to whether under the impugned award, the respondent was entitled to receive the benefits of increments for the period during which he remained out of service. The relevant findings of the impugned award read as under:

“27. The bone of contention in between the parties to the present application is as to whether the workman was entitled for annual increments and all other benefits which were given by the management to the similarly situated

employees as has been claimed by the workman or as to whether the workman was not entitled for annual increments and all other consequential benefits as the same were not specifically given to the workman in the award dated 10.12.1999 as has been claimed by the management.

28. The first limb of the arguments advanced by the management is that the award dated 10.12.1999 does not specifically state that the workman was entitled for reinstatement with all consequential benefits and since the increments were not earned by the workman, because he was off duty, the workman was not given annual increments etc.

29. It has to be seen that the management in clear cut and unequivocal terms, though tacitly, has admitted that annual increments which were given to the similarly situated employees were not given to the workman even after his reinstatement on 12.09.2011. I am of the opinion that the entire controversy revolves around the interpretation of the award dated 10.12.1999 passed by the Ld. Predecessor of this court. It has to be seen that the Ld. Predecessor of this court in the award dated 10.12.1999 has categorically held that the retrenchment/termination of the services of the workman by the management was illegal and unjustified and the workman was entitled to reinstatement to the job with continuity of services and full back wages.

30. I am of the opinion that the language used by the Ld. Predecessor of this court in the award dated 10.12.1999 is quite explicit and there is no scope of ambiguity in the interpretation of the operative part of the award dated 10.12.1999. The Ld. Predecessor of this court has specifically stated in black and white that the workman was entitled for reinstatement to the job with continuity of services and full back wages. The "term" used is full back wages and not merely wages as has been claimed by the management. I am of the opinion that the abovesaid submission of the management is not sustainable and tenable at all.

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33. In the light of the abovesaid discussion and the ratio of the abovesaid judgments, I am of the opinion that the management has wrongly interpreted the award dated 10.12.1999 and the management was not justified in not granting the annual increments etc. to the workman."

14. I may now refer to paras 34 and 36 of the impugned award wherein the learned Labour Court dealt with the petitioner's objection regarding maintainability of the application on the ground that computations were required to be made. The same read as under:

" 34. The second submission of the management is that this court while acting U/S 33-C (2) of the ID Act cannot calculate the amount payable to the workman as there is no decision qua the prior entitlement of the workman. I am of the opinion that the abovesaid argument of the management is absolutely fallacious and the same is not tenable at all. It has to be seen that in the authority cited as 2008 (1) ILR (Rajasthan) 589 titled as Vikas Adhikari, Panchayat Samit V s. Labour Court & Drs. The Hon'ble High Court of Rajasthan has held in Para No. 19 as under:

""As regards challenge to the validity of the order passed by the Labour Court under Section 33C(2) of the Industrial Disputes Act, in my opinion, the proceedings is in the nature of execution proceedings and, as per the language of Section 33C(2) itself, any undisputed amount arising out of any award may be claimed by the workman. Obviously, in the present matter, effect and operation of the impugned award was not stayed, therefore, the Labour Court has rightly exercised jurisdiction while passing order on the workman's application moved under Section 33C(2) . of the Industrial Disputes Act. Hence no interference is required in the order dated 19.07.2004 also"".

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36. Now, going by the ratio of the abovesaid two authorities, it is apparently clear that the entitlement of the workman has already been decided in the award dated 10.12.1999. It necessarily means that the workman is entitled to all the monetary benefits, had he been continued in services. As such, to my mind, the workman is fully entitled to file the present application U/S 33-C (2) of the ID Act and the above said submission of the management does not hold much water. ”

15. Finally, I may also refer to para 38 of the award wherein the learned Labour Court rejected the petitioner’s plea that the application filed by the respondent was barred by limitation. The same reads as under:

“38. It has already been discussed that the management preferred a number of Writ Petitions, LPAs and even the SLPs before the Hon’ble High Court of Delhi and the Hon’ble Supreme Court of India against the award dated 10.12.1999 and ultimately, the award dated 10.12.1999 became final after several rounds of litigation. Despite the award dated 10.12.1999, the workman was allowed to join the duties only on 12.09.2011. Thereafter, the workman gave several representations to the managements, such as representations dated 12.10.2011, 12.11.2011, 11.01.2012 and 26.07.2012 Ex.CW1/C to Ex.CW11F respectively on record. The abovesaid representations have not been denied by the management. Even in the reply, the management has not denied that annual increments etc. were not given by the management to the workman. As such, I am of the opinion that in the entirety of the facts and circumstances, it cannot be said that the present application U/S 33-C (2) of the ID Act is barred by the Proviso of Section 33-C (1) of the ID Act.”

16. Having noted the relevant extracts of the impugned award, I may also note that in the present case the parties are in fact *ad idem* that the respondent was granted not only reinstatement with full back wages but also

continuity of services. Even though, learned counsel for the petitioner is correct in urging that there is a difference between grant of continuity of service and consequential benefits, the fact remains that in the present case, not only has the respondent been granted continuity of service but also full back wages. Continuity of service, would necessarily imply that the employee has to be treated as having been in service all throughout and therefore has to be extended the benefits of all increments for the said period; this however, would not *per se* imply that he would be entitled to receive full wages for the said period. It is only if the employee is specifically granted consequential benefits or back wages that he would be entitled to claim those consequential benefits or back wages alongwith increments. As noted herein above, in the present case, the respondent has been granted not only continuity of service but also full back wages and therefore, the necessary fall out of the said direction would be that the respondent would be entitled to receive salary alongwith benefits of the increments for the period he remained out of service between 01.08.1990 and 11.09.2011, which includes the period before the passing of the award dated 10.12.2019 as also after the passing of the award.

17. I have considered the decision relied upon by the petitioner in *S. Narsagaud (supra)*, but find that the same is not applicable to the facts of the present case. In the said decision, the hon'ble Apex Court was dealing with a situation where a workman who had remained on unauthorised leave for a long period of time was claiming the benefit of increment for the said period of unauthorized leaves which, the Court found, was specifically barred under para 13(8) of the Regulations of the employer therein.

18. I have also considered the decision in *Deepali Gundu (supra)*, relied

upon by the petitioner, but find that the same does not deal with the issue raised in the present case. In the said decision, the Apex Court laid down the principles to be followed while exercising discretion in the matter of granting relief to a workman whose termination is held to be illegal.

19. I have also considered the decision in ***Mahabir Prasad (supra)*** and find that the said decision, instead of forwarding the case of the petitioner supports the respondent's plea. It will therefore be appropriate to refer to para 21 of the said decision which reads as under:-

“21. Consequently, it is held that the direction to grant continuity meant that the petitioner had to be given notional increments for the duration he was out of employment, in the grade and the equivalent grade which replaced it later, till he reached the end of the pay scale. Since there is no direction to give consequential benefits, the petitioner cannot claim promotion as a matter of right; it would have to be in accordance with the rules. ACP benefits however, should be given. The notional pay fixation would also mean that he would be entitled to reckon the period between his removal and reinstatement as having been in employment for pension, gratuity, and contributions to provident fund etc. This Court directs the DTC to issue an order extending these benefits to the petitioner for the 15 year period between his dismissal in 1995 and his eventual reinstatement in 2011, within eight weeks from today. The writ petition is allowed in these terms; there shall be no order as to costs.”

20. From a perusal of the aforesaid extracts from the said in ***Mahabir Prasad (supra)***, it is evident that the Division Bench specifically observed that once continuity of service is granted to an employee, he has to be given notional increment for the duration he was out of employment. In the present case, this is exactly what the respondent is claiming and has been

awarded to him by the learned Labour Court. Similarly, the decision in *Garrison Engineer (supra)* is also not applicable to the facts of the present case as in the said case the Court was dealing with a situation where though the workman had sought continuity of service and all consequential benefits, the learned Labour Court had granted him only reinstatement with 50% back wages and no other relief. I, therefore, find no merit in the petitioner's contention that the respondent was not entitled to receive the benefits of the increments for the period he remained out of service.

21. Now coming to the petitioner's second plea that in a case like the present where the quantum of the benefits/arrears payable to the respondents was required to be determined by the Labour Court, would not fall within the ambit of 33C (2). This plea is noted only to be rejected. As held in *Delhi Society for Prevention of Cruelty to Animal (Supra)*, the scope of Section 33C (2) of the Act is different from 33C (1) wherein an application would lie before the Labour Commissioner where the quantum is already pre-determined. Under Section 33C(2), an application would lie to the Labour Court even in a case where though the question of entitlement of benefits to the workman stands decided in his favour, the quantum thereof is yet to be determined. Furthermore, as already noted herein above, before the Labour Court, the petitioner never disputed the calculations filed by the respondent alongwith his application under Section 33C (2) of the ID Act. The only stand taken by the petitioner before the learned Labour Court as also before this Court has been that since consequential benefits were not granted in favour of the respondent, notional benefits as a result of the increments could not be granted to him. I, therefore, do not find any merit in the petitioner's plea that the application as filed by the respondent was not

maintainable.

22. Now coming to the petitioner's final plea regarding the respondent's application under Section 33C (2) of the Act being barred by limitation. Even though learned counsel for the petitioner by relying on the provisions of Section 33C (2) of the Act, vehemently urges that such an application can be filed only within three months from the passing of the award of which execution has been sought, I am unable to agree with the said submission

23. For the sake of completeness, Section 33C(2) is being noted herein below:

“Section 33C(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;¹ 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.”

24. A bare perusal of the aforesaid provision shows that the period of three months as envisaged under Section 33C(2) of the Act is meant as a guiding factor for the learned Labour Court to expeditiously decide an application under Section 33C(2) of the Act. This period of three months, in my opinion, is prescribed not for filing of an application but for deciding of an application. In this regard, reference may also be made to decision of this Court in **Atul Kanti Tripathi (supra)** relied upon by the respondent wherein the Division Bench found an application filed within three years from the

date of filing of the claim to be within limitation.

25. For the aforesaid reasons, I find no infirmity with the impugned award. The writ petition being meritless is dismissed.

26. Since the petitioner has already deposited the awarded amount with the Registrar General of this Court, the Registry is directed to release the said amount in favour of the respondent alongwith accrued interest thereon.

(REKHA PALLI)
JUDGE

MAY 18, 2023

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