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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 15.02.2023

Pronounced on: 17.03.2023

+ **W.P.(C) 4387/2010**

DINESH KUMAR & OTHERS

..... Petitioner

Through: Mr. Sandeep Kumar
Srivastava and Mr. Dinesh
Kumar, Advocates.

versus

C.P.W.D. & OTHERS

..... Respondents

Through: Mr. Vivekanand Mishra and
Mr. Aayushmaan, Advocates
for respondent No. 1/ CPWD.

Mr. Rishikesh Kumar and Mr.
Aditya Raj, Advocates for
respondent/ GNCTD.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The Petitioners/Workmen in the present writ Petition are assailing the Award dated 12.12.2005 passed by the Presiding Officer, Industrial Tribunal cum Labour Court-II, Rajendra Bhawan, Ground Floor, Rajendra Place, New Delhi, in LCA No.13/2001 ("*impugned award*").
2. Learned Labour Court, vide the impugned Award, was pleased to dismiss the Application filed by the Petitioners/Workmen under

Section 33(C)(2) of the Industrial Disputes Act, 1947 (“**ID Act**”) holding that the real and final liability to pay the wages of the Petitioners/Workmen was of their employer, i.e., the contractors. However, the Petitioners/Workmen failed to implead the contractors as a party to the proceedings before the learned Labour Court and therefore, the learned Labour Court dismissed the said application filed by the Petitioners/Workmen under Section 33 (C)(2) of the ID Act.

FACTS RELEVANT FOR THE CONSIDERATION OF THE PRESENT WRIT PETITION:

3. The Petitioners/Workmen were engaged as Chowkidars w.e.f. 1993 through Respondent Nos.3 to 10 (Contractors) to provide the security services at various premises of Respondent No.1/ Management. It is the case of the Petitioners/Workmen that they were not paid as per the Minimum wages Act for the period 1st of August 1991 to 2001.
4. In view of the same, the Petitioners/Workmen, in the year 2001, filed an Application under Section 33(C)(2) of the ID Act before the learned Labour Court claiming a sum Rs. 9,31,359/- towards their entitlement under the Minimum Wages Act. It is pertinent to mention here that Respondent Nos. 3 to 10 were not party before the learned Labour Court.
5. Respondent No.1/Management filed their written statement before the learned Labour Court raising the preliminary objection that the Claims filed by the Petitioners/Workmen were barred by

limitation. Respondent No.1/Management further averred that the Petitioners/Workmen have already filed W.P(C) no. 2131/2000 before this Court for the release of the balance payment towards their wages and hence the Application filed by the Petitioners/Workmen were barred by constructive res judicata. On merits, it was contended that there was no employer-employee relationship between the Respondent No.1/Management and the Petitioners/Workmen. It was the case of Respondent No.1/Management that the Petitioners/Workmen were engaged through different contractors and hence without impleading the said contractors as party to the present proceedings, it is not possible to verify the wages paid to the Petitioners/Workmen.

6. Learned Labour Court based on the evidence adduced by the parties, rejected the Application filed by the Petitioners/Workmen under Section 33 (C) (2) of the ID Act. Learned Labour Court observed that during the 10 year period, the Petitioners/Workmen were working under various contractors. The wages of the Petitioners/Workmen were paid by these Contractors. However, the said Contractors were not impleaded as a party to the proceedings before the learned Labour Court. In view of the same learned Labour Court rejected the Petitioners/Workmen's application under Section 33 (C) (2) of the ID Act by holding that without impleading the

Petitioners/Workmen's employers, i.e., the contractors, it is not possible to ascertain if there is any outstanding amount.

7. Being aggrieved by the impugned Award, the Petitioners/Workmen preferred the present Writ Petition. In the present Writ Petition, the Petitioners/Workmen impleaded the contractors as Respondent Nos.3-10. Despite service, there was no appearance on behalf of Respondent Nos.3-10 (Contractors) in the present proceedings.

SUBMISSIONS ON BEHALF OF THE PETITIONERS/WORKMEN.

8. Learned counsel for the Petitioners/Workmen submits that Respondent No.1/ Management was the principal employer of the Petitioners/Workmen. Respondent No.1/ Management was engaging the Petitioners/Workmen through contractors in violation of the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 ("**CLRA Act**"). Learned counsel for the Petitioners/Workmen further submits that the Petitioners/Workmen were working as Chowkidars at Respondent No.1/ Management's office w.e.f. 01.08.1991 onwards. However, they were not paid according to the Minimum Wages Act, 1948.
9. Learned counsel for the Petitioners/Workmen further submits that the Petitioners/Workmen were working under the direct control of the officers of Respondent No.1/ Management. Hence, Respondent No.1/ Management was duty bound to make the payment to the Petitioners/Workmen as per Section 21 (4) of the

CLRA Act. However, the learned Labour Court failed to appreciate this fact and rejected the Application filed by the Petitioners/Workmen under Section 33 (C) (2) of the ID Act.

10. In view of these submissions, the learned Counsel for the Petitioners/Workmen prayed for setting aside of the impugned Award.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

11. Learned counsel for Respondent No.1/Management argues in support of the impugned Award. Learned counsel submits that there was no employer-employee relationship between the Petitioners/Workmen and Respondent No.1/ Management. The Petitioners/Workmen were working under various contractors during the period from 1991 to 2001. Hence, without verifying the exact amount paid to each of the Petitioners/Workman by the said Contractors, it is not possible to ascertain if there was any actual outstanding amount payable.

12. Learned counsel for Respondent No.1/Management further submits that the proceedings initiated by the Petitioners/Workmen were barred by limitation. The Petitioners/Workmen were claiming payment of minimum wages from the year 1991, however, they have raised this claim for the first time in the year 2001.

13. With these submissions, learned counsel for Respondent No.1/ Management prays for the dismissal of the present Writ Petition.

LEGAL ANALYSIS.

14. This Court heard the arguments advanced by the learned counsel for the parties and perused the documents on record and Judgments relied upon by the parties.
15. The issue raised for the judicial consideration of this Court is whether the claim of the Petitioners/Workmen claim under Section 33 (C) (2) of the ID Act can be maintained against the principal employer without impleading the contractors as party.
16. Before advertng to the rival contentions of learned counsel for the parties, this Court deems it appropriate to examine Section 33 (C) (2) of the ID Act. Section 33 (C) of the ID Act, reads as follows:

“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 of³[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 peri

(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;⁴[within a period not exceeding three month

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

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Explanation.--In this section Labour Court includes any court constituted under any law relating to investigation and settlement of industrial disputes in force in any State.

17.Hence, from the plain reading of Section 33 (C)(2) of the ID Act,
it is evident that the said section will get attracted when:

- (i) the workman is entitled to receive from the employer any money/any benefit which is capable of being computed in terms of money;
- (ii) a question arises regarding the amount of money due/ the amount at which such benefit should be computed

In such circumstances, the question as to what amount is due to the workman can be decided by Labour Courts under Section 33 (C) (2) of the ID Act.

18. The Hon'ble Supreme Court has examined the ambit of Section 33 (C) (2) of the ID Act in the matter ***Central Bank Of India Vs P.S Rajagopalan*** reported as ***1964 (3) SCR 140*** . The relevant portion, reads as follows:

"16. Let us then revert to the words used in Section 33C(2) in order to decide what would be its true scope and effect on a fair and reasonable construction. When sub section (2) refers to any workman entitled to receive from the employer any benefit there specified, does it mean that he must be a workman whose right to receive the said benefit is not disputed by the employer? According to the appellant, the scope of subsection (2) is similar to that of sub section (1) and it is pointed out that just as under sub section (1) any disputed question about the workmen's right to receive the money due under an award cannot be adjudicated upon by the appropriate Government, so under sub section (2) if a dispute is raised about the workmen's right to receive the benefit in question, that cannot be determined by the Labour Court. The only point which the Labour Court can determine is one in relation to the computation of the benefit in terms of money. We are not impressed by this argument. In our opinion, on a fair and reasonable construction of sub section (2) it is clear that if a workman's right to receive the benefit is disputed that may have to be determined by the Labour Court. Before proceeding to compute the benefit in terms of money the Labour Court inevitably has to deal with the question as to whether the workman has a right to receive that benefit. If the said right is not disputed, nothing more needs to be done and the Labour Court can proceed to compute the value of the benefit in terms of

money; but if the said right is disputed, the Labour Court must deal with that question and decide whether the workman has the right to receive the benefit as alleged by him and it is only if the Labour Court answers this point in favour of the workman that the next question of making necessary computation can arise. It seems to us that the opening clause of subsection (2) does not admit of the construction for which the appellant contends unless we add some words in that clause. The Clause "Where any workman is entitled to receive from the employer any benefit" does not mean "where such workman is admittedly, or admitted to be, entitled to receive such benefit." The appellant's construction would necessarily introduce the addition of the words "admittedly, or admitted to be" in that clause, and that clearly is not permissible. Besides, it seems to us that if the appellants construction is accepted, it would necessarily mean that it would be at the option of the employer to allow the workman to avail himself of the remedy provided by sub section (2), because he has merely to raise an objection on 'the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour Court to entertain the workman's application. The claim under s. 33 C (2,) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by sub section (2). As Maxwell has observed "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution. We must accordingly hold that sub section 33C (2) takes within its purview cases of workmen who claimed that the benefit to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers incidentally, it may be relevant to add that it would be somewhat odd that under sub-s. (3), the Labour Court should have been authorised to delegate the work of computing the money value of the benefit to the Commissioner if the determination of the said question was the only task assigned to the Labour Court under sub section (2). On the other hand, sub section (3) becomes intelligible if it is held that what can be assigned to the Commissioner includes only a part of the assignment of the Labour Court under sub section (2)."

19. Hence, from the law laid down by the Hon'ble Supreme Court, it is evident that under Section 33(C)(2) of the ID Act, the

Industrial Tribunal can adjudicate upon the entitlement of the workman to receive benefit in terms of money. Once the said entitlement is determined, the same can be executed by issuance of the necessary recovery certificates.

20. Based on the settled position of law, now this Court would proceed to examine the facts of the present case. It is an admitted position that the Petitioners/Workmen were employed through contractors. Their wages were paid by the contractors. Respondent No.1/ Management was the principal employer. It is the case of the Petitioners/Workmen that they were not paid the wages as per the Minimum wages Act for the period 1991-2001. All the records qua the payment made to the workman was in the power and possession of the employer of the Petitioners/Workmen, i.e. the contractors. Respondent No.1/ Management being the principal employer is not obliged under law to maintain such records. Further the Petitioners/Workmen never raised any objection qua non payment of minimum wages at the relevant time. The Petitioners/Workmen raised this dispute for the first time after only in the year 2001. Further, no records were placed on record to prove the actual amount received by each of the workmen. Hence, in order to adjudicate on the entitlement of the Petitioners/Workmen and to compute the said entitlement, the employers of the Petitioners/Workmen i.e., the contractors were a necessary party to the dispute. Once the said entitlement is determined, it will be the primary liability of their employers,

i.e., the contractors, to make the said payment. If the employers of the Petitioners/Workmen failed to make the said payment, the said amount can be recovered from Respondent No.1/ Management under Section 21 (4) of the CLRA Act. In case Respondent No.1/ Management provides for the payment under Section 21 (4) of the CLRA Act, they can recover the said amount from the contractors. Therefore, for the proper determination of the entitlement of the Petitioners/Workmen, the said contractors were a necessary and proper party.

21.Learned Labour Court examined this aspect in detail in the impugned Award, and held as follows:

“The applicants have demanded Rs. 9,31,35/- but they have not filed any document to establish the fact that they have not been paid minimum wages or they have been paid less wages. Their claim cannot be ascertained as the contractors against whom they worked are no longer under the respondents. The applicants have also failed to prove that the contractors have made less payment or they have not been paid minimum wages. They might have been paid full wages by the contractors and in that case the respondents cannot be compelled to make payment of less wages again as they cannot recover the same from the contractors who might have paid then their full wages. The application is not time barred but it is difficult to ascertain as to what amount was due in the absence of the documents of payment. It is true that the applicants are entitled to get Minimum Wages but they should have made the different contractors a party to the application. The real and the final liability is of the contractors but the contractors have not been heard in this case. Any amount paid is finally to be realized from the contractors and no order for payment can be made without hearing the contractors. The rule of natural justice enjoins that none should be condemned unheard. The different contractors have not been impleaded and they have not been given opportunity to disprove the demand of the applicants.

No documents regarding payment made have filed by the claimants. Their claim fails on this count alone”.

22.The learned Labour Court passed the impugned Award based on the evidence adduced by the parties. It is a well settled principle of law that the jurisdiction of this Court is limited while examining the Award passed by the Industrial Tribunal. The Hon’ble Supreme Court in India in the matter of ***Overseas Bank Vs I.O.B Staff Canteen Workers Unions &Anr*** reported as **2000(4) SCC 245**, held as follows:

“The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally re- appreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a Tribunal, presided over by a Judicial Officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can be reasonably and possibly be taken.....”

23.In the present case, the learned Labour Court’s decision was based on the well-settled principle of law. This Court is of the considered opinion that there is no perversity or illegality in the impugned Award which requires the interference of this Court under Article 226 & 227 of the Constitution of India.

24. In view of the detailed discussions herein above, the present Writ Petition is dismissed. No order as to costs.

GAURANG KANTH, J.

MARCH 17, 2023

