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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) 9382/2018 and C.M. No. 36369/2018**

ARUN RAI AND ORS.

..... Petitioners

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

versus

CENTRAL PUBLIC WORKS DEPARTMENT
THROUGH ITS DIRECTOR GENERAL OF
WORKERS AND ORS.

..... Respondents

Through: Mr. Rishikesh Kumar and Mr.
Aditya Raj, Advocates for
respondent No. 1-3/ 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 impugned Award dated 12.04.2018 passed by the Presiding Officer, Labour Court-V, Dwarka Courts in ID No.1610/2016. (***"impugned award"***)
2. Learned Labour Court, vide the impugned Award, was pleased to hold that the Petition filed by the Petitioners/Workmen under Section 33 (C)(2) of the Industrial Disputes Act, 1947 (***"ID Act"***)

was not maintainable against Respondent Nos.1-3/Management. In view of the said finding, learned Labour Court disallowed the claim of the Petitioners/Workmen to recover the back wages from Respondent Nos.1-3/ Management.

FACTS RELEVANT FOR THE CONSIDERATION OF THE PRESENT WRIT PETITION:

3. The Petitioners/Workmen approached the learned Labour Court under Section 33 (C)(2) of the ID Act, claiming that they were employed by Respondent Nos.1-3/ Management through Respondent No.4/Contractor since 1994. The Petitioners/Workmen claimed that writ Petition, W.P(C) No. 7193/2000 was pending before this Court wherein the Petitioners/Workmen were seeking the relief of regularization of their services. This Court also granted a stay with respect to termination of the services of the Petitioners/Workmen. However, Respondent Nos.1-3/ Management terminated the services of the Petitioners/Workmen w.e.f. 11.10.2004 and did not pay the wages for the period 01.09.2004 to 10.10.2004 to the Petitioners/Workmen. Aggrieved by such action of Respondent Nos.1-3/ Management, the Petitioners/Workmen filed the Petition under Section 33 (C) (2) of the ID Act seeking relief of continuity of employment and for payment of backwages and further wages.
4. Subsequently, the Petitioners/Workmen made a statement dated 23.02.2018 before the learned Labour Court and withdrew their claim qua the relief of declaration related to continuity in

employment and limited their claim to the relief of back wages and further wages.

5. Respondent Nos.1-3/Management filed their written statement contending that there was no employer-employee relationship between the Petitioners/Workmen and Respondent Nos.1-3/Management. The contract for the security services was awarded to the Respondent No.4 Contractor through tendering process and the payment for undertaking the said security services was paid to Respondent No.4/Contractor. Therefore, Respondent Nos.1-3/Management was not responsible for the payment of back wages and further wages as claimed by the Petitioners/Workmen.
6. Respondent No. 4 (M/s. Jai Jawan Security Agency) failed to appear before the learned Labour Court despite service. Hence, Respondent No.4 was proceeded *ex-parte* by the learned Labour Court.
7. Based on the evidence adduced by the parties, Learned Labour Court framed the following issues:

- “1. Whether the Petition under Section 33 (C) (2) of the Act was maintainable against the Respondent Nos.1-3?
2. To what amount, if any, the Petitioner is entitled from the Respondent No.1 to 3 and or Respondent No.4?
3. Relief?”

8. In order to substantiate their Claim, the Petitioners/Workmen stepped into the witness box as WW-1 to WW-4 and placed on record the documents WW-1/1 to WW-1/8 and the attendance register as Mark A. On behalf of Respondent Nos.1-3/Management, Mr. A.K Soni, Executive Engineer was examined

as MW-1. He proved on record the contract between Respondent Nos.1-3/Management and Respondent No.4.

9. Learned Labour Court based on the evidence adduced by the parties, held that there was no employer-employee relationship between Respondent Nos.1-3/Management and the Petitioners/Workmen. In view of the said findings, learned Labour Court held that the Petitioners/Workmen are not entitled to recover any amount from Respondent Nos.1-3/Management and dismissed the Petition filed by the Petitioners/Workmen under Section 33 (C) (2) of the ID Act.

10. Being aggrieved by the impugned Award, the Petitioners/Workmen preferred the present Writ Petition. Despite service, there was no appearance on behalf of Respondent No.4/Contractor in the present proceedings.

SUBMISSIONS ON BEHALF OF THE PETITIONERS/WORKMEN.

11. Learned counsel for the Petitioners/Workmen submits that the Respondent Nos.1-3/ Management was the principal employer of the Petitioners/Workmen. Respondent Nos.1-3/ Management was engaging the Petitioners/Workmen through contractors in violation of Contract Labour (Regulation & Abolition) Act, 1970 (“*CLRA Act*”). Learned counsel for the Petitioners/Workmen further submits that the Petitioners/Workmen was working as Chowkidars at the office of Respondent Nos.1-3/ Management

since 1994. However, they have not been paid any back wages and further wages.

12. Learned counsel for the Petitioners/Workmen further submits that the Petitioners/Workmen was 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.

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

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

14. Learned counsel for Respondent Nos.1-3/Management argues in support of the impugned Award. Learned counsel submits that there was no employer-employee relationship between the Petitioners/Workmen and Respondent Nos.1-3/ Management. The Petitioners/Workmen were working under various contractors since 1994. The payment of wages was the responsibility of Respondent No.4/Contractor. The Petitioners/Workmen never complained about the non-payment of wages. Since there was no employer-employee relationship between the parties, Respondent Nos.1-3/Management cannot be held responsible for non-payment of backwages and further wages.

15. With these submissions, learned counsel for Respondent Nos.1-3/Management prays for dismissal of the present Writ Petition.

LEGAL ANALYSIS

16. This Court heard the arguments advanced by the learned counsels for the parties and perused the documents on record and Judgments relied upon by the parties.

17. The issue raised for the judicial consideration of this Court is whether the Petitioners' claim under Section 33 (C) (2) of the ID Act is maintainable against Respondent Nos.1-3/Management.

18. 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 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;⁴ [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

(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.

19. Hence from a plain reading of Section 33 (C)(2) of the ID Act it is evident that the provision 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 as to the amount of money due/ as to the amount at which such benefit should be computed

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

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

"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 sub section (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 sub section (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).”

21. It is therefore evident from the aforesaid, that under Section 33(C)(2) of the ID Act, the Industrial Tribunal can adjudicate upon the entitlement of the workman to receive the benefit in terms of money. Once the said entitlement is determined, the same can be executed by issuance of the necessary recovery certificates.

22. 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 were employed through Respondent No.4/Contractor. Their wages were paid by Respondent No.4/Contractor. Respondent Nos.1-3/ Management was the principal employer. It is the case of the Petitioners/Workmen that they were not paid backwages and further wages. The time period of non-payment was not specified. They never complained about the non-payment of wages before the filing of the Petition under Section 33 (C)(2) of the ID Act. Respondent Nos.1-3/ Management being the principal employer made the necessary payment to Respondent No.4/Contractor as per the terms and conditions of the contract between the parties.

23. Under CLRA Act, the liability of the Respondent Nos.1-3/Management gets triggered after the determination of the

entitlement of the Petitioners/Workmen. In the present case, Petitioners/Workmen failed to prove that they are entitled for back wages and future wages. Even after the said determination, it will be liability of the employer of the Petitioners/Workmen, i.e., Respondent No.4/Contractor, to make the said payment. If the employer of the Petitioners/Workmen, i.e., Respondent No.4/Contractor fails to make the said payment, the said amount can be recovered from Respondent Nos.1-3/ Management under Section 21 (4) of the CLRA Act. Respondent Nos.1-3/ Management, in that case, can recover the said amount from the employer of the Petitioners/Workmen, i.e., Respondent No.4/Contractor.

24.The learned Labour Court examined this aspect in detail in the impugned Award and held as follows:

“ 22. Now coming to the question of backwages, as claimed in para no.6 of the petition, it is relevant to mention that for the purpose of seeking even the said amount, the first and foremost requirement on the part of the claimants was to prove that they were ever employed by the-management Nos.1-3 through management no.4.

23.Though the management no.4 was proceeded ex parte, that did not dilute the responsibility on the part of the claimants to prove that they were even employed by management no.4, who in turn placed them with the management Nos.1-3.

24.The claimants have failed to summon any witness from the side of management no.4 to prove the said fact.

25.Furthermore, the claimants have also failed to prove that they were not paid the wages for the period as claimed in para no. 6 of the petition by leading any cogent evidence in this respect.

26. Interestingly, the claimants have also admitted during the course of cross examination that they do not even know the contents of their own affidavits in lieu of examination in chief and in such a situation, the said affidavits in lieu of examination in chief stand treated as a nullity.

27. Accordingly, issue no. 1 is decided against the claimants.

ISSUE No.2: To what amount if any the petitioner is entitled from respondent no. 1 to 3 and/or respondent no.4?

28. In view of the outcome of issue no.1, the court hereby hold that the claimants are not entitled to any amount.

ISSUE No.3: RELIEF”

25. 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 of 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.....”

26. 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 Articles 226 & 227 of the Constitution of India.

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

MARCH 17, 2023

GAURANG KANTH, J.

