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W.P No.31811 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2024

CORAM

THE HONOURABLE MR. JUSTICE **P.DHANABAL**

W.P.No.31811 of 2012
and MP.No.1 of 2012

The Superintending Engineer,
Villupuram Electricity Distribution Circle,
TamilNadu Generation and Distribution
Corporation Limited,
Villupuram.

.. Petitioner

Vs.

1.D.Subramani
2.The Presiding Officer,
Labour Court,
Cuddalore.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, pleaded to issue a Writ of Certiorari, calling for the records relating to the orders passed by the second respondent made in claim petition No.284 of 2008 dated 22.03.2012, and quash the same.

For Petitioner	: M/s.Anand Gopalan for M/s.T.S.Gopalan & Co.,
For Respondents	: No Appearance for R1 : Court for R2



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ORDER

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This writ petition has been filed challenging the award passed by the Labour Court in Claim Petition No.284 of 2008 dated 22.03.2012, filed under Section 33C(2) of I.D. Act, claiming Rs.6400/- as ex-gratia for the period from 1995-1996 to 2006-2007 and the Golden Jubilee award from the respondent/management.

2. The first respondent herein has filed the above claim petition, which was allowed by the Labour Court, and the Labour Court passed an award stating that the first respondent is entitled to receive a sum of Rs.6400/- as ex-gratia for the period from 1995-1996 to 2006-2007, along with the golden jubilee award. The petitioner herein was directed to pay the above said amount to the first respondent. Challenging the said award, the respondent/management has preferred this writ petition.

3. The learned counsel appearing for the petitioner would submit that the petition filed under Section 33(C)(2) of I.D. Act itself is not maintainable. The petitioner is employed as contract labourer during the year 1990 and he is working as a temporary casual labourer. As per



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Tamil Nadu Electricity Board standing order Clause 3(b)(IV) if a temporary casual labourer worked for 240 days in a year, that under section 8 of the Bonus Act 1965, he is entitled to bonus and that he is entitled to receive exgratia payment of a total sum of Rs.6,400/-.

3.1. The second respondent, having not satisfied with the conditions and having not being found in the list of persons identified by the committees constituted for this purpose, is not entitled to maintain the claim petition. The first respondent himself admitted that he did not appear before the committees constituted for the purpose of identifying contract labourers entitled to ex-gratia payment. The first respondent has filed chit agreements entered into by one Mr.Bakthavachalam with TANGEDCO, claiming that he worked under the contract of Mr.Bakthavachalam. The certificate issued by Mr.Bakthavachalam has no legal sanction and cannot be relied upon. The first respondent has never worked as a contract labourer, he is only a temporary casual labourer, so he is not entitled to receive the ex-gratia amount of Rs.6,400/-. The award passed by the Labour Court is erroneous because it allowed the claim petition and awarded the ex-gratia amount as if the petitioner were a contract labourer.



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4. Learned counsel appearing for the petitioner relied on the following judgements, which are as follows:

1. The Superintending Engineer, Tamil Nadu Electricity Board Dharmapuri Vs. M.Saravanan in WP.No.32553 of 2002 dated 13.09.2021

2. The Superintending Engineer, Tamil Nadu Electricity Board Villupuram Vs. G.Ravi in W.P.No.22107 of 2013 dated 05.11.2019.

3. The Superintending Engineer, Mettur Electricity Distribution Center, Mettur Dam – I Vs R.Kandasamy in W.P.No.36892 of 2004 dated 29.11.2022

4. The Superintending Engineer, Tamilnadu Electricity and Distribution Corporation Center, Thiruvannamalai Vs. B.Jaishankar & Another in W.P.No.2275 to 2286 of 2004 dated 31.07.2023.

5. No representation for the respondents. Despite notice served on the respondents and the name of the respondents were also printed in the cause-list, none appeared for the respondents.

6. This Court heard the argument of the petitioner and perused the material available on record.



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7. This writ petition is filed challenging the impugned award passed by the Labour Court in Claim Petition No.285 of 2008 dated 22.03.2012 filed under Section 33C(2) of I.D. Act. The main contention of the writ petitioner is that the claim petition itself is not maintainable. The authority cannot adjudicate the disputed claim under Section 33-C(2) of the Industrial Disputes Act, 1947. At this juncture, it is relevant to rely on the judgment of this Court in W.P.Nos.36892 of 2024 batch cases, as this case is covered by those judgments wherein this Court while dealing with similar kind of cases rendered findings as follows:

*“3. The issue as to whether the Authority can adjudicate the disputed claim under Section 33-C(2) of the Industrial Disputes Act, 1947 has come up for consideration in various cases before the Hon'ble Supreme Court and in one such case, viz., **The Municipal Corporation of Delhi Vs. Ganesh Razak** reported in **1995 (1) SCC 235**, it was held that the Labour Court has no jurisdiction to adjudicate the claims made under Section 33-C(2) of the ID Act, when the claim which is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute. The relevant portion of the order in **Ganesh Razak's case (supra)** reads as follows:-*



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“12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33-C(2) like that of the executing court's power to interpret the decree for the purpose of its execution.

13. In these matters, the claim of the respondent workmen who were all daily rated/ casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without



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which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of 'equal pay for equal work' being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in the writ petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made under Section 33-C (2) of the Act by these respondents."



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4. *The aforesaid decision came to be relied upon by a learned Single Judge of this Court in the case of **The Superintending Engineer Vs. The Presiding Officer, Labour Court, Vellore and another** passed in **W.P.No.14045 of 2004, dated 25.09.2019**, whereby the learned Single Judge had held that the Labour Court had no jurisdiction to entertain a Claim Petition on disputed claims. In view of the aforesaid decisions, the impugned awards passed by the Labour Court, cannot be sustained. Accordingly, the order of the Labour Court dated 20.07.2001 stands quashed. However, at this juncture, it is pertinent to point out that the Claim Petitions were made way back in the year 1997-1998 and the awards are of the year 2001. In case, the petitioner herein/Electricity Board had already made payment to the concerned contract labourers pursuant to the impugned awards, the Board shall refrain from recovering the payment already made to the concerned contract labourers.”*

8. From the above said judgements, it is clear that the Labour Court has no authority to adjudicate the claims made by the workmen in the claim petition on disputed claims. In this case, the management has disputed the entitlement of the claim since the workmen is a temporary



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casual labourer to receive ex-gratia payment. The Labour Court has erroneously exercised jurisdiction under Section 33-C(2) in respect of disputed claims, therefore the impugned order has to be set aside. Since the Court has already considered the similar issues and the petition is covered by above said judgements, this writ petition is allowed.

9. In the result, this writ petition is allowed and the order by the labour court in Claim Petition No.284 of 2018 on the file of Labour Court, Cuddalore dated 22.03.2012 is set aside and the claim petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No.
Internet/Yes/No

drl

P.DHANABAL.J.

drl

To

1.The Presiding Officer,



Labour Court,
Cuddalore.

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