

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4830-2024 (O&M)
Reserved on 03.10.2024
Pronounced on 15.10.2024

Chandigarh Industrial and Tourism Development Corporation Limited
...Petitioner

Versus

Pritam Kumar and another
...Respondents

With

Case No.	Petitioner(s)	Respondent(s)
CWP-4844-2024 (O&M)	Chandigarh Industrial and Tourism Development Corporation Limited	Manjit Singh and another
CWP-4849-2024 (O&M)	Chandigarh Industrial and Tourism Development Corporation Limited	Madan Singh and another
CWP-4862-2024 (O&M)	Chandigarh Industrial and Tourism Development Corporation Limited	Rishi Pal and another
CWP-4865-2024 (O&M)	Chandigarh Industrial and Tourism Development Corporation Limited	Angrej Singh and another
CWP-4877-2024 (O&M)	Chandigarh Industrial and Tourism Development Corporation Limited	Satbir Singh and another
CWP-4890-2024 (O&M)	Chandigarh Industrial and Tourism Development Corporation Limited	Krishna Pal and another
CWP-4926-2024 (O&M)	Chandigarh Industrial and Tourism Development Corporation Limited	Jitender Kumar and another
CWP-4934-2024 (O&M)	Chandigarh Industrial and Tourism Development Corporation Limited	Vijay Kumar and another
CWP-8830-2019	Chandigarh Industrial and Tourism Development Corporation Limited	Dharam Chand and another
CWP-10046-2019	Chandigarh Industrial and Tourism Development Corporation Limited	Uday Singh and another
CWP-10047-2019	Chandigarh Industrial and Tourism Development Corporation Limited	Ashwani Kumar and another
CWP-10052-2019	Chandigarh Industrial and Tourism Development Corporation Limited	Neetu Kumar and another
CWP-10118-2019 (O&M)	Chandigarh Industrial and Tourism Development Corporation Limited	Vijay Kumar and another

CWP-10126-2019	Chandigarh Industrial and Tourism Development Corporation Limited	Ravinder Kumar and another
CWP-10171-2019	Chandigarh Industrial and Tourism Development Corporation Limited	Rajesh Kumar and another
CWP-10191-2019	Chandigarh Industrial and Tourism Development Corporation Limited	Vikas Chaudhary and another
CWP-10233-2019	Chandigarh Industrial and Tourism Development Corporation Limited	Arun Lather and another
CWP-10308-2019	Chandigarh Industrial and Tourism Development Corporation Limited	Munish and another
CWP-9512-2019	Chandigarh Industrial and Tourism Development Corporation Limited	Ranjit Singh and another
CWP-9529-2019	Chandigarh Industrial and Tourism Development Corporation Limited	Parvesh Kumar and another
CWP-9545-2019	Chandigarh Industrial and Tourism Development Corporation Limited	Rajneesh Kumar and another
CWP-9777-2019	Chandigarh Industrial and Tourism Development Corporation Limited	Ravinder Pal and another
CWP-9935-2019	Chandigarh Industrial and Tourism Development Corporation Limited	Rakam Singh and another
CWP-9955-2019 (O&M)	Chandigarh Industrial and Tourism Development Corporation Limited	Kashmir Singh and another
CWP-16960-2024	Chandigarh Industrial and Tourism Development Corporation Limited	Bhim Singh and another
CWP-16969-2024	Chandigarh Industrial and Tourism Development Corporation Limited	Ramesh Chand and another
CWP-16973-2024	Chandigarh Industrial and Tourism Development Corporation Limited	Arun Singh and another
CWP-16979-2024	Chandigarh Industrial and Tourism Development Corporation Limited	Anil Singh Panwar and another
CWP-16981-2024	Chandigarh Industrial and Tourism Development Corporation Limited	Amrit Singh and another
CWP-16983-2024	Chandigarh Industrial and Tourism Development Corporation Limited	Soban Singh and another
CWP-16986-2024	Chandigarh Industrial and Tourism Development Corporation Limited	Arvind Chaudhary and another
CWP-16990-2024	Chandigarh Industrial and Tourism Development Corporation Limited	Roop Singh and another
CWP-17001-2024	Chandigarh Industrial and Tourism Development Corporation Limited	Neeraj Singh and another
CWP-17002-2024	Chandigarh Industrial and Tourism Development Corporation Limited	Ravi Kumar and another

CWP-17004-2024	Chandigarh Industrial and Tourism Development Corporation Limited	Deepak Singh and another
CWP-17006-2024	Chandigarh Industrial and Tourism Development Corporation Limited	Anil Kalia and another
CWP-17010-2024	Chandigarh Industrial and Tourism Development Corporation Limited	Rakesh Singh Rana and another
CWP-17016-2024	Chandigarh Industrial and Tourism Development Corporation Limited	Rakesh Mehta and another
CWP-17018-2024	Chandigarh Industrial and Tourism Development Corporation Limited	Pankaj Kumar and another
CWP-17085-2024	Chandigarh Industrial and Tourism Development Corporation Limited	Parveen Kumar and another

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Amit Jhanji, Senior Advocate with
Ms. Madhu Dayal, Advocate,
Mr. Prince Pushpinder Rana, Advocate,
Ms. Nandita Verma, Advocate and
Ms. Kudrit Kaur Sara, Advocate for the petitioner(s)
(in all the writ petitions)

Mr. Amit Kaith, Advocate for respondent No.1 in CWP-8830-2019, CWP-9512-2019, CWP-10046-2019, CWP-9529-2019, CWP-9545-2019, CWP-9777-2019, CWP-9935-2019, CWP-9955-2019, CWP-10047-2019, CWP-10052-2019, CWP-10118-2019, CWP-10126-2019, CWP-10171-2019, CWP-10191-2019, CWP-10233-2019, CWP-10308-2019 and CWP-4890-2024, CWP-4926-2024, CWP-4934-2024

Mr. D.R. Bansal, Advocate
for respondent No.1 in CWP-4830-2024, CWP-4844-2024, CWP-4849-2024, CWP-4862-2024, CWP-4865-2024 and CWP-4877-2024

JAGMOHAN BANSAL, J.

1. As common issues are involved in the captioned civil writ petitions, with the consent of parties the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from *CWP-4830-2024*.

2. The petitioner-Chandigarh Industrial & Tourism Development Corporation Limited (for short 'CITCO') through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of award dated 28.04.2023 (Annexure P-1) whereby the Labour Court has held that workmen are entitled to salary in terms of letter dated 30.07.2009 (Annexure P-3) and subsequent letters issued by the Department of Personnel, Chandigarh Administration.

3. The respondent is working with the petitioner. He and other workers who are part of instant litigation were appointed during 2008-2015. At the time of his joining, an appointment letter was issued wherein salary to be payable and other terms and conditions were jotted down. The salary to be payable was a consolidated amount. There was no bifurcation with respect to dearness allowance and other allowances. The appointment was for a particular period and said period was extended from time to time. At the time of extension of contractual period, the salary was enhanced, however, enhanced salary was less than salary paid to contractual employees of U.T. Administration but more than D.C. rates. For the ready reference, relevant extracts of appointment letter and renewal letter are reproduced as below:

Appointment Letter:

“Please refer to your application for the post of Commis-II (Tandoor).

On the basis of trade test/interview held on 19.05.2011, you are offered the post of Commis-II (Tandoor) in this Corporation, on the following terms & conditions:-

1. Your appointment will be purely on contractual basis (renewable annually) initially for a period of one year on lump

sum payment of Rs.12,000/- (Rupees Twelve thousand only) per month, with 5% annual increase.

2. *The contract period shall be extendable annually subject to satisfactory performance which shall be reviewed after one year.*

3. *The contract will stand automatically terminated if it is not extended.”*

Renewal letter:

“The contract appointment offered to you vide this office letter referred to above is hereby extended for another period of one year i.e. from 25.5.2012 to 24.5.2013 in term of clause (2) of your appointment letter with lump sum payment of Rs. 12,600/- per month (Twelve thousand six hundred only). The other terms and conditions shall remain unchanged. You are, further advised to execute fresh agreement on non-judicial stamp paper of Rs.20/- as per specimen enclosed within a week’s time.”

4. The workman formed an opinion that he should be paid salary equal to contractual employees working with U.T. Administration. His opinion was based upon letter dated 30.07.2009 issued by Department of Personnel, Chandigarh Administration. He preferred an application under Section 33C(2) of the Industrial Disputes Act, 1947 (for short ‘ID Act’) before the Labour Court which held that the petitioner is part of U.T. Administration because it is directly or indirectly controlled by Chandigarh Administration and the workmen of the petitioner are entitled to salary equal to salary payable to contractual workers of Chandigarh Administration. While passing the said order, the Labour Court relied upon advertisement material, Memorandum of Association, Articles of Association and other documents of

the petitioner. For the ready reference, letter dated 30.07.2009 is reproduced as below:

“To Chandigarh, dated the 30/7/2009

1. All the Administrative Secretaries,
Chandigarh Administration.

2. All the Heads of Departments/Offices
Institutions/Boards/Corporations,
Chandigarh Administration.

Subject: Regarding consolidated contractual amount to persons appointed on whole time on contractual basis in the Union of Territory, Chandigarh.

Sir/Madam,

In continuation of this Administration’s letter No.28/54-IH (7)-2007/4297, dated 5.3.2009, whereby the consolidated amounts to be paid to the persons appointed on contract on whole time basis against sanctioned posts were fixed, which were to remain in force till 31.12.2009. Now in view of the revision of scales of pay by the Chandigarh Administration vide Notification No.7000/1/2-F&PO (7)-2009/4029, dated 11.06.2009, the matter has been considered and it has been decided that the contractual appointments on whole time basis against sanctioned posts where regular appointment is not immediately possible and is likely to take time, will be made on the consolidated amounts as mentioned below:-

Sr. No.	Pre Revised Scale of pay of the post (Rs.)	Revised scale of pay of the post		Consolidated contractual amount per month (Rs.)
		Pay Band (Rs.)	Grade Pay (Rs.)	
1.	2520-4140	4900-10680	1300	7500
2.	2720-4260	4900-10680	1400	8100
3.	2820-4400	4900-10680	1650	8400
4.	3120-5160	5910-20200	1900	9500

5.	3120-6200	5910-20200	1950	9700
6.	3330-6200	5910-20200	2000	10000
7.	4020-6200	5910-20200	2400	12000
8.	4400-7000	5910-20200	2800	13600
9.	4550-7220	5910-20200	3000	14000
10.	5000-8100	10300-34800	3200	16400
11.	5480-8925	10300-34800	3600	17600
12.	5800-9200	10300-34800	3800	17800
13.	6400-10640	10300-34800	4200	19800
14.	7000-10980	10300-34800	4400	21200
15.	7220-10980	10300-34800	4600	22000
16.	7220-11320	10300-34800	4800	22200
17.	7220-11660	10300-34800	5000	22500
18.	7880-11660	10300-34800	5400	24700
19.	7880-13500	15600-39100	5400	25600
20.	9200-13900	15600-39100	5700	27800
21.	9750-14700	15600-39100	6000	29400
22.	10025-15100	15600-39100	6600	30800
23.	12000-15100	15600-39100	7400	37900
24.	12000-15500	15600-39100	7600	38200
25.	12000-16350	15600-39100	7800	38400
26.	13125-16350	15600-39100	8200	39800
27.	13500-16800	15600-39100	8400	40800
28.	14300-18150	37400-67000	8600	56100
29.	14300-18600	37400-67000	8700	56200
30.	14300-20100	37400-67000	8800	56300
31.	16350-20100	37400-67000	8900	59200
32.	18600-22100	37400-67000	10000	66700

The consolidated contractual amount in respect of the pre revised scale of Rs.8000-13500 will be Rs.25800/- per month.

The above will be subject to the following terms and conditions;

- 1. These consolidated rates of salary for contractual appointment shall be applicable from 1st August, 2009*

and shall be payable from the salary budget head depending on adequate budget provision.

2. *The departments can consider to extend these rates to the contractual posts, who are entitled of NPA. However, no NPA will be payable and only consolidated pay will be payable.*
3. *Contractual appointments on these rates can only be made against duly sanctioned posts where regular appointment is not immediately possible and is likely to take time.*
4. *The period of contractual appointment shall not exceed one year in any case. However, in special circumstances for continuance of contractual appointment beyond one year, prior approval of Finance Department shall be obtained by concerned department so that budgetary provisions etc. are properly monitored.*

This issues with concurrence of Finance Department, Chandigarh Administration conveyed vide U.O. No.46/32-UTFII(10)-2009/4711, dated 15.07.2009.

Yours Faithfully

Sd/-

*Joint Secretary Personnel.
Chandigarh Administration”*

5. Mr. Amit Jhanji, Senior Advocate for the petitioner submits that letter dated 30.07.2009 is inapplicable to CITCO because CITCO is an autonomous body though its Chairman is Home Secretary and Managing Director is an I.A.S. Officer. The appointment of Chairman and Managing Director is made by the Administrator. All the Directors of the Organization are appointed by Administrator and their tenure is at the pleasure of Administrator. The Organization is managed by Board of Directors. There are

separate set of rules and regulations governing terms and conditions of the employees. The petitioner has not adopted letter dated 30.07.2009 and subsequent letters issued by Chandigarh Administration. These letters were not issued by Administrator to the petitioner. The petitioner is not bound by letters of different wings of Chandigarh Administration. The said letter was marked to the petitioner and duly received by Managing Director, however, said letter was never implemented. The workmen were appointed prior to aforesaid letter as well as thereafter, however, salary was never determined as per said letter. No workman at the time of appointment, revision of salary or renewal of contract demanded salary as per aforesaid letter. The workmen were appointed on temporary basis and they were not appointed against sanctioned posts. The question of applicability of aforesaid letter is a disputed question and Labour Court while exercising power conferred by Section 33C(2) of ID Act could not adjudicate disputed question of facts. The proceedings under Section 33C(2) of ID Act are sort of execution proceedings. The Labour Court can interpret terms and conditions of an award or settlement arrived at between the parties, however, it cannot adjudicate a right. The Labour Court can implement an already adjudicated/settled right.

6. *Per contra*, learned counsel for the respondents submits that CITCO is undisputedly part of Chandigarh Administration. All the Directors are holding Office at the pleasure of Administrator of U.T. Chandigarh. The Chairman and Managing Director are I.A.S. Officers. The workmen were appointed against sanctioned posts. From the Employees Service Regulations of CITCO, it is evident that there were 52 sanctioned posts of Security Staff

and 40 posts of Bill Clerks. The workmen were appointed on the posts of Security Guard, Bill Clerk or Waiter. The letter dated 30.07.2009 is applicable to all the contractual employees who have been appointed against sanctioned posts. The letter dated 30.07.2009 has been issued by Chandigarh Administration and it is addressed to all the Boards, Corporations and Departments of Chandigarh Administration. The letter was duly received by Managing Director of CITCO. These facts collectively indicate that workmen of CITCO are similarly situated with the employees of U.T. Administration. The petitioner is an integral part of U.T. Administration and it would be violative of Articles 14 and 16 of the Constitution of India, if workmen of CITCO are not extended pay equal to pay of contractual employees of Administration. The petitioner has raised dispute just to deprive the workmen from their valuable right otherwise there is no dispute. The Labour Court has executed letter dated 30.07.2009 issued by Chandigarh Administration. The said letter is in the form of consent of employer.

7. I have heard the arguments of learned counsels for the parties and perused the record with their able assistance.

8. Pursuant to order dated 25.09.2024 of this Court, the petitioner through its Managing Director filed an affidavit dated 27.09.2024 disclosing that the respondents were not appointed against sanctioned posts of Waiter, Security Guard and Bill Clerk; they were appointed on temporary basis; Managing Director did not implement letter dated 30.07.2009 received from Chandigarh Administration; the said letter was approved by the Administrator prior to its issuance but was not directed to CITCO for implementation; initial

salary of workmen was determined by Board. The relevant extracts of said affidavit are reproduced as below:

“a) As per record, all the respondent-workmen were appointed on contract basis only, as per approval of the Board of Directors, CITCO and not against regular posts.

b) The details of sanctioned posts as per Chandigarh Industrial and Tourism Development Corporation Limited Service Regulations, 2011 is as under-

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|-------------|------------------------|------------|
| <i>i)</i> | <i>Waiters</i> | <i>110</i> |
| <i>ii)</i> | <i>Security Guards</i> | <i>52</i> |
| <i>iii)</i> | <i>Bill Clerk</i> | <i>40</i> |

c) As per record, after receipt of the above letter vide diary No. 5398 dated 31.7.2009, the same was forwarded to all the dealing Assistants for information and necessary action. The said letter has not been adopted by CITCO.

d) As per the information supplied by the Department of Personnel, UT, Chandigarh, letter dated 30.7.2009 issued by the Department of Personnel UT Administration, Chandigarh was issued after the approval of Hon'ble Administrator, U.T. Chandigarh.

e) The Board of Directors of CITCO is the competent authority to fix the initial salary to be paid to the contractual employees of CITCO. The Board of Directors of CITCO, which is the competent authority, has in its Agenda item No. 166.22 dated 05/08/2011 approved that:

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| <i>i)</i> | <i>"The wages of contractual employees are not to be less than the minimum wages fixed by U.T. Administration under the Minimum Wages Act.</i> |
| <i>ii)</i> | <i>The consolidated contractual amount fixed at the time of their contractual appointment cannot be enhanced during the currency of the contract period. As such, the wages of all the contractual</i> |

employees may be enhanced @ 5% only at the time of renewal of the present contract (with prospective effect only), in case their services are found satisfactory.

iii) There should be uniform provision for annual increase of 5% in the contractual wages rate to all contractual employees already engaged or to be employed in future."

9. The petitioner has not borrowed rules and regulations governing service conditions of Central or State government employees whereas has framed its own rules. These rules are known as "CITCO Employees Service Regulations". In these Regulations, the petitioner has incorporated terms and conditions of employment of its employees of different level. The relevant extracts of the Regulations are reproduced as below:

"The Board of Directors of Chandigarh Industrial and Tourism Development Corporation Limited (hereinafter called CITCO in short) having its registered office at SCO No.121-22, Sector 17 B, Chandigarh -160017, India originally registered as Chandigarh Small Industries Development Corporation Limited (CSIDC) vide CERTIFICATE OF INCORPORATION NO. 3415 OF 1974 hereby lays down CITCO Employees Service Regulations as approved in its meeting held on 5.8.2011 (circulated vide office order No. P&A/P-II/167 dated 2.9.2011 issued under endst. No. 18048-76 dated 2.9.2011).

XXXX XXXX XXXX XXXX

2. Definitions

2. In these regulations unless the context otherwise requires:-

(a) "Act" means the Companies Act No.1 of 1956 (Act of 1956) as amended from time to time;

- (b) "Administrator" means Administrator of Union Territory of Chandigarh;
- (c) "Administration" means the Union Territory Administration of Chandigarh;

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3. Implementation of Regulations

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3.3 The Corporation shall be guided by instructions or orders as may be issued by the Administration to the extent the same are applicable to the Corporation in respect of matters not specifically covered by these regulations and shall seek advice or clarification(s) from the Administration appropriately.

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13. Pay and Allowances

13.1 Scales of Pay:

- (a) Every employee shall be entitled to such scale of pay including special pay as may be sanctioned by the Board of Directors from time to time. The scales of pay at present in force in respect of the posts and services in the Corporation are given in Schedule I.
- (b) The powers to revise the scales of pay of various categories of posts in the Corporation shall be exercised by the Board of Directors, on such terms and conditions, as may be deemed fit by the Board of Directors.

Provided that the pay and allowances of an employee on deputation shall be regulated in accordance with such terms and conditions of Foreign Service as may be mutually decided between the Corporation and the lending organization.

- (c) No employee while in the service of the Corporation shall accept without the permission of the appointing authority

any other employment, pay, honorarium or fee from any other source.

13.2 Fixation of Pay:

(a) Unless otherwise specifically provided in these regulations, fixation of pay of an employee shall be regulated under the provisions, regulations or orders as applicable to the employees of the Administration.

(b) The appointing authority, in special cases and circumstances such as higher qualifications and professional competence on the recommendations of the Departmental Recruitment/Selection Committee concerned, may allow higher initial pay not exceeding five grade increments for initial appointment by direct recruitment to Group 'A' post.”

10. From the pleadings and arguments of both sides, it is evident that dispute hangs around the scope and ambit of Section 33C(2) of ID Act. For the ready reference Section 33C is reproduced as below:

“33-C. 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 Chapter V-A or Chapter V-B, 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.

(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.”

10.1 From the reading of sub-section (2) of Section 33C, it transpires that essential ingredients to invoke jurisdiction of Labour Court are as below:

- i) A workman is entitled to receive from the employer:
 - a) any money or
 - b) any benefit which is capable of being computed in terms of money, and
- ii) Question arises:
 - a) as to the amount of money due or
 - b) as to the amount at which such benefit should be computed,

It means the workman should be entitled to receive money or any benefit which is capable of being computed in terms of money. The labour Court is not supposed to or empowered to adjudicate question of entitlement while exercising power under sub-section (2). The Court can only determine the amount e.g. an employee is entitled to salary of 2 months. The labour court can determine the amount of salary but cannot decide whether workman is entitled to salary or not. The question of salary can be determined under other provisions of ID Act or any other Act but cannot be under Section 33C. It is purely an execution provision where question of entitlement is undisputed and only quantum has to be determined. In the first part of sub-section (2), the expression ‘any money’ is used and in second part after words and expression ‘question arises’ the expression ‘amount of money due’ has been used. It

means the said sub-section is applicable where workman is undisputedly 'entitled' to money or benefit which can be computed in terms of money. The workman can approach Labour Court with a prayer to determine the amount of money or amount at which benefit can be computed but cannot ask to decide question of entitlement.

Judicial Pronouncements:

11. In *State Bank of India v. Ram Chandra Dubey*, (2001) 1 SCC 73, Supreme Court had occasion to consider a case where Labour Court ordered to reinstate the workman without back wages and workman subsequently approached Labour Court under Section 33C(2) of ID Act claiming back wages. Labour Court exercised its power and granted back wages. The order of Labour Court came to be upheld by Delhi High Court. The Apex Court set aside orders of both courts and held:

“8. *The principles enunciated in the decisions referred by either side can be summed up as follows:*

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33-C(2) of the Act. The benefit sought to be enforced under Section 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does

not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages.”

11.1 Supreme Court in ***MCD v. Ganesh Razak, (1995) 1 SCC 235*** considered question of maintainability of application under Section 33C(2) where daily workers on the principle of same pay for same work were claiming wages at par with regular employees. The Court held that question of wages at par with regular employees has not been settled, thus, application under Section 33C(2) is not maintainable. The Court held:

“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 recognised 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 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.”

11.2 Supreme Court in ***Bombay Chemical Industries v. Labour Commr., (2022) 5 SCC 629***, where there was dispute on the question of employment of the workman, held that the application under Section 33C(2) was not maintainable. The Court held that firstly question of employment should be decided by way of reference. The relevant extracts of the judgment read as:

“10. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, when there was no prior adjudication on the issue whether Respondent 2 herein was in employment as a salesman as claimed by Respondent 2 herein and there was a serious dispute raised that Respondent 2 was never in employment as a salesman and the documents relied upon by Respondent 2 were seriously disputed by the appellant and it was the case on behalf of the appellant that those documents are forged and/or false, thereafter the Labour Court ought not to have proceeded further with the application under Section 33-C(2) of the Industrial Disputes Act. The Labour Court ought to have relegated Respondent 2 to initiate appropriate proceedings by way of reference and get his right crystalised and/or adjudicated upon.

11. Therefore, the order passed by the Labour Court was beyond the jurisdiction conferred under Section 33-C(2) of the Industrial Disputes Act. The High Court has not appreciated the aforesaid facts and has confirmed the same without advertting to the scope and ambit of the jurisdiction of the Labour Court under Section 33-C(2) of the Industrial Disputes Act.”

12. From the afore-cited judgments and reading of Section 33C(2) of ID Act, it is clear that that there should be prior confirmed liability of the employer to invoke jurisdiction of Labour Court under the said section. The said liability may arise on account of award/judgment passed by court or on account of an instrument executed between the parties. In the absence of already determined liability, the employee cannot approach Labour Court under the said sub-section.

13. In the case in hand, the respondents were appointed on contract basis. In the appointment letter, terms and conditions of service were incorporated. The workmen accepted terms & conditions of service which included salary and they without demur worked for quite sometime. The period of contract was extended from time to time and at the time of extension salary was increased. As per letter dated 30.07.2009 issued by Chandigarh Administration, every employee of the Administration who has been appointed against a sanctioned post but on contract basis would be entitled to salary as mentioned in the said letter. Salary mentioned in the said letter is higher than minimum wages fixed under Minimum Wages Act as well as D.C. rates. The said letter was addressed to different departments including Boards/Corporations. Managing Director of the CITCO received said letter

but there is nothing on record disclosing that it was implemented or there was decision to implement. A sufficient sanctioned posts of peon, waiter or clerks are available but workmen were appointed on contract basis. Period of service was mentioned in the appointment letter, however, it was extended from time to time. No workmen was made regular/permanent. They are still contractual workmen.

14. The workmen are claiming that they are entitled to salary as paid to contractual employees of U.T. Administration. The Petitioner-CITCO is claiming that its workmen are not governed by service conditions applicable to UT employees. It has its own Service Regulations. In the appointment letter, salary was duly disclosed and paid to workmen. At the time of renewal of contract, salary was revisited. It is not receiving grant from Administration. Salary is arranged from own sources. The salary paid to UT employees is arranged by U.T. Administration. There is budgetary provision of Central Government from where salary is paid to U.T. employees. No respondent-workman was appointed against a sanctioned post.

Whether letter dated 30.07.2009 is applicable to workmen of CITCO; whether workmen of CITCO are at par with UT employees; whether workmen were appointed against sanctioned posts; whether CITCO like other departments is part of UT Administration; whether workmen can claim salary contrary to appointment/renewal letters, are disputed questions. It is axiomatic that if an employer just to deny monetary claim of a workman raises some dispute, Labour Court can ignore dispute raised by the employer. In the instant case, the employer is a Government Undertaking and there is affidavit

of Managing Director of CITCO on record. The Managing Director is a public servant and his affidavit cannot be brushed aside. From the arguments of counsel for the workmen and findings of Labour Court, it is difficult to conclude that there is no dispute between the parties and employer has raised frivolous or vexatious issues to deny claim of the workmen.

Labour Court in exercise of power under Section 33C(2) cannot determine entitlement to salary. It can order to employer to pay already determined salary. Had any other Court already decided question of entitlement or CITCO at any stage accepted to pay at par with contractual employees of UT, the Labour Court could proceed to exercise power under Section 33C(2) of ID Act. Labour Court has adjudicated all the disputed questions and thereafter ordered to pay to workmen at par with UT employees. Section 33C(2) is a sort of execution provision and in the absence of already adjudicated/determined entitlement to higher salary, the Labour Court could not ask the petitioner to pay higher salary to its workmen. Compassion, sympathy or allegation of violation of any vested or fundamental right cannot vest jurisdiction in Labour Court or Tribunal. Labour Court is a creature of ID Act, thus, it cannot travel beyond or contrary to provisions or limits of ID Act. It has no inherent power though it carries ancillary powers which are necessary to exercise powers vested in it.

15. In the wake of above discussion and findings, this Court is of the considered opinion that impugned order(s) deserve to be set aside and accordingly set aside. All the petitions are hereby allowed.

16. The workmen/respondents are at liberty to avail any other remedy as permissible by law. The findings recorded by this Court are confined to maintainability of application under Section 33C(2) of ID Act.

17. Pending application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

15.10.2024
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No