



Labour Commissioner on 22.04.2002. He was reinstated in service on 23.04.2002. Once again, he abandoned his service on 08.05.2002. He raised industrial dispute in the year 2003, which was allowed by the Labour Court on 28.07.2005, while his reinstatement alongwith all other benefits including continuity of service and full back wages. This was an *ex parte* award.

1.3 The Management filed Writ Petition No. 1010 of 2006. During the pendency of the writ petition, the workman submitted an application dated 20.09.2005, while requesting the Management to issue him a letter granting him continuity of service with full backwages while reinstating him in service. Thereafter, the workman wrote a letter to the Labour Inspector that he is prepared to go for duty but with the condition that his payment should be made in the presence of the Labour Inspector. On 25.05.2006, he joined back. He was also requested to submit his claim for pending wages for scrutiny by Accounts section of the College. On 31.05.2006, he filed an application before Deputy Labour Commissioner to direct the Management to pass an order to grant him continuity in service with full backwages, failing which, the Management should be directed to be prosecuted. On 26.10.2006, he filed an application under Section 33C(2) of the Industrial Disputes Act, 1947, which was allowed on 15.12.2007 while directing the Management to pay the amount of Rs. 3,06,737/- alongwith interest @9% per annum on delayed payments. The writ petition filed by the Management against the *ex parte* award was dismissed on 10.01.2008, against which the Special Leave Petition was filed, which was also dismissed. Pursuant to the direction, he was paid Rs. 3,34,343/-



on 02.09.2009. Thereafter, on 01.11.2009, the petitioner filed second application under Section 33C(2) of the Industrial Disputes Act, 1947, for directing the Management to pay wages/monetary benefits for the period from 26.05.2006 to 30.10.2009, which was contested by the Management on the ground that such application is not maintainable. However, the Labour Court allowed the application on 04.10.2011. The correctness of Labour Court's order was challenged by the Management in a writ petition, which has been allowed on 22.12.2016 by a detailed judgment dated 22.12.2016.

2. **Arguments put forth by the learned counsel representing the parties:-**

2.1 Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

2.2 Learned counsel representing the appellant has contended that the appellant's services were dispensed with on the same day i.e. 25.05.2006, hence, the learned Single Judge has erred in accepting the writ petition and the appellant is entitled to benefits computed in terms of money pursuant to Labour Court's award passed on 28.07.2005 and therefore, the learned Single Judge has erred and the assessment made by the Labour Court was correct. He submits that the appellant cannot be forced to once again seek reference, particularly, when the appellant's services were dispensed with on the same day i.e 25.5.2006.

2.3 *Per contra*, the learned counsel representing the respondent while elaborately referring to the judgment passed by the learned Single Judge



submits that the appeal lacks merit.

3. **Discussion and Analysis:-**

3.1 Having heard learned counsel representing the parties, this Bench is of the considered view that the appellant has failed to make out a ground for interference on the following grounds:-

(i). Admittedly, the appellant reported back on duty on 25.05.2006 and he permitted to join his service. He does not dispute the correctness of his joining on 25.05.2006. Whether he abandoned the job or his services were dispensed with; is required to be adjudicated upon, which does not fall within the scope of proceedings filed under Section 33C(2) of the Industrial Disputes Act, 1947.

(ii). Moreover, the appellant either while filing application before the Deputy Labour Commissioner on 31.05.2006 or while filing application under Section 33C(2) of the Industrial Disputes Act, 1947 failed to disclose that his services have been dispensed with on the same day when he was permitted to join.

(iii). The appellant filed second application on 01.11.2009 under Section 33C(2) of the Industrial Disputes Act, 1947 after he was paid previous wages on 02.09.2009. During his cross-examination, for the first time, he disclosed that the day he joined his duty, he was removed from service, which is seriously contended by the respondent-Management.



(iv). The appellant while filing application on 20.09.2005 submitted that at the first instance, he should be granted continuity in service with full backwages and then reinstate him. Thereafter, on 22.11.2005, the appellant submitted that he is prepared to join duty but with condition that his payment should be made in the presence of the Labour Inspector. On 25.05.2006, he was permitted to join duty while requesting him to submit his claim for pending wages. The appellant while submitting application on 31.05.2006 to the Deputy Labour Commissioner did not disclose that his services have been dispensed with on 25.05.2006. Hence, the conclusion drawn by the learned Single Judge is based on appreciation of material produced by the parties.

(v). The Hon'ble Supreme Court in '**D. Krishnan and another vs. Special Officer, Vallore Coop. S.M. and another**', **reported 2008 INDLAW SC 968**, while interpreting the scope of proceedings under Section 33C(2) of the Industrial Disputes Act, 1947 has held as under:-

“5. We have considered the arguments advanced by the learned counsel for the parties. The fact that proceedings under Section 33 C(2) are in the nature of execution proceedings is in no doubt, and such proceedings presuppose some adjudication leading to the determination of a right, which has to be enforced. Concededly there has been no such adjudication in the present case. It will be seen that the reliance of the appellant-workmen is



exclusively on documentary evidence placed on record which consisted primarily of the punch time cards and the representations that had been filed from time to time before the respondents. It is also true that the claim raised by the appellants had been hotly disputed by the respondents. The question that arises in this situation is whether reliance only on the documentary evidence was sufficient to prove the case. We are of the opinion that the reference to Municipal Corporation's case (supra) is completely misplaced as in that matter, the fact that different categories of workers were doing identical kind of work was virtually admitted but different scales of pay were nevertheless being paid to them. It is also relevant that oral evidence had been adduced by the workmen to supplement the documentary evidence and it was in that situation that the Court felt that an application under section 33 C(2) was maintainable. We find that the claim by the appellants herein has been disputed from the beginning and that the documents filed by the appellants themselves suggest that they were unsure of their own status. We have also perused the representations which have been filed as additional documents. A perusal of the letter dated 10th February 1996 from S.Karuthiah Pandian, Special Officer shows that the appellant D.Krishnan was being posted as a Canteen Manager. The subsequent letters dated 20th May 1996, 20th January 1997, 20th February 1997, 15th April 1998 and 6th August 1998 were all written by the appellant D.Krishnan identifying his post as that of Manager of the canteen and in the body of the last letter, a specific plea has been made that amongst the several duties entrusted to him, he had to instruct 4 workers to come in the morning, to prepare breakfast and a complaint that on one



particular day, one C. Uttharakumar, a Clerk working under him had refused to follow his orders. We also find similar letters written by the second appellant, K. Shanmugam and they too are on the record as additional documents. We are, therefore, of the opinion that in the light of the categorical statements time and again in the very documents relied upon by the appellants in support of their case, that they were, prima- facie, Managers and it would, therefore, be beyond the jurisdiction of the Labour Court to determine their status in proceedings under Section 33 C(2) of the Act.

6. *In this view of the matter, we find that the judgment reported in Municipal Corporation's case (supra) was clearly applicable to the facts of the present case. In this case, it was observed that:*

"In these matters, the claim of the respondent-workmen who were all daily- rated/causal 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.

In Brijpal Singh's case (supra), this is what the Court had to say:

"It is well settled that the workman can proceed under Section 33-C(2) only after the Tribunal has adjudicated on a complaint under Section 33-A or on a reference under Section 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. This Court in the case of Punjab Beverages (P) Ltd. vs. Suresh Chand held that a proceeding under Section 33-C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of

money, proceeds to compute the benefit in terms of money. Proceeding further, this Court held that the right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman, and his employer."

3.2 Thus, it is evident that the conclusion drawn by the learned Single Judge is in accordance with law and it does not require any interference.

4. **Decision:-**

4.1 Finding no merit, the appeal is ordered to be dismissed.

4.2 All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

28.08.2024
neeraj

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No