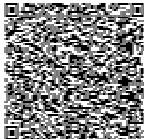


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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

229 (08 cases) CWP-36923-2019
Date of Decision : 05.12.2024

M/S NATIONAL TEXTILE CORPORATION LIMITED

.... PETITIONER

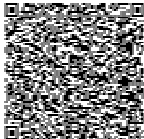
V/S

THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, S.A.S NAGAR, MOHALI AND OTHERS

.... RESPONDENTS

Sr. No.	Case No.	Parties Name
2.	CWP-36925-2019	M/S NATIONAL TEXTILE CORPORATION LIMITED V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, S.A.S NAGAR, MOHALI AND OTHERS
3.	CWP-36990-2019	M/S NATIONAL TEXTILE CORPORATION LIMITED V/S THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, S.A.S NAGAR, MOHALI AND OTHERS
4.	CWP-877-2020	M/S NATIONAL TEXTILE CORPORATION LIMITED V/S THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, S.A.S NAGAR, MOHALI AND OTHERS
5.	CWP-889-2020	M/S NATIONAL TEXTILE CORPORATION LIMITED V/S THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL CUM LABOUR COURT AND OTHERS

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6.	CWP-936-2020	M/S NATIONAL TEXTILE CORPORATION LIMITED V/S THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, S.A.S NAGAR, MOHALI AND OTHERS
7.	CWP-951-2020	M/S NATIONAL TEXTILE CORPORATION LIMITED V/S THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, S.A.S NAGAR, MOHALI AND OTHERS
8.	CWP-966-2020	M/S NATIONAL TEXTILE CORPORATION LIMITED V/S THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, S.A.S NAGAR, MOHALI AND OTHERS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Chanderdeep Singh, Advocate
for the petitioner.

Ms. Prabhjot Kaur, Advocate
for respondent No.2.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order, the above-said petitions are disposed of as issues involved and prayer sought in all the petitions are common. For the sake of convenience and with the consent of parties, the facts are borrowed from CWP-36923-2019.
2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order

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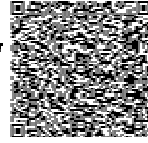


dated 20.02.2019 (Annexure P-3) whereby Labour Court in exercise of power conferred by Section 33C(2) of Industrial Disputes Act, 1947 (for short 'ID Act') has assessed its liability.

3. A labour dispute erupted between the parties. The petitioner retrenched 26 workmen on 16.12.1972. They served demand notice and matter reached to Labour Court which vide award dated 20.04.1975 ordered to reinstate them with continuity of service. The petitioner preferred CWP No.3106 of 1982 before this Court assailing aforesaid award which was dismissed. The petitioner unsuccessfully approached the Hon'ble Supreme Court. The petitioner did not reinstate the workers and they filed CWP No.5079 of 1994 before this Court which was allowed vide order dated 04.09.2009. They preferred Contempt Petition No. 634 of 2011 and this Court directed the petitioner to comply with order dated 04.09.2009. The petitioner as per its calculation complied with the order of this Court and made payment to workers. Feeling dissatisfied with the calculation made by the petitioner, the workmen approached Labour Court in terms of Section 33C(2) of ID Act. The workman claimed that he is entitled to back wages to the tune of Rs.29,92,977/- as per high Court's order dated 04.09.2009 whereas employer has made payment of Rs.5,66,508/-. The Labour Court vide impugned order dated 20.02.2019 allowed application of the workman and directed the management to make payment of Rs.6,65,067/- over and above already made payment.

4. Mr. Chanderdeep Singh, Advocate submits that the Labour

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Court in exercise of power under Section 33C(2) of ID Act while acting as Executing Court could not travel beyond the order of this Court. This Court while disposing of writ petition has directed the management to pay wages till the date of retirement. There was no direction to upgrade status of workers and thereafter calculate their wages. The scope of Section 33C(2) of ID Act is very limited. The Labour Court has relied upon notifications issued by Labour Department and Supreme Court in *Hindustan Sanitaryware and Industries Ltd. & Others Versus State of Haryana, 2019 AIR (SC) 2194* has set aside notification dated 27.06.2007 whereby workers were ordered to be upgraded.

5. Counsel for respondent No.2 submits that the management was liable to pay minimum wages as per Minimum Wages Act, 1948 (for short '1948 Act'), thus, the Labour Court has rightly calculated liability of the petitioner.

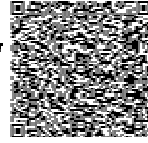
6. I have heard the arguments of counsel for the parties and perused the record.

7. 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,

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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

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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.”

7.1 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,

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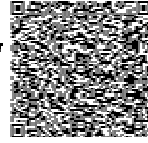


It means the workman should be entitled to receive money or any benefit which is capable of being computed in terms of money. The Labour Court is not supposed to or empowered to adjudicate question of entitlement while exercising power under sub-section (2). The Court can only determine the amount e.g. 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:

8. 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

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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

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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.”

8.1 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

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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

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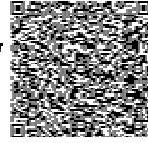
casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made under Section 33-C(2) of the Act by these respondents.”

8.2 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-

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C(2) of the Industrial Disputes Act. The High Court has not appreciated the aforesaid facts and has confirmed the same without advertng to the scope and ambit of the jurisdiction of the Labour Court under Section 33-C(2) of the Industrial Disputes Act.”

9. 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.

10. Order dated 04.09.2009 passed by this Court which was foundation of application under Section 33C(2) of ID Act is reproduced as below :

“From the year when the writ petition was filed in the year 1994 till now, much water has been flowed under the bridge. Many of the workmen are reported to have been died. If some of them have survived, they would have been superannuated. Their prayer for reinstatement under the circumstances becomes incapable of being granted. In my view, the appropriate relief shall only be to treat them as retired with all the benefits from the state of the award of the Labour Court namely from 30.4.1975 till the date of the superannuation. If they had been in service or death that may have occasioned to some of the workmen, whichever was earlier. Any amount, which

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the workmen had obtained by virtue of the order passed by the Labour Court under section 33(c)(2) shall be deducted from their entitlements. The amounts that shall be found due shall carry interest at 9% per annum. The relief is modified in the writ petition to cope with what is exigent and appropriate under the circumstances. The attempt of the 1st respondent at all times to evade the duty which is cast on them ill-behoves an institution of public character. By their wanton conduct and complete insensitivity to human sufferings by Unemployment despite awards in their favour, not to leave out of reckoning statutory protection to workmen and brazen violation by the management, they have engaged the workmen and their families by frivolous defences and prolonged the agony of litigation for over three decades. The assessment of liability to the petitioner and other workmen and their legal representatives, who have obtained favourable awards in their favour shall be undertaken expeditiously and the payments shall be made within a period of three months from the date of receipt of copy of this order. The writ petition is allowed with costs assessed at Rs.50,000/- against the 1st respondent.”

11. From the perusal of above quoted order, it is clear that this Court has not directed the management to upgrade status of employees and thereafter calculate their wages. The respondent-workmen were entitled to wages as per 1948 Act. The Labour Court has upgraded status of workers while calculating their back wages. It has relied upon notifications issued by Labour Department. The notification dated

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27.06.2007 issued by Labour Department whereby workers were ordered to be upgraded has been declared ultra virus by Supreme Court in **Hindustan Sanitaryware and Industries Ltd.'s case (supra)**. The relevant extracts of the judgment read as :

“19. The upshot of the above discussion is:

19.1. The prohibition of segregation of wages into components in the form of allowances in the notification is impermissible.

19.2. The security inspector/security officer/security supervisor cannot be included in the notification.

19.3. Trainees who are employed without payment of any reward cannot be covered by the notification.

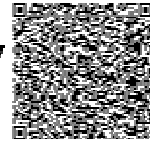
19.4. Categorisation of unskilled employees as semi-skilled and semi-skilled as skilled on the basis of their experience is ultra vires.

19.5. Fixing the training period for one year is beyond the jurisdiction of the Government.”

12. The Labour Court in view of afore-cited judgments could not travel beyond the order passed by this Court. The Labour Court in exercise of power conferred by Section 33C(2) of ID Act was bound to implement its award and order passed by this Court. There was no direction to upgrade status of employees and thereafter calculate their salary. They were certainly entitled to minimum wages as per 1948 Act.

13. Supreme Court recently in **Government of West Bengal & ors. Vs. Dr.Amal Satpathi & Ors., 2024 SCC OnLine SC 3512** while advertng to question of retrospective promotion to a retired employee

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has held that an employee who has not been actually promoted or worked on the promoted post is not entitled to remuneration payable to a person holding higher post.

14. In the wake of above discussion and findings, this Court is of the considered opinion that respondent-workmen were entitled to wages as per 1948 Act, however, they were not entitled to upgraded posts or upgraded salary payable to workers who had actually worked. The workers herein did not work and they have been paid salary without actual work. The respondents are at liberty to calculate wages payable under 1948 Act and if they find that there is difference between the back wages already paid and payable under 1948 Act, they may submit their calculation to the petitioner who after verification shall make payment of differential amount, if any, within two months from the date of receipt of calculation from the employees. The differential amount shall carry interest @ 10% per annum from 04.09.2009 to date of payment.

15. Disposed of.

(JAGMOHAN BANSAL)
JUDGE

05.12.2024
anju

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