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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 28th May, 2024**

+ **W.P.(C) 5577/2007**

J.B.BODA SURVEYORS LTD Petitioner

Through: **Mr. Vinay Sabharwal and Mr.
Karunesh Shah, Advocates**

versus

SURESH KUMAR SHARMA & ANR Respondents

Through: **Mr. S. Kumar, Advocate**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“I. Quashing and setting aside the impugned order dated 8.9.06 passed by the Presiding Officer, Labour Court No. 1, Karkardooma Delhi in LCA No. 46/98 titled ‘Sh. Suresh Kumar Sharma V/s M/s J.B. Boda Surveyors Co. Ltd.’:

II. Holding and declaring the Respondent No. 1 to be not entitled to any relief...”

2. The petitioner is an incorporated company engaged in the business of running surveyors. The respondent no. 1 (‘respondent workman’ hereinafter) was working in the petitioner entity since 1992 till the year 1998.



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3. Allegedly, the respondent workman remained absent from his duty since 30th May, 1998 and subsequently, he filed an application bearing no. 46/98 under Section 33C(2) of the Industrial Disputes Act, 1947 ('I.D. Act' hereinafter) seeking earned wages and bonus etc.
4. Pursuant to completion of the proceedings, the learned Labour Court passed an order dated 8th September, 2006 ('impugned order' hereinafter), thereby, directing the petitioner to pay earned wages and bonus amount of Rs. 16,405/-, The learned Court did not adjudicate on the issue of payment of minimum wages on the ground that it lacks of jurisdiction to adjudicate upon the same.
5. Aggrieved by the impugned order, the petitioner has preferred the instant petition.
6. The learned counsel appearing on behalf of the petitioner submitted that the learned Labour Court erred in adjudicating the application as the claims made by the petitioner were not maintainable in the application filed under Section 33C(2) of the I.D. Act.
7. It is submitted that the learned Labour Court failed to appreciate that the respondent workman did not establish that he is entitled to get leave wages and other emoluments. Furthermore, it is also submitted that the respondent workman did not provide details about the said legal entitlement.
8. It is submitted that the learned Labour Court failed to appreciate that the plea regarding payment of bonus can only be adjudicated by way of reference and not by filing an application under Section 33 C(2).



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9. It is also submitted that the respondent workman failed to produce any proof with regard to any overtime work which has allegedly been done him, and therefore, in absence of the same, the grant of overtime wages is not sustainable under the law.

10. In view of the foregoing submissions, the learned counsel for the petitioner submitted that the present petition be allowed and reliefs be granted as prayed.

11. *Per Contra*, the learned counsel appearing on behalf of the respondent workman vehemently opposed the instant petition submitting to the effect that the present petition is nothing but a gross abuse of the process of law and therefore, is liable to be dismissed.

12. It is submitted that the respondent workman was working as a clerk in the petitioner entity and was getting the wages below the minimum wages as statutorily prescribed.

13. It is submitted that the respondent workman had requested for payment of the adequate wages, however, the petitioner did not pay heed to any such request. The learned counsel for the respondent workman also apprised this Court that the said factum was also duly noted by the Labour Inspector and directions to pay the minimum wages was given by the said Labour Inspector.

14. It is also submitted that the petitioner had terminated the services of the respondent workman, and the same was done without any notice, show cause or payment of service compensation and pending dues.



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15. It is further submitted that the petitioner had paid bonuses to the similarly placed employees, however, it failed to grant the same to the respondent workman, therefore, amounting to violation of statutory rights of the respondent workman.

16. In view of the foregoing submissions, the learned counsel for the respondent workman submitted that the present petition, being devoid of any merit, may be dismissed.

17. Heard the learned counsel for the parties and perused the records.

18. It is the case of the petitioner that the impugned order has been wrongly passed by the learned Labour Court as the directions for payment of wages and bonuses cannot be given by the Labour Court while adjudicating upon an application filed under Section 33C(2) of the I.D. Act.

19. In rival submissions, the respondent workman has rebutted the said contentions by stating that the learned Labour Court rightly appreciated the settled position of law and was well within its power to direct payment of the dues accrued towards the services rendered by the respondent workman.

20. Therefore, the limited question for adjudication before this Court is whether the learned Labour Court had powers to adjudicate the issue or not.

21. Before delving into the issue at hand, this Court deems it appropriate to discuss the settled position of law regarding exercising of powers conferred under Article 226 of the Constitution of India for interference with an order passed by the Labour Court. The jurisdiction of the High Court in matters where Article 226 has been invoked, is limited. It is a well settled proposition of law that it is not for the High Courts to sit over as Appellate



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Court over the decisions passed by the Tribunals/Courts/Authorities below, since, the concerned authority is constituted under special legislations to resolve the disputes of a particular kind, it is assumed that the said adjudicating authority has the requisite knowledge and expertise to subject matter.

22. A writ is issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals and such errors would mean where orders are passed by inferior Courts or Tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to the principles of natural justice.

23. Tersely stated, *firstly*, a High Court shall exercise its writ jurisdiction sparingly and shall act in a supervisory capacity and not adjudicate upon matters as an appellate court. *Secondly*, the Constitutional Court shall not exercise its writ jurisdiction to interfere when *prima facie*; the Court can conclude that no error of law has occurred. *Thirdly*, judicial review involves a challenge to the legal validity of the decision. It does not allow the Court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. The reasoning must be cogent and convincing. *Fourthly*, a High Court shall intervene only in cases where there is a gross violation of the rights of the petitioner and the conclusion of the



authority concerned is perverse. A mere irregularity which does not substantially affect the cause of the petitioner shall not be a ground for the Court to intervene. *Fifthly*, if the Court observes that there has been a gross violation of the principles of natural justice.

24. Now advertent to the issue at hand, the learned counsel for the petitioner submitted that the impugned order suffers from illegality as the learned Labour Court exceeded its jurisdiction by adjudicating the issue of payment of bonus and earned wages in an application filed under Section 33C(2) of the I.D. Act.

25. Section 33C(2) of the I.D. Act provides for the computation of any money or benefit that the workman is entitled to receive from the employer.

The relevant part of the said provision reads as under:

(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 3[within a period not exceeding three months:]

26. The aforementioned extract stated that the Labour Court under Section 33C(2) of I.D Act has the authority adjudicate upon the quantum of money due from the employer when the entitlement for the same already exists, i.e., the claim has been adjudicated.

27. The Allahabad High Court in the judgment of ***Executive Engineer v. Mahesh Chandra***, 2024 SCC OnLine All 1214, held that the entire scheme



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which has been given under Section 33C(1) and 33C(2) is in the form of execution proceedings for recovering the money due from an employer to a workman which is under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B as computed to be due towards the workmen.

28. Section 33C(2) envisages a situation where a workman is entitled to receive money from his employer or any benefit which is capable of being computed in terms of money and if a question arises as to the amount of money, then such question can be decided by Labour Court as directed by the Appropriate Government. Therefore, in case of a dispute concerning quantum of money, the same has to be settled by Labour Court, and once the decision is made by Labour Court, it forwards the same to appropriate Government to be recovered in the manner provided under sub-section (1) of Section 33C.

29. Therefore, the Labour Court cannot adjudicate the dispute of entitlement or the basis of the claim of workmen under Section 33C(2). It can only interpret the award of settlement on which the claim is based and its jurisdiction of the ID Act is like that of an executing Court.

30. However, the Labour Court under Section 33C of the I.D. Act can still interpret the award on which the claim of the workman rests. In this light, it is apposite to mention that in *MCD v. Ganesh Razak*, (1995) 1 SCC 235, the Hon'ble Supreme Court has stated that these proceedings are analogous to execution proceedings and the Labour Court acts like Executing Court in the execution petition under the Code of Civil Procedure. It was further held that the benefit sought to be computed under Section 33C(2) must be an



existing one which are already adjudicated upon or provided for. For doing this exercise, as held by the Hon'ble Supreme Court, the learned Labour Court can interpret the award or settlement on which the right of the workman rests.

31. Now advertent to the issue at hand, i.e., the impugned order dated 8th September, 2000, passed by the learned Labour Court in the application filed by the respondent workman. The issues framed by the Labour Court are as follows:

- “1. Whether claim is not maintainable in view of the preliminary objection stated in the Written Statement?*
- 2. Whether the claimant is entitled to the relief prayed for?”*

32. The findings arrived at by the Labour Court are as follows:

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“7. A.R for the management has argued that there is no existing right in favour of the claimant nor there has been any prior adjudication by any Court in respect of the claim raised by the petitioner and therefore, the petition; under Section 33-C(2) of the Industrial Disputes Act, 1947 is not maintainable, in that regard he has placed reliance upon a decision by the Hon'ble Apex Court in the case of. Ganesh

Razak Vs MCD 1994 SC ILLJ 395, it has been further argued by the (management A.R that the Payment of Wages Act is a self-contained code which provides for specific authority to adjudicate upon the dispute with regard to wages and that being the position that this Court has no jurisdiction to try the dispute relating to the minimum wages claimed in this petition. It is further argued by the management AR that Payment of Bonus Act is also a self contained code which provides for a specific authority / method of adjudication with regard to payment of bonus and, therefore, the application under Section



33-C(2) of the Industrial Disputes Act, 1947 is not maintainable.

10. In the present case the claim of the workman includes the benefits of earned wages and arrears of minimum wages for a period of two years @ Rs. 500/- per month. Since the claim includes arrears of earned wages, leave wages, petition under Section 33-C(2) of the Industrial Disputes Act, 1947 is maintainable as it is based on some pre-existing rights with regard to earned wages and leave wages along with bonus.

16. In the light of the above discussion and detailed reasons given therein, it is held that the workman is entitled to a sum of Rs, 1930/- towards earned wages for May, 1998, leave wages of Rs. 2895/- for 45 days @ Rs, 1930/- per month, Rs, 11,580/- towards bonus for three years i.e, 1995-1996, 1996-1997 and 1997-1998 which is total sum of Rs, 16,405/-. The management is directed to pay the said amount to the claimant within two months from the date of this order, A copy of this order be sent to the appropriate Government. File be consigned to record room.”

33. A perusal of the aforementioned order indicates that the Labour Court has extensively discussed the preliminary objections raised by the petitioner herein and assumed its jurisdiction u/s 33C(2) only after addressing them.

34. It has found that the claim filed by the workman includes arrears of earned wages, leave wages and therefore, the application u/s 33C(2) is maintainable as it is based on pre-existing rights of the workman.

35. It has further noted that though MW1, Aman Kumar, has in his cross-examination admitted that the workman was paid bonus, it did not produce the payment of bonus register for a period of three years, i.e., 1995-1996,



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1996-1997 and 1997-1998. It has also rejected overtime wages claimed by the workman in the absence of cogent evidence in relation to the same.

36. Hence, it is evident that there is no error apparent on the face of the record and no jurisdictional error has been committed by the Labour Court in the exercise of its jurisdiction u/s 33C(2).

37. This Court does not find any force in submissions advanced by the petitioner as to justify the exercise of its extraordinary jurisdiction under Article 226.

38. Additionally, it is relevant to note that an award directing reinstatement with 50% backwages was delivered by the Labour Court on the same day, i.e., 8th September, 2006. Hence, the Labour Court did not adjudicate the matter afresh on merits so as to travel beyond the scope contemplated under Section 33C as the claim had already been answered in favour of the workman. Secondly, the Labour Court was also cognizant of the scope of its jurisdiction and observed that the claim pertained to pre-existing rights of the workman in Para 10 of the order.

39. Since the Labour Court only utilized its jurisdiction under Section 33C(2) to interpret the award, this Court does not find force in the argument advanced by the petitioner that the Labour Court has traveled beyond the scope of its jurisdiction.

40. In light of the aforementioned discussion, this Court is not inclined to interfere in the impugned award under its writ jurisdiction as it does not suffer from any infirmity. Therefore, the instant petition, being devoid of any merit, is liable to be dismissed and the impugned order dated 8th



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September, 2006, passed by the learned Labour Court in application bearing no. 46/98 is upheld.

41. Accordingly, the instant petition is dismissed, along with pending applications, if any.

42. Order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 28, 2024
GS/AV/DB